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THE

CONNECTICUT CIVIL OFFICER,

IN THREE PARTS.

PART I. CONTAINING THE POWERS AND DUTIES OF

JUSTICES OF THE PEACE.

PART II. CONTAINING THE POWERS AND DUTIES OF

CONSTABLES.

PART III. CONTAINING THE POWERS AND DUTIES OF

SELECT MEN;

WITH SUITABLE AND APPROVED FORMS FOR EACH.

TOGETHER WITH NUMEROUS LEGAL FORMS, OF COMMON USE, AND GENERAL CONVENIENCE.

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PREFACE.

THE delay in the publication of this work has been occasioned by a partial relinquishment of the undertaking, on the part of the publishers, soon after the original proposals were issued, which was the result of circumstances, not necessary to be disclosed; and in consequence of which, the work was not commenced until a few months since, within which period it has been prepared for the press, in the time that the author could spare from other avocations. This fact is mentioned to shew the cause of the delay, which may have occasioned disappointment to subscribers, and seem to require some explanation, and not to claim indulgence towards the work for any deficiences or errors it may contain, as the haste with which it has been compiled can afford no excuse for its faults.

I have been fully sensible that *accuracy* and *simplicity* constitute the principal value of a publication of this description, and have bestowed upon it that degree of care and attention, which I trust will render it a safe guide to those officers for whose use and convenience it is intended. Whilst I have endeavoured to supply all *forms*, deemed necessary, in the discharge of the official duties, both of Justices of the Peace and Constables, these constitute but a small part of the work. To give forms without directions as to the use of them, would be in some measure like putting the tools of a mechanic into the hands of a person wholly unacquainted with the art or trade in which they are to be used.

It has been my intention to make this work a *directory* and *manual*, to Justices of the Peace and Constables, in the discharge of their various and often important duties: how far I have succeeded in this, I submit to the public. With respect to Justices of the Peace, I have aimed to specify their numerous official acts, both of a ministerial and judicial nature, and to give directions for their proceedings in both civil and criminal matters, connected with suitable forms, and to present such an abstract or general view of

the law as appeared to be necessary for these objects. As to Constables, their duties lying within a narrower compass, I have endeavoured to present a complete view of them, and to give a digest or summary of the law relating thereto. I have given only a very general view of the duties of Select-men.

With a view to perspicuity, and to prevent misapprehension, I have been particular to separate matters belonging to the same general subject, and to treat of them with as much distinctness as possible, bearing in mind that I was writing for those who in general are unacquainted with the elements of legal science.

There is a disagreeable responsibility attending a publication of this description; as from its humble character, success will afford no credit, whilst a failure must subject the compiler to deserved animadversion. If it contains errors, its being designed for common use, and by those who in general will not be capable of detecting the same, must render them the more dangerous. And that no errors should have intervened, is hardly to be expected; but I trust they will not be found so numerous or essential as to impair its usefulness.

INTRODUCTION.

THE first section of the fifth article of the Constitution of this State, provides that the judicial power shall be vested in a Supreme Court of Errors, a Superior Court, and such inferior courts as the General Assembly may establish. The second section provides, that there shall be appointed in each county a sufficient number of Justices of Peace, with such jurisdiction in civil and criminal matters as the General Assembly may prescribe. The third section directs that the judges of the supreme court of errors, of the superior and inferior courts, and justices of the peace, shall be appointed in such a manner as may be prescribed by law. Since the adoption of the constitution, this is the basis of the judicial department in Connecticut, although the constitution made no alteration in the system.

It is provided by statute, (*a*) that the judges of the supreme court of errors, of the superior and county courts, judges of probate and justices of the peace, shall be appointed by the concurrent vote of the Senate and House of Representatives; the judges of the court of errors and the superior court, are required to be chosen by ballot in each house, and hold their offices during good behaviour, removable by impeachment, or by the governor, on the address of two thirds of the members of each house of the assembly. The judges of the county courts, of probate, and justices of the peace, are chosen annually, and continue in office until the 20th of June, in the year next following their appointment, unless sooner removed or suspended by the general assembly. The mode of proceeding is by bill, as in the case of other bills for public acts; it may originate in either house. A nomination of the judicial officers of each county, is usually made in county meetings, consisting of the representatives of the several towns in the county. These nomlnations are introduced into the house of representatives in the form of bills; the judge of the county court, the associate judges, and judges of probate, in separate bills, but the justices of the peace of each county all in one bill. These bills can be amended by erasing, adding, or substituting names, in either house; but both houses must concur as to each name, or the person is not appointed. After the county bills, as they are called, are passed, other bills are usually introduced by members of either house, for the appointment of additional justices of the peace.

The judges of the superior and county courts, and judges of probate, receive separate commissions; but the justices of each county are commissioned jointly, in one commission, consti-

(*a*) *St. p.* 149.

tuting them justices of the peace within and for the county, for which they are appointed, to which their authority is confined. No judge or justice of the peace, is capable of holding his office after he arrives to the age of seventy years (*c*). No justice of the peace can hold the office of sheriff, deputy sheriff or constable, or be a taverner (*d*).

All judges and justices of the peace are to be sworn before entering upon the duties of their office, and without which their acts are void. Before the adoption of the constitution, there were specific oaths for judges of the courts and justices of the peace; but since the adoption of the constitution, the general oath prescribed therein, which is both an oath of allegiance and of office, is administered to the members of the assembly, and to all state and judicial officers. This oath which is now to be administered to justices of the peace, is as follows: "You do solemnly swear (or affirm, as the case may be) that you will support the constitution of the United States, and the constitution of the state of Connecticut, so long as you continue a citizen thereof, and that you will faithfully discharge, according to law, the duties of the office of to the best of your abilities. So help you God."

The office of justice of the peace is very ancient, and like most other human institutions, has in the progress of civilization and improvements gradually experienced important changes. It was derived to us from England, the land of our fathers, with the fundamental principles of our jurisprudence and civil law. In that country it appears to have originated from the office of conservator of the peace, which was a mere executive office, held in some instances by prescription, or as incident to the tenure of fiefs or freholds, and in others by appointment of the freeholders of the county. In the first year of Edward III. commissioners of the peace were appointed by statute, which superseded the office of conservators of the peace. They, however, continued only conservators, or keepers of the peace, until the 34th year of the same reign, when the power of trying felonies was conferred upon them by act of parliament; and being invested with judicial authority, they soon acquired the more dignified and honourable appellation of justices. This appears to have been the origin of the judicial power of justices of the peace, or indeed of the office itself, for previously, the office of conservator and commissioner of the peace, had in its duties much more resemblance to that of constable than to that of justice of the peace at the present day. From that period the authority, duties, and jurisdiction of justices of the peace, have been enlarged and extended from time to time by numerous statutes.

In the colony of Connecticut, the office appears to have been adopted without the authority of any express statute, and its existence is probably coeval with the colony. They were, until

(*c*) *Con. art. 5th.* (*d*) *St. p.* 148.

the revision of 1702, called commissioners, but possessed judicial authority, and in the oldest statutes of the colony, commissioners were associated with magistrates and select-men in the administration of justice. The assistants, as they were afterwards called, were then denominated magistrates, and originally their primary powers and duties were of a judicial nature.

(*e*) The compact formed by the towns of Hartford, Windsor and Wethersfield, in 1639, provided for establishing a general court to be holden in April and September, to consist of the governor, at least four magistrates, and a majority of the deputies which were to be chosen by the towns. This body united all the powers of government, executive, legislative & judicial. The particular courts, which had previously been constituted, consisting of a certain number of magistrates, still continued to be held, from which appeals were made to the general court. In October the same year, the several towns were authorised to establish a *town court*, to consist of three, five, or seven of their principal inhabitants, one to be chosen moderator. This court was to be holden once in two months, and had jurisdiction as to persons over the inhabitants of the town only, and as to cases, of matters of trespass, and contract, not exceeding forty shillings. An appeal might be taken from its decisions to the particular court. This is evidently the origin of justices' courts, and of the civil jurisdiction of justices of the peace in this state. In 1647, a question arose as to what number of the magistrates formed a quorum, to hold a particular court; and it was finally decided that the governor or deputy governor, and two magistrates, had power to hold such court, and that in case the governor or deputy governor should not be present, three magistrates, one to be chosen moderator, were competent to hold the court (*f*). This court was attended by a jury, but all causes under forty shillings could be tried by the court.

In 1665, after the union of the two colonies of Connecticut and New-Haven, by the charter of Charles II. the court of assistants was established, consisting of at least seven assistants, the name of magistrate having at this time been changed to that of assistant. The next year the colony was divided into the counties of Hartford, New-Haven, New-London and Fairfield, and a county court established in each, consisting of one assistant, and three or more commissioners. These courts superseded the particular courts. In 1669, the town courts were re-organised, and were to consist of an assistant, or a commissioner, and at least two of the select-men(*g*.) By subsequent acts, any one assistant was authorised to try all causes arising in his county without a jury, wherein the matter in demand did not exceed forty shillings; and in those towns where no assistant resided, the same power was given to a

(*e*) *Pref.* 1*st*, *Conn. Rep.* (*f*) *Pref.* 1, *Con. Rep.*
(*g*) 2 *Col. Rec.* 272.

commissioner and two select-men. From these courts an appeal was allowed to the county-court, and from the decisions of that court to the court of assistants, and from thence to the general assembly, which was the dernier resort in all matters of law and equity.

In 1698, it was provided that in each county, at least four justices of the peace should be appointed, three of whom were to be justices of the quorum, who, with a judge to be appointed for that purpose, were to hold county courts; and subsequently, three justices of the quorum, were authorised to hold the court in the absence of the judge. The judge and justices of the quorum, were at first appointed during the pleasure of the general assembly; but afterwards were appointed annually. The judicial power of justices of the peace, appears at this period to have been established, and to have superseded the inferior courts held by an assistant, and by a commissioner and two select men. By numerous statutes, their jurisdiction was extended to various subjects, enlarged, and the right of appeal in certain cases taken away. Their jurisdiction in civil matters was finally fixed at fifteen dollars, with the right of appeal, ordinarily in cases exceeding seven, and so continued until the year 1821, when it was extended to thirty-five dollars, with the right of appeal in causes exceeding seven dollars, as before. The constitutionality of this law has been doubted, on the ground of its interfering with the right of trial by jury, and it is understood that a cause from Fairfield county is now pending before the court of errors, in which this question is to be discussed and decided. It is, however, hardly to be expected that the court will declare the law void; it would be a subject of regret if they should, as so far as we are enabled to judge from experience, it is promotive of convenience and economy.

The criminal jurisdiction of justices remains the same as before the statute last referred to; it embraces a great variety of matters, and comprises a considerable part of their duties. In addition to their judicial authority, both civil and criminal, they are by different statutes entrusted with various powers,, and required to discharge various duties of a ministerial nature.

PART I.

CHAPTER I.

Of the ministerial powers and duties of Justices of the Peace.

The powers and duties of Justices of the Peace, may be divided into those which are judicial, and those which are ministerial; although in many cases they partake of both. The latter consist of the authority which they possess at common law, and which is in general recognized by Statute, as conservators of the Peace, and the various powers and duties which have been entrusted to them by different statutes, of an executive or ministerial nature. This and several succeeding chapters are devoted to a consideration of their ministerial duties, or rather to a notice of them, as neither our limits nor the object of this work will admit of their being examined at length.

1st. (*a*) Justices of the Peace are authorised to issue all ordinary original writs in civil causes, both in law and equity, and warrants in criminal cases. Writs in civil actions are either a summons or an attachment, having the official signature of a Justice. The latter cannot be granted without the plaintiff or some other person enters into a recognizance before the authority issuing the same, conditioned that he prosecute his action to effect. A certificate or record of such recognizance must be made on the writ. If in the opinion of the Justice the plaintiff is unable to pay the bill of cost that may be recovered against him, it is his duty to require surety in such bond; and in case of a summons, if the plaintiff is not an inhabitant of this state, or if an inhabitant of the state, and it appears to the authority signing the writ, that he is unable to pay the cost that might be recovered against him, some responsible person be-

(*a*) St. p. 34.

longing to this state must recognize as surety to the plaintiff for the prosecution of such suit, and to answer all damages in case he make not his plea good.

(*b*) Writs, whether attachment or summons, are ordinarily to be directed to, and served by, the sheriff or his deputy, of the county where the defendant resides, or a constable of the town. When, however, there are more than one defendant in the writ, who are described to be of different counties, it may be directed to an *indifferent person by name;* the process, whether a summons or attachment, must previously be filled up and completed in all other respects. Writs of attachment also may be directed to an indifferent person, when the plaintiffs, or one of them, if there are more than one, or his or their agent or attorney shall make the following affidavit: "You solemnly swear (or affirm) that you verily believe the plaintiff (or plaintiffs, as the case may be) is in danger of losing the debt (damage, or other thing, as the case may be) in this writ, unless an indifferent person be deputed for the immediate service of the same—*So help you God.*" Which oath the Justice signing the writ is to administer and certify the same literally on the back thereof. He is entitled to twelve cents for administering the oath, which is not to be taxed in the bill of cost. He need not certify, as was formerly required, the reason of the writ's being directed to an indifferent person.

(*c*) Sheriffs are authorised to make special deputations, which must be entered on the back of the writ, the person being named, who, after having served the process, must make oath that he served the same according to his endorsement thereon, and that he did not fill up said writ, nor give directions to any other person to fill up the same; and the administration of said oath is to be certified by the Justice on the back of said writ.

(*d*) Formerly Justices could not issue a writ to be served out of the county where they resided; but now they issue process to be served in any part of the State, and returnable before any court within the State. All writs returnable to the Superior, County, or City Courts, are subject

(*b*) St. p, 35. (*c*) St. p. 36. (*d*) St. p. 146.

to a duty, in the first case, of one dollar, and in the two last, of thirty-four cents; the payment of which, the Justice must certify on the writ, and thereupon becomes chargeable for the same to the State. Writs to the Superior or County Court, must be made returnable to the next term, unless issued after the expiration of the time of service; but if there is a wrong date, so as to appear to have overleaped a term, it may be shewn by parol testimony that there is a mistake in the date, and that the writ was issued since the last term (*e*).

Subpœnas for witnesses may in all cases be directed to an indifferent person.

Issuing a writ, being a ministerial act only, it may be done in favour or against the town where the Justice resides, also against or in favour of persons standing in those relations in which a Justice is prohibited by law from acting judicially, and it has been claimed that a Justice might sign a writ in his own name, but this would not be advisable nor proper. A writ against a town, where there is sufficient cause, may be directed to an inhabitant of such town as an indifferent person. (*f*) A writ directed to a sheriff *or* an indifferent person would abate; but to a sheriff or other proper officer *and* an indifferent person is good.

Writs may also be signed by the governor, lieutenant governor, a senator, any judge of the superior or county courts, and writs returnable to the superior, county or city courts by the clerks of those courts, respectively.

2d. (*g*) Justices are authorised to issue and sign warrants in all criminal cases, to be served and returned before any court in the state. Ordinarily a Justice cannot issue a warrant, but upon a complaint made to him by an informing officer, or an individual who has been injured, or a common informer. The informing officers are the state attornies, the grand-jurors, and constables, and tithing-men in particular cases. Private individuals may also in certain cases make complaint to a justice in their own name and that of the state; and in one or two instances an individual may make complaint in the name of the state only, but this must be under oath.

(*e*) 4th Day, 436. (*f*) 2 Swf. Sys. 108. (*g*) St. p. 146.

(*h*) A Justice may, *ex officio*, as a peace officer, arrest without a warrant, all who violate the peace in his presence, and may commit them to prison, if necessary to preserve the peace. (*i*) He may arrest not only those who break the peace by actual violence of beating or striking any person, but such as contend with hot and angry words, tending to provoke actual violence in his presence; and those who in his presence threaten to kill, wound, or inflict some bodily injury, and likewise those who go about armed with dangerous or offensive weapons, to the terror and disquiet of the people. In such cases a justice might at common law, *ex officio*, grant a warrant, without complaint of an informing officer, to cause the offender to be arrested and brought before him, and on inquiry he might convict and pass sentence against him; but this power seems now to be taken away by statute (*k*).

3d. (*l*) It is made the duty of Justices by statute, on their own knowledge, or a verbal or written complaint of any grand juror, constable, select-man, or any substantial householder, to issue a warrant and bring before him all idlers, sturdy beggars, vagrants and vagabonds, who roam about from place to place, and have no lawful business nor visible means of support; all night-walkers, jugglers, and fortune-tellers; all who run away and leave their wives and children to be supported by the town; all who mispend what they earn and do not provide for the support of themselves and families; all lewd and dissolute persons, who frequent houses of ill-fame; all common prostitutes and common drunkards, and on conviction, to sentence them to the work-house, not exceeding forty days.

When any Justice shall have plain view, or personal knowledge of any person's being guilty of drunkenness, profane swearing, or sabbath breaking, he may, with or without warrant, cause such offender to be brought before him, and upon such evidence make up judgment against him. This statute provides that no judgment shall be rendered for any other offence, whether on confession or otherwise, without a previous complaint and warrant. This provision was introduced at the late revision; it takes

(*h*) 1 Hawk. P. C. 25. (*i*) Dal. Just. 37. (*k*) St. 431-2.
(*l*) St. p. 172.

away the common law authority of a Justice to order a person to become bound to keep the peace who breaks it in his presence, or where a person is brought before him by a constable without warrant, for a breach of the peace in his presence. A Justice now has only the authority to interfere in case of an affray, or other breach of the peace, in his presence, to arrest the offender, to order him confined, and if necessary to preserve the peace, imprisoned, until he can safely be permitted to go at large, but he can pronounce no sentence or judgment, without a previous complaint and warrant. But although this provision may be considered as having restricted the common law authority of Justices, it cannot be regarded as taking away the special authority granted in particular statutes, enacted at the same time, and of equal validity. It cannot be supposed that the legislature intended by a general restriction to take away or limit the authority specifically given in different statutes. The statute relating to idlers, vagabonds, &c. already noticed, is inconsistent with this general provision, as that authorises and makes it the duty of Justices, on their *own knowledge*, or a verbal complaint, and that too of a householder, to arrest such offenders, and pass sentence against them. There are other statutes containing similar provisions.

4 (*h*) When any Justice sees or has knowledge of any counterfeit bill or bills, it is his duty to seize and deface the same, and enter on the back the name of the person of whom he received it, and to retain it; and it is the duty of all persons having counterfeit bills to deliver them to some justice of the peace; in both of which cases the justice may at his discretion cause the person from whom said bill was seized or delivered, to come before him, and to examine him on oath, respecting the person of whom he received such bill; and he may make such other enquiries as he may deem necessary, to discover the person who counterfeited, or passed said bill knowing it to be counterfeit, and on satisfactory proof, require such person to become bound with surety for his appearance before the court having jurisdiction of said crime, and for want of bail com-

(*h*) St. p 134.

mit him as in other cases. A person in such cases ought not to be arrested without a warrant; but this a justice can evidently issue, without any previous complaint being presented to him.

5. (*i*) Two justices are authorised, on information in writing, *or otherwise* of an informing officer, or a majority of the selectmen, that he or they have cause to suspect that any biliard table or E O table, is concealed or kept in any building which must be described, to issue a warrant to any proper officer or indifferent person, directing him to search for, and if found, to seize and carry away such tables, and make return of his doings to such justices. A warrant in pursuance of this statute might be issued without being accompanied with any regular complaint; althongh it would be most safe and proper that a written complaint be made and signed, either by an informing officer, or by the major part of the select-men.

6. In case of sudden, untimely or unnatural death, the cause or manner of which is unknown, any justice of the peace of the county may issue a venire or writ to summon a jury of twelve judicious men, who being sworn by such Justice, shall proceed to inquire into the cause or manner of the death of such person, and present a true verdict thereof, signed by each of them, to the same or some other Justice of the Peace of the county, who shall return the same to the next superior court in the county. If there is no Justice in the town, a constable may summon and swear the jury of inquest (*k*).

Venire, or Summons for Jurors.

To any Constable of the town of in the county of Greeting: By authority of the state of Connecticut, you are hereby commanded forthwith to summon twelve judicious and discrete men of said town of to appear before me at in said town of on the day of at o'clock, then and there to form a Jury of inquest, to inquire of the cause and manner of the death of A. B. there lying dead, the cause and manner of whose death is unknown. Hereof fail not, but due return make Dated, &c.

(*i*) St. 249. (*k*) St. 177.

Juror's Oath.

You swear that you will diligently inquire of the cause and manner of the death of A. B. here lying dead, the cause of whose death is unknown, and deliver up a true verdict thereof, according to the evidence that may be given you, and your best judgment—*So help you God.*

Verdict.

——— county ss. ——— The undersigned jurors being duly impannelled and sworn to inquire of the cause and manner of the death of A. B., whose death was sudden and untimely, and the cause and manner of which was unknown, having viewed the body of said deceased, and considered the evidence given to us, do on our oaths say, that said A. B. came to his death by accident and mischance, by falling from a certain bridge, at a place called in said town of (or do on our oaths find and say that the cause and manner of the death of said deceased is to said jurors unknown); whereof we subscribe our names.

Signed by all the Jurors.

The verdict may be delivered to any justice of the peace in the county, who must return the same to the next superior court. Any person summoned as a juror, forfeits two dollars for not attending; and neither the justice, jurors, or constable, are entitled to any fees for their services.

7. (*l*) In all cases where any person has executed a bail bond, or entered into a recognizance for the personal appearance of another, before any court, and such bail or surety shall afterwards believe that his principal intends to abscond, such bail or surety may apply to any Justice of the Peace in the county in which such principal resides, and on producing his bail-bond, or evidence of his being bail or surety, and verifying the reason of his application by oath or otherwise, it is the duty of the Justice to grant a mittimus forthwith, directed to any proper officer, or an indifferent person, commanding him to arrest such principal and commit him to the keeper of the gaol of the county, and also authorise and command said keeper to receive

(*l*) St. 63.

such person and him detain in gaol, until he is discharged by due course of law. The bail may, without any warrant or mittimus, arrest his principal, to surrender him in court where he was bound to appear, or to deliver him to the officer who has the execution issued on the judgment recovered in the action in which the bail was given (*m*). On application to a Justice, he ought to require the bail bond to be produced, or some other evidence of the person applying being bail, and that he make oath as to the reason or cause of his applying for a mittimus : which facts should be recited therein.

8. Justices have power, and it is their duty to issue warrants to collect all taxes which may be lawfully granted by towns, societies, or other communities. It is the duty of the select-men of towns, and the committee of societies or other communities, to make out the rate bills for all taxes under their hands, containing the proportion each individual is to pay according to his list, and then to apply to a Justice of the Peace for a warrant, who is bound to grant the same, which should be directed to the collector or collectors of such tax.

CHAPTER II.

Of the ministerial powers and duties of Justices of the Peace.

1st. Justices are conservators of the Peace throughout the county, and may, *ex officio*, arrest, and if necessary confine any person who violates the peace in his presence, and at common law might order such offender to procure bonds to keep the peace, and for his good behaviour, without complaint or warrant, but this authority is now taken away by statute. As a peace officer, it is made the duty of Justices to suppress riots (*n*). If three or more persons shall come together with an intention to do an unlawful act with force or violence against the peace, or to the manifest terror of the people, any Justice of the county, the sheriff or any of his

(*m*) Swf. Dig. 597. (*n*) St. 384.

deputies, or any constable or select-man of the town is authorised and required on notice or knowledge of any such unlawful and riotous assembly, to resort to the place, and among, or as near as he can safely come to such rioters, with an audible voice command silence, or cause it to be done, whilst proclamation is making; and thereupon make, or cause to be made, proclamation, in these words, or words to the like effect: "In the name and by authority of the state of Connecticut, I charge and command all persons assembled, immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, upon the pains and penalties of the law." And if such persons, or any three or more of them, after proclamation has been made, shall not disperse, any Justice of the Peace, the sheriff, or any of his deputies of the county, and any select man, or constable of the town, is authorised and empowered to call assistance and apprehend such person or persons continuing together after proclamation has been made as aforesaid, and forthwith to carry them before some Justice of the Peace, that they may be proceeded against according to law. And if any person so unlawfully and riotously assembled, shall be killed, or maimed, or hurt, in the dispersing or apprehending or endeavouring to disperse, or apprehend him or them, such Justice or other officer, and all persons aiding or assisting them, shall be discharged and indemnified, as well against the public, as the person injured.

2. Justices of the Peace are authorised to administer oaths, not only in judicial proceedings, but in all cases where they are by law required, unless there is an express provision that in particular cases they be administered by certain officers. The form of administering oaths in this State is extremely simple. In England, and in most of the other states, it is done by resting the hand on the New Testament, and then kissing the Book. (o) Here it is provided by statute that no other ceremony shall be used by persons to whom an oath is administered, than holding up the right hand, as has been accustomed; but when by reason of scruples of conscience any person shall object to

(o) St. 369.

such ceremony, he shall be permitted to use any proper ceremony to which he has been accustomed in such cases, or such as the court or authority by whom the oath is to be administered shall direct.

There seems to be no express general provision by statute as to the administration of oaths; but they may be administered not only by Justices of the Peace, but by the governor and the judges of the superior and county courts. It is a power incident to all courts to administer judicial oaths in proceedings before them; and the clerks of the superior, county, and city courts, as officers of such courts possess the same authority. The clerk of the senate, the clerks of the house of representatives, and the chairman of committees of either house of the general assembly, are authorised to administer oaths during the session of the general assembly (*p*). This power is undoubtedly to be confined to proceedings before the general assembly. Specific forms of oaths are prescribed for town and other subordinate officers, and also for judicial proceedings. The governor, lieutenant governor, members of both houses of the legislature, sheriffs and judges of the courts, and of probate, and justices, take the oath prescribed in the constitution as an oath of office. Where a person, from scruples of conscience, declines to take the witnesses oath in the usual form, it may be administered to him as follows: "You, A. B. do solemnly and sincerely affirm and declare, that the evidence you shall give to this court, concerning the case now in question, shall be the truth, the whole truth, and nothing but the truth, *upon the pains and penalties of perjury.*"

3d. The poor debtor's oath, as it is called, is administered to poor debtors in gaol on civil process for debt only. It has been decided that this is so far a ministerial act, that it may be administered by any justice in the county, although not residing in the town in which either of the parties belong (*q*). The oath to be administered to the debtors is as follows: "You, A. B., solemnly swear, that you have not any estate, real or personal, in possession, reversion, or remainder, of the value of seventeen dollars in the whole, or sufficient to pay the debt or demand for which

(*p*) St. May Ses. 1822. (*q*) 3 Con. Rep.

you are imprisoned, (except what is by law exempt from being taken on execution) and that you have not directly or indirectly sold or otherwise disposed of all or any part of your estate, thereby to secure the same, to receive or expect any profit or advantage thereof, or to defraud or deceive your creditors—*So help you God.*" Notice must be given by citation to the creditor, or to his attorney if he is out of the state, four days, inclusive, before the day on which the oath is to be administered, to appear and shew reasons, if any he has, why the oath shall not be administered to such debtor. The citation may be directed to any proper officer, or an indifferent person, and must be served by copy; when served by an indifferent person, he must make affidavit to his endorsement, before any Justice of the county, who must certify the same on the back of the citation. It is usual to notify the adverse party to appear at the gaol of the county on a certain day and hour, to shew reasons why the oath shall not be administered, without mentioning any Justice before whom to appear, as it might not be convenient to obtain the same. This practice has grown up from considerations of convenience, but the statute evidently contemplates that the adverse party should be notified to appear before some particular Justice, to whom the notification should be made returnable. It would be more correct that he be cited to appear before any proper authority. In case the adverse party appear, it is the duty of the Justice who is called on to administer the oath, to enquire into the matter, and if no sufficient reasons are shewn to the contrary, to administer the oath. The creditor may shew that the debtor is possessed of property to a greater amount than seventeen dollars, or the debt for which he is imprisoned, or that he has fraudulently conveyed away property to defraud his creditors and qualify himself to take the oath; in either of which cases it is the duty of the Justice to refuse him the oath. When the oath is administered, the debtor is discharged, unless the creditor shall lodge with the keeper of the gaol such sum for the weekly maintenance of the debtor as the county court have established; and in case the debtor immediately adopts the legal steps to take said oath, the creditor must also leave money for the support of such debtor

from the time of his application to the time of administering the oath, provided it does not exceed seven days, or the gaoler will not stand charged with the prisoner. It is the duty of the keeper, when a debtor immediately applies for the oath, to furnish such debtor with necessaries, and if the creditor does not pay for the support of such debtor antecedent to his taking the oath, the keeper may recover the same by suit against such creditor; and if he is unable to pay the same, the gaoler may recover it of the town to which such prisoner belongs; and if he is not an inhabitant of any town in this state, then the same shall be paid by the state. The prisoner is entitled to his weekly maintenance of the gaoler in money if he demands it.

If the oath is refused by the Justice, the prisoner cannot make application except to two judges of the county court, or one judge and a justice of the peace, who may administer or refuse said oath; and if the oath shall be administered by the Justice on the first application, the creditor has a right to apply to two judges of the county court, or one judge and a justice, to review said cause, giving reasonable notice to the prisoner, and if on a full hearing, it shall appear to the satisfaction of such court that the prisoner is not entitled to the benefit of the poor debtor's oath, it is their duty to order his support to cease, and he shall thenceforward be holden in prison, in the same manner as though said oath had not been administered. It was long considered as doubtful whether the decision of a court of review was final and conclusive or not; and a practice has prevailed when the oath was refused by such court, for the debtor to commence *de novo*, and cite the creditor again to appear before a Justice; and it has been decided by the superior court that this might be done (*r*). But in the revision of the statutes there was a provision added, that if the circumstances of the prisoner subsequent to the refusal of the oath by such court of review, shall become changed, so that he may lawfully be entitled to take said oath, he may make application therefor, as in the first instance. This provision is confined to the case where the oath is refused by the Justice, and his decision confirmed by the court of review; but as the reason is the same, it is un-

(*r*) Hart. Co. Sept. term, 1821. Phelps, Shff. vs. Soper, et al.

doubtedly equally applicable to the case where the oath is administered by the Justice on the first application, and refused, and the support of the prisoner ordered to cease, by the court of review. This provison may be considered as making the decision of the court of review final, except in cases where there is a change in the circumstances of the prisoner after the oath has been refused. If the oath is refused to a debtor on the ground of his possessing more than seventeen dollars in property, he may subsequently assign his property in payment of bona fide debts, and thereby entitle himself to the oath ; but this must be done in good faith, for if such assignment is made even to actual creditors only as a cover, and the debtor intends to reclaim the property, he cannot be entitled to the oath. If the oath was refused on the ground of the debtor's having made a fraudulent conveyance, it would seem that the fraud might be purged and the fraudulent debtor entitled to the benefit of the oath, by his afterwards assigning such property in good faith in payment of *bona fide* debts. It has been decided by the court of errors that a fraudulent debtor is entitled to the benefit of the insolvent act, after having purged the fraud by the assignment or transfer of the property which had been fraudulently conveyed to his creditors in payment of bona fide debts. The same rule would be applicable to a debtor, thus situated, applying for the poor debtor's oath.

Form of citation to Creditor :

To the sheriff of the county of or his deputy, or either of the constables of the town of within said county,—Greeting—*or if directed to an indifferent person.* To A. B. of the town of in the county of an indifferent person,—Greeting—By authority of the state of Connecticut, you are hereby commanded to summon or give notice to C. D. of in the county of the creditor, on an execution in whose favour E. G. is now confined in the gaol of said county, to appear on the day of at o'clock, noon, at the common gaol in in said county, before A. B. Justice of the Peace for said county, or other proper authority, then and there to shew reason if any he hath, why the oath provided

by law for the relief of poor debtors in prison, shall not be administered to the said E. G. a poor prisoner, confined in said gaol for debt only (as it is said.) Hereof fail not, but make service by leaving a true and attested copy of this citation with the said C. D. or at his usual place of abode, and make return according to law. Dated at the day of A. D.

A. B. Justice Peace.

Form of certificate where the service is made by an indifferent person.

County of ss. day of A. D.

Personally appeared before me, C. D. and was sworn to the truth of the above endorsement, by him subscribed and attested.

A. B. Justice Peace.

4. Justices of the Peace are authorized to take depositions, swear the deponents, make the certificate, and direct them to the court wherein they are to be used, in all cases in which depositions are allowed by law. Depositions are authorized by statute, not being evidence at common law. (*s*) When any witness in a civil cause, lives out of the state, or more than twenty miles from the place of trial; is going to sea, or out of the state, or by age, sickness, or bodily infirmity, is unable to travel to court, or is confined in gaol on legal process, his deposition may be taken. If the adverse party lives within twenty miles of the place of caption, or he has an agent or attorney within that distance, notice must be given to him or to such agent or attorney, to be present at the time and place of taking such deposition. The statute does not prescribe any mode of notice; but it is most safe that it be in writing, and delivered to the party or left at his usual place of abode. A citation is often issued and served on the party, and returned before the magistrate; which affords him the best evidence that notice has been given; no time of notice is required, but it should be reasonable. Depositions may be taken in any other state or country by a magistrate having power by the laws thereof to administer oaths. Where depositions may be taken, a

(*s*) St. 47.

justice is authorized to issue a subpœna for the appearance of the witness before him, to give his deposition; and if he refused to appear, the subpœna having been served and returned, the justice may issue a *capias*, and cause him to be brought before him; and if he shall refuse to give his deposition, and in any case if a witness shall refuse to depose, the justice may commit him to prison until he shall comply. Neither the party, his attorney, or any person interested, can write, draw up or dictate a deposition; and they should regularly be written by the witness or the magistrate. The deposition must be signed by the witness, and the justice should caution him to speak the whole truth before he administers to him the oath. The justice must certify that he administered the oath to the witness, the reason of taking the deposition, that the adverse party or his agent, if either live within twenty miles, was notified and present, or notified and not present, (as the case may be,) or that he lives more than twenty miles, and was not notified or present. He must seal it up and direct it to the court, or he may himself return it to the court unsealed; but if delivered open by any other person, it will be rejected. A justice cannot take a deposition except in the county in which he belongs, nor in any other case administer an oath out of his county. A justice may take depositions here to be used in any other state where they are allowed.

Form of certificate.

County of ss. day of A. D. Be it remembered that on the day aforesaid, C. D. who hath subscribed the foregoing deposition, appeared before me, and after being examined and cautioned to speak the whole truth, made solemn oath to the same deposition; which is taken at the request of J. S. to be used in an action now pending before the court to be holden at within and for the county of on the Tuesday of (or now in session at within and for the county of as the case may be) wherein the said J. S. is plaintiff, (or defendant as the case may be,) and G. H. is defendant, (or plaintiff.) The reason of taking said deposition is, that the said deponent resides more than twenty miles from the place of trial; (*or* is going to sea, *or* out of the state, *or* from sickness is unable to travel to court, *as the*

case may be) the adverse party was notified and present, *or* living more than twenty miles from the place of caption, and having no known agent or attorney within that distance, was not notified or present. Said deposition drawn up and certified by A. B. Justice Peace.

DIRECTION.

To the honourable court, to be holden at within and for the county of on the Tuesday of A. D. The deposition of C. D., taken, sealed up, and directed at in the county of this day of A. D. by me.

A. B. Justice Peace.

If the deposition is to be used before a Justice, vary the direction as follows: To A. B. Esquire, Justice of the Peace, for the county of The deposition of, &c. The subpœna, when it is necessary to issue one for the appearance of the witness is in common form, summoning him to appear at a specified time and place, before a justice, then and there to testify his knowledge in a certain cause pending before a certain court, the cause and court being described.

CAPIAS *when the witness refuses to obey the subpœna.*

To the sheriff of the county of his deputy, or either constable of the town of within said county,—Greeting:—Whereas C. D. of in said county, having been summoned to appear before me at my office in on the day of A. D. at the hour of then and there to testify his knowledge in a certain action pending before (describe the court and cause) and has neglected and refused to appear. Wherefore, by authority of the state of Connecticut, you are hereby commanded to take the said C. D. if he shall be found within your precincts and him cause to be safely kept, so that you him have forthwith, (or at a certain day and hour) before me at my office in then and there to testify his knowledge in the cause aforesaid. Hereof you are not to fail, but have you there this writ, and how you shall have served the same, make known by your endorsement thereon. Dated &c.

A. B. Justice Peace.

Mittimus in case he refuses to testify.

To the sheriff, &c,—Greeting :—Whereas C. D. of in the county of having been brought before me by a Capias to testify his knowledge in a certain cause (describe the cause and the court before which it is pending) and the said C. D. wilfully and contemptuously refuses to testify and depose what he knows concerning said cause : Wherefore—By authority of the state of Connecticut, you are hereby commanded to take the said C. D. and him commit into the custody of the keeper of the gaol of said county, and to leave with said keeper this mittimus ; and said keeper is hereby commanded to receive the said C. D. and him safely keep in the common gaol of said county, until he consent to testify his knowledge in the aforesaid cause, and be discharged by due course of law. Hereof you are not to fail. Dated, &c.

A. B. Justice Peace.

5. Justices of the Peace are authorized to take the acknowledgment of deeds, and all other instruments which are required to be acknowledged, to give them validity. All grants, deeds and mortgages of lands and buildings must be acknowledged by the grantor to be his free act and deed before a justice of the peace, or any judge of the superior or county courts ; and if executed out of the state, the acknowledgment may be taken by a judge of the supreme or district court of the United States, a judge of the supme or superior court, or of the court of common pleas, or county court ; before a commissioner or other officer having power by the laws of such state to take acknowledgment of deeds (*t.*)

All leases of lands or houses for more than one year must be acknowledged, witnessed and recorded, the same as deeds.

When a deed is executed by an attorney, it must be acknowledged by him ; but it should be executed and acknowledged in the name of the principal : the power of attorney must also be acknowledged. No sale or lease for a longer term than one year of any pew in any meeting house or

(*t*) St. 302.

church shall be effectual in law, except against the grantor or leasor and their heirs, unless it is in writing, subscribed, witnessed and acknowledged in the same manner as deeds of land, and recorded by the clerk of the society in a book to be kept for that purpose. One pew, the property of any person having a family, who ordinarily occupy the same, is exempt from being taken by execution for debt or taxes. When any grantor having executed a deed shall, on being required by the grantee, his heirs or assigns, refuse to acknowledge the same, the grantee, his heirs or assigns may enter a *caveat*, or caution, upon the lands and houses granted in such deed, with the town clerk or register, where they are situated, by leaving with him a copy of the deed, with a claim of title by virtue thereof; which caution shall secure the interest of the grantee, until a legal trial can be had; and an attested copy of the judgment of the court delivered to the register shall be his warrant to record such deed, although the grantor refuse to acknowledge the same, and such deed shall have the same effect as if acknowledged. The party need only leave the deed with the register, and a written statement that he claims title by virtue thereof, and intends to try the validity of the same.

6. Where all the persons interested in an estate of a deceased person, being legally capable to act, mutually agree on a division of the same, it must be by writing, signed, sealed, witnessed and acknowledged before a justice or the judge of Probate, and when returned to said judge and recorded it will be effectual in law.

CHAPTER III.

Of the ministerial powers and duties of Justices of the Peace.

1. Justices of the Peace are authorised to join persons in marriage; but this must be done within their county. Marriage may also be solemnized by ordained ministers, so long as they continue in the work of the ministry, and by the judges of the superior and county courts. No form of covenant or contract is required, and every denomination

of christians, and almost every individual who officiates pursues a form of his own.

If any Justice of the Peace or other person authorized, shall join persons in marriage, before the intention of the parties has been published in some public meeting or congregation on the Lord's-day, or some public fast, thanksgiving or lecture-day in the parish or society where the parties, or either of them ordinarily reside, or by setting up such intention or purpose in fair writing upon some post or door of their meeting-house, or near the same, in public view, there to stand so that it may be read for eight days before such marriage, they shall forfeit and pay the sum of sixty-seven dollars for every such offence :—one moiety to him who shall complain and prosecute, and the other to the Treasury of the county where the offence is committed. And where such publication has been made, if the parties or either of them are minors, the justice or minister forfeits the same sum for joining them in marriage, without previously being certified of the consent of their parents or guardians, if any they have, whose care and controul they are under. If any person shall deface or take down any notice in writing set up as aforesaid before the expiration of eight days, he shall be fined three dollars.

It is the duty of every person who celebrates the marriage contract, within thirty days after, to lodge a certificate of the same with the clerk of the town in which such marriage is performed, and to pay such clerk twelve and a half cents for recording the same, which it is his duty to do, in a book to be kept for that purpose, and for every neglect to lodge such certificate, he forfeits the sum of fifteen dollars to the treasury of the town wherein such marriage was performed (*u*).

2. When any person under an overseer does not submit to his authority, two or more Justices of the same town, on application of the select-men, may issue a warrant to bring him before them, or grant a summons or other written notice, for him to appear at a certain time and place, or if he abscond, leave such notice at his usual place of abode. On his appearing, or without, after notice, and refusal, said

(*u*) St. 316.

Justices may inquire into the matter, and if they find such person refuses to submit to the authority of his overseer, or that by his misconduct he is wasting his estate, and likely to be reduced to want, they may authorize the overseer or any other person they may appoint, to take such person, his family and estate under their care. The power and duty of a person thus appointed will be the same or similar to that of a conservator appointed by the county court. An overseer thus appointed, may for misconduct be removed by the select-men and two justices of the town, and another appointed; so also in the case of his death; and in case of vacancy of an overseer, the disability of the person is to continue nine days, to give the select-men time to appoint another. If such person reforms, said Justices may revoke the appointment of the overseer. and order his estate restored to him. An appeal lies from the doings of the select-men, or the two Justices, to the next county court (*w*). The two Justices must record the appointment of an overseer and all their doings.

3. The children of those persons who receive relief or supplies from the town, and who suffer their children to live in idleness; and also those children who have no parents, or others to take care of them, and are exposed to want and distress, and who live in idleness, the select-men, with the consent of one Justice of the Peace, are empowered to bind out to proper masters, to be instructed in some trade, calling, or profession; males until the age of twenty-one, and females until that of eighteen, or the time of their marriage within that age (*x*).

4. If any apprentice, bound by indenture, shall refuse to serve as an apprentice, according to the terms of the indenture, or shall disobey the lawful commands, or resist the authority of his master, or shall waste or destroy his property, or be guilty of any gross misbehaviour and wilful neglect of duty, on complaint of the master to any two Justices of the Peace of the same town, the said Justices may issue a warrant and cause such apprentice to be brought before them, and inquire into the truth of the complaint, and if they find such apprentice guilty, they may

(*w*) St. 276, (*x*) St. 319.

commit him to the house of correction, and if there is none, to the common gaol in the county, there to be confined at hard labour for such term of time as they may think proper, not exceeding thirty days; and if he reform, said Justices may release him from prison before his term expires. Said Justices are also empowered, if they judge it best, to discharge said master from the contract of apprenticeship, and cancel the indenture (*y*).

In case an apprentice, bound by an indenture, departs from the service of his master, any Justice, on complaint of his master, may issue a warrant to the sheriff or constable, commanding them to press men, if necessary, to pursue said apprentice and bring him back by force, at the request and expense of his master.

Where the master is guilty of personal cruelty or abuse, or refuses to provide for him necessary food or clothing, or neglects to instruct him in his trade or business, or if an apprentice shall flee from the tyranny of his master, to the house of any inhabitant in the same town, on complaint of the parent or guardian of such apprentice, or the selectmen, to any Justice of the town, such Justice may cause such master and apprentice to appear before him, and reconcile them if he can, and if he cannot, he may at his discretion bind the master and the apprentice to the next county court, or give order for the apprentice's custody in the mean time, and for his appearance at court.

Complaint to two Justices.

To A. B. and C. D. Esquires, Justices of the Peace for the county of and residing in the town of in said county, comes O. P. an inhabitant of said town of and complains and informs said Justices of the Peace, that he is by profession and occupation a blacksmith, and carries on said business in said town, and that for more than one year last past, Q. R. has been, and now is, an indented apprentice to your complainant, and duly bound by indenture to the complainant by S. T. his father, (or guardian) with the written consent of said apprentice, expressed by his subscribing said indenture, to learn the trade of a

(*y*) St. 319.

blacksmith ; and he further informs that at divers times, and particularly on the day of A. D. in the town aforesaid, the said apprentice did wilfully and contemptuously disobey the lawful commands, and resist the authority (*or*, did grossly misbehave and wilfully neglect his duty, as the case may be) of the complainant, to the great interruption and detriment of his business ; and which said doings of said apprentice are contrary to the statute in such case provided, and of evil example. And the complainant prays that you will issue a warrant, and cause said apprentice to be brought before you, to answer unto this complaint, and that you will inquire into the truth of the matters herein alledged.

O. P.

Warrant.

To the Sheriff, &c. You are hereby commanded forthwith to arrest the aforesaid Q. R. of the town of in the county of apprentice to the aforesaid O. P. and him forthwith have (or at a certain day and hour) before us, the undersigned, Justices of the Peace, at the office of A. B. in said town, that he may be examined, touching the foregoing complaint, and be dealt with according to law. Hereof you are not to fail, &c.

A. B. Justice Peace.
C. D. Justice Peace.

Record.

county, ss. H day of A. D.

Be it remembered, that on this day, Q. R. of was brought before us by virtue of a warrant by us issued, on the complaint of O. P. of representing that the said Q. R. being an indented apprentice to the complainant, bound to him by indenture, by his father, and with his own written consent expressed in said indenture, at divers times, and particularly on the day of A. D. at said did wilfully disobey the lawful commands, and resist the authority of the complainant, to the injury and detriment of his business, and contrary to the statute in such case provided; and having appointed L. M. guardian, to defend the said Q. R., he being required to answer to said complaint, says he is not guilty, whereupon we proceeded to inquire into said matters, and having fully

considered the evidence, do find that said Q. R. is guilty in manner and form complained of, by the said O. P. and thereupon it is considered by us, that the said Q. R. be confined in the common gaol of said county, as a house of correction, there being no house of correction in said town of to be kept at hard labour, for a period of time not exceeding twenty days, and that in case he reform before that time, he be released by our order.

A. B. Justice Peace.
C. D. Justice Peace.

Mittimus.

To the Sheriff, &c.—Greeting.

Whereas Q. R. of was on the day of A. D. found guilty before us of disobeying the lawful commands, and resisting the authority of O. P. his master, the said Q. R. being an indented apprentice to the said O. P. and by us sentenced to confinement in the common gaol of said county, as a house of correction, and there to be kept at hard labour, a period of time not exceeding twenty days, and to be discharged on his reformation, before that time, by our order. Wherefore you are hereby commanded to take the said Q. R. and him commit to the keeper of said gaol, and to leave with him this mittimus; and said keeper is hereby commanded to receive said Q. R. and him safely keep within said gaol at hard labour during said term of twenty days from the date hereof, unless sooner discharged by us. Hereof you are not to fail, &c.

A. B. Justice Peace.
C. D. Justice Peace.

Minor children, who are stubborn and rebellious, and refuse to obey their parents or those who have the care of them, may be proceeded with and sentenced in the same way as apprentices, on complaint of their parents, or those who have the charge of them, or an informing officer, to two Justices of the Peace of the town where the parties live (*z*).

4. Two or more Justices of any town, on application

(*z*) St. 107.

of the select-men, may issue a warrant to remove any person who has become chargeable to such town, not being an inhabitant thereof, to any other town in this state to which such pauper may belong. Also in case any inhabitant of any other state come to reside in any town in this state, not having a settlement in this state, any two or more Justices of such town may, on application of the select-men, grant a warrant to convey such person out of the state, from whence he came. We shall consider this subject more fully in treating of the duties of select-men (*a*).

Form of Warrant.

To either Constable of the town of within the county of Greeting— Whereas, E. F., G. H., and I. K. a major part of the select-men of said town of have made application to the undersigned Justices of the Peace for said county, and residents in said town of representing that U. V. and his family, on or about the day of A. D. removed into the said town of that he has become chargeable to said town, and is a pauper; that he belongs to, and is an inhabitant of the town of in the county of [or that he is not an inhabitant of this state, and came from in the state of New-York.]

Wherefore, By authority of the state of Connecticut, and agreeably to the statute in such case provided, you are hereby required and commanded to take the said U. V. and his family forthwith, or as soon as they can safely be removed, and them convey into said town of where they belong and have a legal settlement, [or them convey out of this state into the said state of New-York, whence they came.] Hereof you are not to fail, &c.

A. B., Justice of the Peace.
C. D., Justice of the Peace.
E. F., Justice of the Peace.

There are various duties and powers, of a ministerial nature, confered by numerous statutes upon Justices of the Peace, either individually, or upon two or more, or upon

(*a*) St. 231.

one or more Justices and the select men, or upon the civil authority, consisting of the board of Justices of the town, or the civil authority and the select-men; but as these services are not of frequent occurrence, or of much importance individually to magistrates, and as in general they present but little difficulty, we shall merely notice them; our limits not admitting of more. Those cases, too, where one or more of the civil authority are to act in conjunction with the select-men, we may have occasion to notice when considering the duties of select-men.

5. The civil authority and select-men of those towns where manufacturing establishments exist, are constituted a board of visitors, and it is their duty in the month of January annually, and at such other times as they may think proper, to visit such factories, and examine and ascertain whether the requisitions of the statute relating to the instruction and preservation of the morals of the children employed in such factories have been complied with, and if they find any neglect, to report the same to the next county court. They may delegate their power, and appoint a committee of visitors if they please (*b*).

6. The civil authority and select-men of the several towns in the state are constituted a board of health, and may organize themselves and act as such when occasion may require; appoint a president and clerk, and such health officers or health committees, as they may deem expedient, and exercise all the power and authority necessary for the prevention, or to stop the diffusion and spread of malignant or contagious diseases (*c*).

7. It is the duty of the civil authority on the first Monday of January in each year in their respective towns, to appoint, or to approve of proper persons to be retailers of wines and spiritous liquors, for the year ensuing. They are to appoint a clerk who must be sworn, and they must lodge with the clerk a list of the persons approbated, certified by the chairman, designating the place where, as well as the name or firm under which such persons desire to retail. A license will then be issued to each person or firm in the name of the civil authority, attested by the clerk.

(*b*) St. 320. (*c*) St. 419.

A duty at the rate of five dollars per annum is to be paid for each licence, and twenty five cents to the clerk for the licence (*d*).

Oath of the Clerk.—"You, A. B. being chosen and appointed Clerk of the civil authority of the town of do swear that you will truly and faithfully execute the office to which you are chosen and appointed, make true entries of the proceedings of the civil authority at any of their meetings, account for, and pay over all monies belonging to this state received by virtue of your office, and perform all other duties incident to your appointment according to your best skill.—*So help you God.*"

Form of License.—"Whereas the civil authority of the town of in the county of in the state of Connecticut, reposing special confidence in the integrity and faithfulness of to support the laws of this state for the suppression of an improper use of spiritous liquors, and having approved of the said according to law to be a retailer of the same: We therefore do give license to the said to be a retailer of wines and distilled spiritous liquors, according to the laws of this state at in said town of until the second Monday of January next. Given under my hand this day of

Per order, C. D., Clerk."

Special meetings of the civil authority may be called if necessary. The civil authority also grant licenses to auctioneers, which are necessary to enable them to sell foreign goods or produce. They are required to pay a duty of two per cent. on all foreign goods they may sell, to the clerk of the civil authority, and to give a bond with surety to secure a compliance with the law (*e*).

8. The civil authority, select-men, constables, and grand jurors of the several towns in the state, are constituted an electoral body for the appointment or nomination of taverners, which must be done sometime in the month of January annually. They are required to nominate by their major vote such person or persons as they shall judge fit and suitable to keep houses of public entertainment in

(*d*) St. 436. (*e*) St. 61.

such town the ensuing year, which nomination certified under the hand of a majority of the civil authority and select-men, shall be transmitted to the next county court, which can reject or approve such nominations, and grant licenses to such as are approved. Each taverner must give a bond of seventy dollars to the treasurer of the county for the due observance of the laws relating to houses of public entertainment (*f*).

It is the duty of the civil authority and select-men to inspect the conduct of tavern-keepers in their towns, and if they are satisfied they do not observe the laws to admonish them; and if such taverner disregard such admonition, and persist in his disobedience to the law, a major part of the civil authority and select-men may revoke and set aside his license; and on their causing a copy of such revocation to be left with such taverner, and another posted on the sign-post of the town, his right to keep a public house ceases, and determines.

9. The civil authority, select-men, grand jurors and constables of the several towns on the first Monday of January, choose by ballot, the number of jurors, to which such town is entitled, to serve in the superior and county courts in the county the ensuing year. They must be freeholders, having a freehold estate set in the list at nine dollars or more (*g*). Land under mortgage is not a legal freehold, even if the mortgage debt has been paid, after it became forfeited.

10. The civil authority and selectmen of any town are empowered to authorize any person to enter on the land of any other person, within the town at any season of the year, on which barbary bushes are growing, and to dig up and destroy the same, and such person shall not be liable to an action therefor. The same authority may be given by vote of the town in legal town meeting (*h*).

11. The civil authority and select-men of the respective towns, are empowered to abate the one eighth part of all taxes which may be granted by the General Assembly, and for which the treasurer may issue his warrant, arising upon the lists of the inhabitants of such town, and apply

(*f*) St. 442. (*g*) St. 45. (*h*) St. 91.

the same for the relief of the indigent or unfortunate in the abatement of their particular rates, in whole or in part, in such a manner as they may judge most just and reasonable. And which abatements the civil authority and select-men must certify under their hands to the Treasurer of the State, who thereupon must allow the same to the credit of the collector of such tax. They are authorized to make a further abatement of the taxes of the poor, but all abatements above one eighth must be made up by the town (*i*).

CHAPTER IV.

Of the Judicial Powers and Duties of Justices of the Peace.

Although the office of Justice of the Peace was originally ministerial, at the present time their judicial powers and duties are far the most important. This branch of their authority and duties, is naturally divided into those which are of a civil and those which are of a criminal nature. We propose first to consider the civil branch of their judicial powers, and shall devote this chapter to an examination of their

CIVIL JURISDICTION.

The general civil jurisdiction of Justices of the Peace, as it respects the subject matter is now fixed at thirty-five dollars. All causes wherein the title of land is not concerned, and wherein the debt, trespass, damage, or other matter in demand, does not exceed thirty-five dollars, must be heared and determined by a Justice of the Peace; provided that in all cases where the sum demanded shall exceed seven dollars, except in actions on notes or bonds vouched by two witnesses and given for money only, an appeal shall be allowed to the next county court (*k*).

Actions of trespass *quare clausum fregit* must be brought in the county where the land lies. When in such actions, demanding not more than seven dollars damages, the defendant shall justify by a *plea of title* to the land, a record

(*i*) St. 453. (*k*) St. 41.

shall be made thereof and the matter of fact shall be taken to be confessed and the defendant shall become bound to the adverse party before the justice with surety, in a recognizance in a sum not exceeding seventy dollars, that he will prosecute his plea and enter his cause in the next county court where the land lies and prosecute the same to effect and pay all damages and costs if he fail to make his plea good. If he neglect to give such bond his plea shall be rejected and the action proceed. When such bond is given it determines the jurisdiction of the Justice, as a Justice of the Peace has no jurisdiction as to the title of land in any case where it appears from the record that the title is in issue; but when in an action of trespass upon land the defendant does not *plead title*, but gives his title in evidence under the general issue, the Justice can proceed with the case and incidentally try the title, for if the defendant wishes to take away the jurisdiction of the Justice he must plead his title. Where the defendant pleads his title and enters into a recognizance, it is his duty to procure copies of the proceedings before the justice, certified by him, and have the cause entered in the docket of the county court; which must be left with the clerk on the first or at the opening of the court on the second day of the court, and if he neglect so to do, he becomes liable on his recognizance, to the plaintiff for all the damage he has sustained. And if on a trial before the county court, he fail to make out a title to the land, paramount to that of the plaintiff, he is liable to pay treble damages and costs (*l*). He will not be permitted before the county court, to alter his plea, but the action must be tried on the plea put in before the justice.

In all actions brought before a Justice of the Peace, demanding not more than seven dollars damages, charging the defendant with raising or obstructing the waters of any stream, river, creek or arm of the sea, by the erection of any mill, dam, or other obstruction, in which the defendant shall justify the same by a *special plea, stating or alleging a lawful right;* and in all actions demanding not more than seven dollars damages, charging the defendant

(*l*) St. 53.

with an injury done to land, in which the defendant shall justify the same, stating or alleging a *right of way;* the party who shall be aggrieved by the judgment of such Justice of the Peace, shall be allowed to appeal to the next county court in the same county, on his giving bond with surety to prosecute his appeal to effect.

A justice is authorized to take the acknowledgment of a debt from a debtor to his creditor for any sum not exceeding seventy dollars and the costs of such confession. The confession must be made by the debtor himself, not by any other person for him; it can only be for the debt and the cost of the confession which is twenty-five cents. Before the revision, a confession might be for costs which had previously accrued by suit, as well as the costs of confession; but now, in such cases, a new note must be given including such costs and a confession taken thereon. The Justice must make a record thereof and issue execution as in other cases (*m.*)

The civil jurisdiction of justices as to persons is, in a qualified sense, confined to the town in which they reside. All actions before a justice of the peace must be brought and tried in the town in which the plaintiff or defendant dwells; but where there is no justice of the peace who can lawfully try the cause in either town, it may be brought before any justice of the town next adjoining to that where the plaintiff belongs (*n*). But where neither of the parties belong in this state, the action must be brought in the town where the defendant is at the time the suit is commenced; or if the service is made by attaching the property of the defendant, or factorising his debtor, the plaintiff and defendant neither being inhabitants of the state, the action must be brought where the property is attached or the debtor of the defendant resides. If a suit is brought by a corporation having no location, it should be brought where the defendant resides. If the plaintiff is not an inhabitant of this state, the action should be brought in the town where the defendant is when the writ is served upon him, or if service is made by attaching property, the defendant not residing in the state at the time, in the town where the property

(*m*) St. 146. (*n*) St. 41.

is attached. Where the plaintiff is an inhabitant of this state, and the defendant is not, the action cannot be brought where the defendant may be found and a writ served upon him in the state, but it must be brought where the plaintiff belongs. Actions of trespass *quare clausum fregit*, need not be brought in the *town* where the land lies but where either of the parties belong, in the same county. Where there is so near a relationship between a judge or justice of the peace, and either of the parties in any civil action, as father and son, by nature or marriage, brother and brother, uncle and nephew, or landlord and tenant, such judge or justice is disqualified to act. And where he is interested in the suit, and may receive any direct benefit or loss, or is liable for the cost, or has engaged to pay the whole or any part of the expences of carrying on such suit, he is likewise disqualified (*o*). An interest in the question or principle on which the case depends, not connected with any interest in the suit, is not a legal disqualification; but in such cases a magistrate from considerations of delicacy at least, ought to excuse himself. An action in which a corporation is a party or interested, cannot be tried before a justice who is a stockholder or member, or any other way interested in such corporation.

Any justice of the county may be called on to the county court, when it shall so happen, by reason of the absence or legal exception of any two of the judges, that there shall be but one judge present qualified to try any cause pending before such court. And when all the judges of the county court are disqualified to sit in any cause pending before them which is not appealable, the clerk shall draw by lot from the names of all the justices of the peace qualified to act in such cause, in the town where the court is sitting, the names of three justices of the peace, who shall have power to try said cause. And if such town is interested, three names shall be drawn in like manner from the justices of an adjoining town.

(*o*) St. 148.

CHAPTER V.

Of proceedings before a Justice in cases of Defaults, Non-suits and Trials.

I. *Of Defaults and Non-suits*—By a late statute all writs returnable before a Justice of the Peace, are required to be returned twenty-four hours at least, before the day of trial; and those returnable to the Superior, County or City Courts, forty-eight hours before the session of the court (*p*). It is provided by a subsequent statute that where writs have not been returned forty-eight hours before the session, they may be received at the discretion of the court, the officer's fees to be disallowed. This law does not extend to suits before justices, although the reason is the same. As the statute requiring writs to be returned before a justice twenty-four hours before the day of trial, does not expressly say that where they are not so returned, the justice cannot proceed in the case, it is the most reasonable construction of the statute, that where no objection is made on account of the writ's not being returned in season, the justice can try the case, as the defendant may waive the objection. In case of defaults where the defendant does not appear, if the writ has not been returned in season, the justice may enter upon judgment by default, as the defendant may be considered as waiving the exception by not appearing.

(*q*.) In an action brought before a justice wherein the defendant is an inhabitant of the state, but out of the state when the suit was commenced and does not return before the trial, such action must be adjourned a reasonable time, not less than one month, nor more than nine, to give the defendant an opportunity to return, or for notice to be given to him. And where in an action before a justice, the defendant is not an inhabitant or resident of this state, and actual notice is not given to him, the action must be adjourned for a term not less than three, nor more than nine months (*r*). If judgment is given on default, without an

(*p*) St. 37. (*q*) St. 39. (*r*) St. 40.

appearance by any other person for the defendant, and without the cause being adjourned, in either of the aforesaid cases, it will be erroneous ; and on application to the county court a new trial will be granted.

In actions on joint securities, where all the defendants are not inhabitants of this state, service on those that are inhabitants of this state, is sufficient to maintain the action against all the defendants ; and in such cases it is not necessary to continue the suit on account of some of the defendants not being inhabitants of this state. A justice of the peace has in no case the power of granting *new trials ;* but in either of the aforesaid cases if judgment is rendered against a defendant who was out of the state at the service of the writ, who continued absent until after the time of trial, and who had no actual notice, he may apply to the county court of the same county, which, on his making it appear, that such judgment was obtained wrongfully, and that he has a good ground of defence, may grant him a new trial, and proceed to final judgment therein. The case is not to be returned to the justice to be tried again by him. Petition must be brought to the county court, within six months after such absent defendant returns or comes into this state, and within three years from the rendering of the judgment (*s*). Where judgment was rendered against an absent debtor after adjourment of the cause, formerly the form of the judgment was that execution issue on the Plaintiff's giving bond, with surety in double the amount of the judgment to refund the money in case the judgment should be set aside. But since the revision of the statutes this is not necessary. When the defendant does not appear, or if he appears and does not answer to the case on its being called, the plaintiff is entitled to judgment on default, and it is the duty of the justice to enter up judgment accordingly, and issue execution.

Form of Record on Default.

County of ss day of A. D. :

At a court holden before the undersigned authority, at the time and place aforesaid, John Brown against Peter

(*s*) St. 40.

Smith, action on the case demanding thirty-five dollars damages; the plaintiff appeared, but the defendant being called made default of appearance, whereupon it is considered that the plaintiff recover of the defendant the sum of damages, and his costs of suit, taxed and allowed at making in the whole the sum of dollars and cents; and that execution issue therefor, with seventeen cents more for the same, and returnable according to law.

Dated &c. A. B. Justice of the Peace.

It is not however, necessary to make out a record in full; it is sufficient to make an entry or memorandum on the file, that the case was defaulted on such a day, and to enter the amount of the damages and costs; items of the costs being specified. Such an entry on the file is not a record of the judgment; but no inconvenience can arise from the practice, as a justice is authorised at any time afterwards to fill up and complete the record, not only during his continuance in office, but after he is out of office, except he is removed or left out in consequence of some crime of which he has been convicted, by impeachment or otherwise (*t*). When a justice shall die or removes out of the state, or is removed from office on account of some crime, his files shall be by himself or his heirs, executors, or administrators, lodged in the office of the town clerk of the town where he last resided. And such town clerk is required to demand and receive such files and records, and safely to keep the same to give, when required, true copies, which shall be legal evidence. And if such person who has exercised the office of justice of the peace, and is removed as aforesaid, or the executor or administrator of a justice in case of his death, shall refuse to deliver to the town clerk his files and records within ten days after they are demanded, he shall forfeit for each week he so refuses, the sum of five dollars, to be recovered in an action in the name of the county treasurer (*u*).

2. If on calling the action the Plaintiff does not appear, and the defendant does, the defendant is entitled to judg-

(*t*) St. 381. (*u*) St. 381.

ment on *non-suit*. It is usual to give one hour of grace before the action is called.

Form of Judgment.—At a court, &c. (name the parties and cause as in default,) the defendant appeared and answered to the action, but the plaintiff being three times publicly called, did not answer or appear; whereupon it is considered that the defendant recover of the plaintiff his costs, taxed and allowed at and that execution issue therefor, with seventeen cents more for the same, and returnable according to law.

A. B. Justice of the Peace.

CHAPTER VI.

II. Of Proceedings in Trials.

When the parties appear before a Justice for trial, various motions and interlocutory questions may arise. If the writ has not been returned in season, an exception may be taken, either on motion or by plea in abatement.

Of Special Bail.

1. Where the body of the defendant has been attached, the plaintiff is entitled to *special bail*. When it is required by the plaintiff, no defendant, whose person has been attached, and let to bail, shall be admitted to plead or defend in such action until he hath in court given special bail, with sufficient sureties for his abiding final judgment in the cause. If the defendant was attached and imprisoned, and so remained at the time of trial, he cannot be required to give bail (*a*). Special bail is to be ordered on motion; where the defendant is taken by surprise, it is proper to give him reasonable time to procure bail, and it may sometimes be necessary to adjourn the cause for that purpose. The liability of special, is the same as common bail, or the bail on the attachment; he is liable to satisfy the judgment in case of the avoidance of the principal and return of non est in-

(*a*) Stat. 62.

ventus—that the principal cannot be found—on the execution. When bail is taken on mesne process or attachment, the bail or surety may at any time during the trial, before entering up final judgment, surrender the principal up in court, and move to be discharged. He must thereupon, if he wishes it, move to have him taken into custody, which the court will order and grant a mittimus to commit him to the keeper of the gaol, that his body may be taken on the execution. If the plaintiff does not move to have him taken into custody, he will be discharged (*b*). He is to be kept in custody five days after final judgment; when if execution is not levied on him, he may be discharged (*c*).

Form of Mittimus.

To the Sheriff, &c. Whereas A. B. of was attached by C. D., deputy to the sheriff of by a writ of attachment in favour of E. F. of against the said A. B., demanding the sum of damages issued by G. H., Justice of the Peace, returnable before me this day; and the said A. B. having been let to bail, and his said bail or surety having brought him into court and surrendered him during the trial, and before entering up final judgment, and moved to be discharged: Wherefore, you are hereby commanded to take the said A. B., &c.

If a defendant does not obtain bail in the first instance, but is committed to gaol, and is bailed whilst confined, as he may legally be by the sheriff having the charge of the gaol, the plaintiff has the same right to special bail, as though he had been let to bail at first. Where the plaintiff is entitled to special bail, he must move for it before the defendant has been permitted to plead in the case; for after a plea has been received it is too late, and as the law requiring special bail has an apparent rigour in it, the plaintiff ought to be held to the strict rule, and his motion rejected, unless made in season. Where special bail is ordered, and the defendant neglects, refuses, or is unable to give bond with surety, if he will not agree to suffer a default, judgment must be given against him on *nihil dicit*—the defendant's

(*b*) St. 63. (*c*) Swf. Dig. 596.

refusing to plead or answer, for if he neglects or refuses to comply with the legal orders of the court, whereby his plea can be received, he is considered as refusing to plead or answer in the case; whereupon judgment may be entered up against him on the ground of such neglect or refusal.

Form of Judgment.

At a court, &c. (same as in default,) the action being called, the parties appeared, and the defendant having been attached on the mesne process and let to bail, the plaintiff moved for special bail, which was ordered by the court, but the defendant neglected and refused to give special bail, agreeably to the order of the court, and so the defendant neglected and refused to answer, plead, or defend in said cause; whereupon it is considered that the plaintiff is entitled to judgment against the defendant, and that he recover of him the sum of damages, &c.

Of Bonds for Prosecution.

2. Where a bond was not given at the praying out of the writ, or where the bond taken is insufficient, the Justice, on motion of the defendant, and on satisfactory proof that the plaintiff or his surety is not able to satisfy the bill of cost that may be recovered in the suit, must order the plaintiff to give a bond with surety to prosecute his action to effect, and pay all damages in case he fail in his suit (*d*). If the plaintiff neglect or refuse to give bond with sufficient surety, he must be non-suited, and the defendant is entitled to recover his cost. The proof lies upon the defendant, who must shew that the plaintiff, and his surety where bonds were given at the issuing of the writ, are not able to pay the bill of cost that may be recovered. Where the plaintiff has no visible property on which the execution might be levied, and where he is without credit, bonds ought to be ordered; the mere want of visible property on which to levy, would not justify ordering bonds, where the plaintiff possessed credit, as many persons of sound credit do not possess visible property. But when from the testimony it appears probable the defendant would not be able to collect his bill of cost, bonds should be ordered, as no

(*d*) St. 40.

person should be dragged into a court of justice and compelled to defend himself, and having done so, be unable to recover the cost which the law allows him, which is much less than his actual expense in defending himself.

Of motions for Adjournment.

3. Motions for adjournment frequently occur in trials before Justices. They may be made by either party, and at any stage of the trial. Justices have power to adjourn from time to time, in all cases; there can be no fixed rules upon this subject, but they must exercise a sound discretion. They ought not to adjourn for trivial causes; the absence of a material witness, where there has been no neglect of the party in obtaining his testimony, is always sufficient cause for postponement. The sickness of a party where his presence is necessary, or his personal attention in preparing the case, the sickness or absence of counsel when the party is surprised by it, and has not had an opportunity to employ other counsel, and numerous other circumstances are sufficient causes for postponement of a trial. When there is another suit pending before the higher courts, upon the same subject matter, or depending upon the same principle of law, between the same parties, it is sufficient cause for delaying the trial, until such cause can be decided. So likewise is the pendency of a petition before the superior court for the benefit of the insolvent law, a reason for postponing a cause until such petition can be decided; for if decided in favour of the petitioner, his body will be liberated, and execution can issue only against his goods and estate. It is usual, however, in such cases, for the plaintiff to take execution against the goods only; and where he consents to do this, there is no cause for postponement. A Justice may adjourn a cause, without the appearance of either party on the day, by their previous consent; or he may adjourn for his own convenience, giving the parties notice, if he conveniently can. Justices also may at their discretion adjourn a cause, when one party only appears, where they are satisfied the other party has been surprised, or where they personally know of satisfactory reasons why the absent party has not attended. In actions upon notes and other securities, where the plaintiff has no reason to expect there is a defence, or that the defendant will appear, it is

not usual for the plaintiff to attend at the trial, and in such cases it is proper for the Justice, if the defendant appears for trial, to adjourn the cause, and notify the plaintiff. But if the plaintiff knew there was a dispute about the note, he ought to attend, and could not be thus indulged. In actions on torts, and in all cases where from the nature of the suit it might be expected to be a dispute, it is as much the duty of the plaintiff to attend at the time of trial, as that of the defendant. Actions of book debt, are of an equivocal nature, being for a debt, yet one which may not be liquidated; but as the attendance of the plaintiff may be necessary to substantiate his account, and as the defendant may also have an account against the plaintiff, it is in general, the duty of the plaintiff to attend himself, or by some other person. Where, however, there are no mutual accounts between the parties, and the plaintiff's account is liquidated, or the amount known to the defendant, actions on book stand on much the same ground as those on note. As there is no regular sessions of justice courts, a liberal practice ought to be adopted as to adjournments, to accommodate the parties and others concerned.

Of motions for Amendment.

4. Motions for amendment frequently occur in trials before Justices. The plaintiff may amend any defect, mistake, or informality in the writ or declaration, at any time during the trial; provided such amendment shall not change the form or ground of action; and both parties may amend any mistake, defect or informality in the pleadings or other part of the record or proceedings. Either party may change his plea, replication or rejoinder, when he thinks he has missed the ground of his plea, and plead anew. But in all cases of amendment or pleading anew, the other party is entitled to reasonable notice to answer the same; and where the amendment is material, varying the nature of the claim or of the defence, it is sufficient cause of adjournment; and in all such cases, too, it is discretionary with the court to allow cost against the party making the amendment (*e*). When the amendment is merely verbal, or some informality, and does not essentially affect the

(*e*) St. 44.

claim or the defence, costs ought not to be allowed; but where it occasions a delay or inconvenience to the other party, costs should be allowed; and particularly in all cases where it occasions an adjournment, unless it is waved.

Of motion for Oyer.

5. In actions where a note is declared upon, as the gist or ground of the action, and a profert made thereof, (which is necessary to be done,) that is, an averment, that the plaintiff is ready to produce such writing in court, the defendant is entitled to oyer of such writing. Oyer, is having the writing read to him, but the practice is to deliver him a copy of the note or writing, which he is entitled to on motion. In actions of book debt, the plaintiff makes a profert of his book, and must give the defendant a copy of his account, or the original, on motion. As the defendant also may have an account against the plaintiff, and as the courts governed by the common law, refused oyer of the defendant's account, a statute was made requiring it to be given, so that the plaintiff is as much entitled to oyer of the defendant's account now, as the plaintiff is of his. In actions on bond, it is necessary for the defendant to have oyer of the bond, to see if there is not a condition annexed to it, and to plead it if there is.

Of Pleas in Abatement.

6. Pleas in abatement are often made before Justices; as they do not relate to the merits of the cause, and are sometimes merely for vexation and delay, they ought not to be encouraged. The defendant, however, has a right to offer such a plea, and when he does, it must be received and regularly disposed of. The plaintiff should be required to answer the plea as in other cases, that there may be a regular issue closed; this may be either an issue in fact, or an issue in law. If the matters set up in abatement are traversed or denied, it is an issue in fact; if demurred to, it is an issue in law. In the former case, the parties introduce testimony as to the matters of fact put in issue, the same as on issue as to the merits; and the Justice must decide whether the plea or allegations contained therein, are true or not; when the plea is demurred to, the facts are admitted to be true, and the Justice has to decide as to the operation of law on these facts, or whether the plea, it be-

ing admitted to be true, is sufficient to abate the action. We do not propose to go into an examination of the various pleas in abatement, as our object is only to state the mode of proceeding. We will, however, mention some of the most common.

Where the plaintiff is under age, and does not sue by his parent, guardian, or next friend, advantages may be taken of it in abatement; but if a minor is sued, it is not cause of abatement, for the court will appoint a guardian to conduct the suit for him. This should be done by the Justice, and the name of the person so appointed guardian, entered on the file, who should be notified if not present; and such person will plead and controul the suit for such minor. Persons under the care of conservators and overseers, may sue in their own names; but it is most usual to join the conservator or overseer; and if they are not, they can withdraw the suit, as well as though their names were on the record; although the defendant cannot plead in abatement. Where such persons are sued without citing their conservators or overseers, it is not cause of abatement, but the court will notify them, and continue, or postpone the case if necessary, to enable them to come in and defend (*f*).

If a married woman brings a suit in her own name, without joining her husband, this can be plead in abatement; but if she marry during the pendency of the suit, the husband can cause the marriage to be suggested or entered on the record, and the suit shall proceed in the same manner as though it had been commenced after the marriage (*g*). If a married woman is sued as though she was single, this is cause of abatement, and also if she marry during the pendency of the suit.

Members of both branches of the General Assembly are by the constitution privileged from arrest on civil process, during the session, and for four days before and after the same, so that if their bodies are attached, it is cause of abatement.

Misnomer, or misdescription of either party, is ground of abatement. Where the defendant is misnamed or misdescribed, he can take advantage of it by plea in abatement;

(*f*) Swf. Dig. 609. (*g*) St. 42.

but he should not plead as defendant, as this would be admitting himself to be the same person ; but the form should be, " and, A. B., on whom this writ was served, pleads and says that at the time said writ was served on him, and for a long time previous, he was known and called by the name of A. B., which is his true name, and that he was not at said time known and called by the name of mentioned in said writ, and by which he was sued" (*h*). If a party is described as of the wrong town or county, that is cause of abatement ; but a mere mispelling, either of the name of a party or place, is not fatal, if the words are the same and can be rightly understood. If a person is sued as executor, when he is administrator, or an administrator is sued as executor, this may be taken advantage of in abatement. If one of two defendants is misnamed or misdescribed, or the writ has not been legally served on him, he alone can take advantage of it, or he may waive it ; and if the cause of action is joint *and several*, the writ would abate only as to the person misnamed, but if *joint only*, it must abate in *toto* (*i*). If a person execute a note or writing by a false name, he must be sued by his true name, and declare that he executed such writing, by such false name. This is contrary to the English practice. The want of jurisdiction is also cause of abatement, either as to the subject matter, or the parties ; as where the demand exceeds thirty-five dollars, or where neither of the parties belong to the town where the action is brought. Where the action is on a note, or other writing which affords evidence of the amount of the debt or demand, that is the rule to determine the magnitude of the claim ; and where the note or other writing is of greater amount than thirty five dollars, a Justice has not jurisdiction, although no more than that sum is demanded in damages. But where the note is less than thirty-five dollars, if more is demanded, it is bad. In other cases where the amount of the plaintiff's claim does not appear from the cause of action as set forth in the declaration, the amount demanded in damages is the rule both as it respects the Justice jurisdiction and the right of appeal. Where there are more than one plaintiff or defendant, and one of them dies pending the suit, if the *cause of action* sur-

(*h*) Swf. Dig. 609. (*i*) ib. 608.

vive for, or against, such surviving plaintiff or defendant, such death may be suggested on the record, and the action will not abate. And if the defendant, or all of them where there is more than one, in any action, die pending the same, if the action might *originally have been prosecuted*, against the executor or administrator of such defendant or defendants, it shall not abate, and the plaintiff shall have a *scire-facias* against the administrator or executor of such deceased defendant, to shew cause why judgment shall not be rendered against them (*k*).

A misjoinder or non joinder, is cause of abatement; as where all the persons who ought to have been made plaintiffs, or all who ought to have been defendants are not joined. In joint contracts, all the contracting parties ought to be joined, whether as plaintiffs or defendants; but those which are joint *and several*, all may be joined, or a part only. Trespasses and torts are joint and several, and all or a part may be sued. Where persons who are not interested, and should not be parties, are joined, either as plaintiffs or defendants, it is cause of abatement. Where it is claimed that other persons should have been made defendants, the plea must name them, so as to give the plaintiff a better writ, as he may not know who they are (*l*).

A defect in the writ, or service, is ground of abatement. A mere defect in form, or in an immaterial part, will not abate a writ; if it is signed by proper authority, the court and time so described that they can be understood, it is good. If a writ has been filled up by a sheriff, his deputy, or constable, this will abate it. A material alteration in a writ of attachment after it is signed, will vitiate it, except it is done by the Justice signing it, as all attachments must be filled up and completed before they are signed, and a material alteration may vary the liabilities of the person who has given bond (*m*). The same rule by parity of reason, applies to a summons, where, from the plaintiff's being not an inhabitant of the state, or from his poverty, a bond is required and has been given at the issuing of the writ.

A defect in service is cause of abatement. Writs should be served in the manner required by law. If served by copy, if the copy is left at some other place than the defend-

(*k*) St. 42. (*l*) Swf. Dig. 609. (*m*) Swf. Dig. 610.

ant's abode, it will abate (*n*); so if there is a material variance from the original, it will be bad; yet if the court, the time of trial, and the cause of action, can be rightly understood from the copy, it will be good. The service of an attachment may be good as a summons, although not good as an attachment, so as to hold the property, as where incorrect or no copies are left, yet if the writ was read to the defendant, it is sufficient to hold him to trial. In case of defect in a writ, which is discovered before the time of trial, it may be altered and served over again; or in case of defective service, the writ may be served again, or a new writ may be obtained and served, and the officer need not return the first (*o*). If an officer has made a defect or omission in his endorsement, the service having been regularly made, he may be permitted to come into court and amend it. The return of an officer is *prima facie* evidence of the facts stated in it, and sufficient, unless it is disproved. The pending of another action, whether of the same form or not, for the same cause and matter, between the same parties, whether before the same or any other court, will abate the second suit. The rule to decide whether it is the same cause, is the evidence required to support the action; where the same evidence is required, the cause of action is the same, although the form may be different. As to form of pleas in abatement, they should begin and end in abatement; if they end in bar, they will be considered as pleas in bar, and final judgment given. Various distinct causes of abatement may be included in one plea, and it will be good. A plea in abatement cannot be received after the defendant has plead to the action. When an issue is formed on a plea in abatement, the justice must find the issue for one party or the other. If the plea is denied, he must decide either that the facts contained in it are true, or that they are not true; if the facts are admitted, and the plea demurred to, he must decide that the plea is sufficient or insufficient. If he decide the issue in fact or law, in favour of the defendant, his judgment is that the writ abate; if in favour of the plaintiff, his judgment should be, that the writ do not abate, and that the defendant answer over, or plead to the merits of the action. After one plea in abatement

(*n*) 1 Root, 120. (*o*) 1 Root, 560.

has been decided against the defendant, he cannot be permitted to plead another, although it consist of different matter. Where the judgment is that the writ abate, the plaintiff may amend by statute, but the cost must be paid, as there is no discretion with the court in such cases. This, however, can only be done where the defect is amendable. An appeal may be taken by the defendant from a judgment, on a plea in abatement, where the action is appealable, and if he fail to make his plea good, before the court to which he appeals, he shall pay cost, however the action may finally issue (*p*). A writ of error also lies on a judgment on a plea in abatement, but not until after final judgment (*q*).

Of Pleas to the action.

7. These are the *general issue*, *pleas in bar*, a *traverse*, and *demurrer*; which we can barely notice, so as to give some general idea of them. A demurrer, as we have stated, forms an issue in law. It may be taken to the declaration, the plea in bar, the replication, or any part of the pleadings. If the defendant demurs to the plaintiff's declarations, he admits the facts to be as set forth, but claims that the law is so that the plaintiff is not entitled to recover, notwithstanding. The plaintiff must join in the demurrer, and then the parties are at issue, whether the law is so that the plaintiff is entitled to recover or not. When the plaintiff demurs to the defendant's plea, the question is whether the defendant's plea is a sufficient answer to the plaintiff's declaration or not. There may be a demurrer to evidence, which is, where the party admits the evidence to be true, but denies its effect and operation in law, and wishes to raise the legal question; to carry the cause to a higher court, or for other reason.—This is seldom done, and is mostly confined to written evidence.

A traverse, is where the defendant denies some material fact or point in the declaration; or where the plaintiff denies all or a part of the facts in the defendant's plea, or where the defendant denies all or a part of the facts in the plaintiff's replication or reply to his plea. It is only a denial of some material fact or allegation in the pleadings, and must be of some material point which will make an end of the case.

(*p*) St. 43. (*q*) 1 Day, 28.

Pleas in bar, or as they are usually called, special pleas in bar, are where the defendant admits the truth of the facts set forth in the declaration, but sets up certain other facts, by which, he intends to avoid the legal effect of the facts in the declaration, and defeat the plaintiff's right of recovery.

In an action on a note, the defendant may admit the execution and the promise, and plead that subsequently he had paid the note; or an accord and satisfaction, or that he was a minor when he gave the note, or any other fact which admits the execution of the note, but shews that the plaintiff is not entitled to recover.

But at the present time, the *general issue* is the most common plea, and it is admitted by statute in various cases where a special plea was required at common law. The general issue is a general denial of all the material facts in the declaration; as in an action of trespass, that the defendant is not guilty; in an action of assumpsit, or on a promise, that he did not assume and promise. It is provided by statute that any defendant may plead the general issue, in any action, and on the trial give in evidence under such plea, his title or any special matter in his defence and justification, according to the nature of the action; excepting only a discharge from the plaintiff or his accord and satisfaction, or some special matter, whereby the defendant, *by the act of the plaintiff*, is saved and acquitted from the plaintiff's demand in the declaration; provided that at the time of making his plea, he gives notice to the plaintiff in writing, of the special matter which he proposes to give in evidence (*r*). Such notice must set out such special matter with nearly the same certainty and particularity as a special plea. If notice is not given, no special matter can be received in evidence under a general plea, and the party will be confined to the same rules and restrictions as at common law.

It is also provided by Statue that the defendant may by special leave of court, plead as many several matters by *distinct pleas*, as he may think necessary for his defence. Leave to plead double is granted of course by the court, unless it shall appear that the party had no other object.

(*r*) St. 43.

by pleading a plurality of pleas, than to embarrass the trial, and confuse the record. When the defendant pleads several pleas the plaintiff must answer them all, so that several issues will be formed, which may be either issues in law or in fact or both. The court must try and decide all the issues formed. And if any issue is found for the plaintiff the court must allow the plaintiff his cost, though on some other issue the defendant should be entitled to judgment; unless the court shall be of opinion the defendant had *probable cause*, to plead such matter as has been found against him (*s*). Unless it is apparent that the defendant plead such matter without any cause or for mere vexation or to embarrass the trial, he ought not to be subjected to pay a bill of cost, where the action is decided in his favour on some other issue, as this would in a great measure defeat the object of the statue. In actions of replevin where the defendant makes avowry, the plaintiff has the same right to plead double, in reply thereto. In actions on bond, note or other obligation, with a condition annexed, where the plaintiff does not set out the condition in his declaration, and where the defendant having prayed oyer of such writing sets out such condition, and pleads performance thereof, and the plaintiff replies thereto, setting forth any breach or breaches, the defendant may, with leave of court, rejoin as many several matters by distinct rejoinders, as he might have pleaded, had such condition and breach or breaches, been set forth in the declaration (*t*). In an action founded on a note, or other obligation not negotiable, if the defendant plead or give in evidence, a discharge, acknowledgement, payment or other act of the plaintiff on the record, the plaintiff may reply or give in evidence as the case may require, the assignment of such note or other obligation and notice given of such assignment to the defendant; and if such payment, discharge, acknowledgment, or other act of the plaintiff was after such assignment, it will not avail such defendant (*u*).

We cannot notice the various matters which may be given in evidence under the general issue in pursuance of the statue, but there is one matter, as it rests on a recent law, and may be of frequent occurrence, we will notice;

(*s*) St. 45. (*t*) St. session 1822. (*u*) St. sess. 1822.

we allude to set-offs. Where the plaintiff lives out of the State, or is insolvent, the defendant may plead a set-off of mutual debts, or give it in evidence, under the general issue on given notice. But a debt claimed by assignment cannot be set off, unless the plaintiff had notice of such assignment before commencement of the suit (*x*). The debts to be mutual, must be between the same parties, so that where the debt declared on, is in favour of two or more persons as partners, the defendant could not set off a debt against one of such partners. The defendant must state his debt with the same certainty and particularity as in a declaration that the plaintiff may be able to defend against it. He must state the amount of his debt, and that it exceeds the claim of the plaintiff, to wit, in such a sum, and that he is willing and offers to allow and set off his debt against the plaintiff's demand according to the form of the statue in such case provided ; and conclude with a verification. If the defendant's debt is less than the plaintiff's demand, it may be set off in part ; if it is more, he may recover the balance ; but if the balance exceeds thirty-five dollars a justice cannot give judgment for the balance ; but in such cases he must find the amount of the plaintiff's demand or damages, and also find that there is a *greater debt* due to the defendant which he has offered and is entitled to have offset, and that he off-sets the same to the amount of the plaintiff's demand and give judgment for the defendant to recover his cost. The defendant may then bring an action for the residue of his debt. If the defendant demands a balance due to him, and the court find there is a balance in favour of the plaintiff they must off-set the defendant's debt as far as it goes and give judgment for the plaintiff to recover the residue of his claim (*y*). The defendant may give in evidence several distinct debts if they are mutual ones ; if some are proved and others not, those that are, will be off-set ; or if some are not entitled to be off-set, they will form no obstacle to the off-set of those that are. Where a debt or debts are plead or given in evidence as set off, which are not entitled to be set off, the plaintiff may demur, or traverse, or deny the plea, which

(*x*) St. 34. (*y*) Swift's Dig. 713.

will not preclude him from taking advantage of the legal exception.

8. *Of motions or objections as to testimony.*

In trials before justices as before other courts various questions arise as to the admission or rejection of testimony. No general rules can be laid down upon this subject, as all questions of this sort depend upon the law of evidence, which it does not come within the views of this work to examine. The parties & all persons interested in the cause, that is, where they may gain or lose by the suit, or where the judgment may be evidence, for or against them in any other case, are inadmissible, except in particular cases where they are admitted by statute ; but an interest in the question or principle on which the case depends does not exclude a witness, but affects his credit only. The testimony ought to be confined to the issue or issues formed in the case and upon which the parties are on trial ; so that evidence which is irrelevant and has no bearing on the issue is not to be received ; but this rule must not be confined to testimony having a direct bearing on the issue, for any fact or circumstance which *tends* to prove any fact put in issue is proper. Where there is a variance between a note or other writing declared upon and the one offered in evidence, this variance may be taken advantage of by an objection to its being received as evidence on the trial ; and if the variance is material it cannot be received. No fact can be proved in a court of justice but by the testimony of at least one credible witness or testimony equivalent to it ; so that where there is but one witness to a fact, without any corroborating circumstances, who is impeached, the fact cannot be considered as proved. In all cases it belongs to the party, whether plaintiff or defendant, who takes the affirmative of an issue to prove it, and if he fails the cause must be decided against him, although there is no evidence on the other side.

When testimony is objected to, the party making the objection first states the grounds or reasons of his objection, to which the party offering it replies, and the court must then decide either to reject or admit the testimony. If the party against whom the court decides is dissatisfied, he may file his bill of exceptions, which consists of a statement of the testimony offered, the purpose for which offer-

ed, that it was objected to, and admitted or rejected by the court as the case is. This must be signed by the justice and it then becomes a part of the record and lays the foundation for a writ of error. If the parties cannot agree as to the facts, or if the bill presented is incorrect, the justice must correct it, but when correct it is his duty to sign it, and if he refuse he may be compelled by a writ of mandamus from the superior court. A bill of exceptions may be taken to any other incidental question, arising upon any challenge or exception during the trial, where the facts are agreed or admitted and the court decides a point of law (*z*).

9. *Of appointment of auditors.*

In actions of account before the higher courts, when the judgment is for the plaintiff that the defendant do account, auditors must be appointed to take the account; but it is provided by statute that in actions of account before justices of the peace, the justice shall take the account, without the appointment of auditors and render judgment accordingly (*a*).

In actions of book debt it is provided that where the account is alleged to be more than seventeen dollars, the court before which such action is pending shall have power to appoint three or less judicious and disinterested men to audit & adjust the accounts between the parties; who shall have the same power and be sworn and proved in the same manner as auditors in the proper action of account; and the award being returned into court judgment shall be rendered in pursuance thereof (*b*). This statute applies to justices, who are empowered when the account is alleged to be more than seventeen dollars to appoint auditors. If the defendant in his plea alleges an account of more than seventeen dollars auditors may be appointed; where either party alleges his account to be more than seventeen dollars auditors may be appointed, although it is in fact less than that sum. But it is not *necessary* that auditors be appointed where the amount exceeds seventeen dollars; where either party moves for the appointment of auditors, the court is to exercise a sound discretion and appoint them if the case requires it. When the accounts of the parties are of long standing, of considerable amount, or involved

(*z*) Swif. Dig. 771. (*a*) St. 34. (*b*) St. 94.

in intricacy or difficulty, it would be proper to appoint auditors; and in most cases where both parties request it. When auditors are appointed they must take the following oath: "You swear that you will faithfully examine and adjust the accounts referred to you, and award thereon according to your best skill and judgment—*So help you God.*" The parties and other persons interested will be permitted to testify before the auditors the same as before the justice. They must make and report to the justice an award, stating which party they find indebted, and the amount; and the justice must render judgment upon such award. An objection may be made by way of remonstrance, stating the grounds of the objection to the acceptance of the award, and it may be set aside by the court, where the auditors have decided against some plain principle of law, considered matters not submitted to them, committed a mistake on their own principles, or improperly admitted or rejected testimony (*c*). Where the award is set aside new auditors must be appointed. It will however probably seldom be necessary to appoint auditors in trials before justices of the peace.

Of judgment.

The judgment must follow the issue. The pleadings in all trials should be regularly closed, and where the parties are not capable of doing it, the justice should do it himself. The issue must be expressly and directly decided; when it is an issue in law formed by a demurrer to the declaration, the plea, the replication or the rejoinder, the court must always give their opinion as to that part of the pleadings to which the demurrer is taken, and which is put in issue; for instance, if the demurrer is taken to the declaration, they must decide that the declaration is *sufficient* or *insufficient*, as their opinion may be. If the question of law is decided in favour of the plaintiff, they must, after deciding that point, proceed to give judgment that the plaintiff recover such sum in damages as they may think reasonable and his costs. If it be decided that the declaration is insufficient, the judgment must be for the defendant to recover his costs. In entering up judgment on a demurrer, the record will read:

(*c*) 1 Swf. Dig. 726.

"This court is of opinion that the plaintiff's declaration (or the defendant's plea as the case may be) is sufficient, and thereupon it is considered that the plaintiff recover of the defendant the sum of dollars damages and his costs taxed at dollars, or is of opinion that the plaintiff's said declaration, is insufficient, and thereupon consider and give judgment that the defendant recover of the plaintiff his costs taxed at dollars."

Where an issue in fact is joined, the facts put in issue must be expressly found to be true or not true, and judgment given accordingly. In cases of the general issue, of owe nothing, not guilty, did not assume and promise, the court may say, this court does find that the defendant owes or does not owe, did or did not assume and promise, or is not guilty in manner and form, the plaintiff in his declaration has alleged, and thereupon it is considered that the plaintiff recover of the defendant the sum of dollars damages, and costs taxed at , or if the issue be found for the defendant; and thereupon it is considered that he recover of the plaintiff his costs taxed at . If there be special pleadings and a traverse or denial of some particular fact, either in the declaration, the plea, replication or rejoinder, the court must find true, or not true, every fact put in issue, and give judgment according to their finding of the facts (*d*). Where there are several issues joined, in consequence of the defendant's pleading several pleas in pursuance of the statute, or in other cases, whether they are all issues in fact, or issues in fact and issues in law, the court must decide all the issues joined, and give judgment accordingly to their find. If any one issue is found for the defendant he is entitled to judgment. Where there are several issues joined between the parties, if the court finds one issue, and proceeds to give judgment accordingly, without taking any notice of the other issues the judgment will be erroneous: so too where the court renders judgment generally for one party or the other, without finding any issue. In every trial there must be one or more issues formed between the parties, which the court must expressly decide and give judgment accordingly. The decision of the issue is the principal thing, and the

(*d*) 1 Swf. Dig. 84.

judgment is founded upon that, and is a consequence of it. In all cases therefore, where it does not appear from the record that all the issues joined, have been decided, the judgment will be erroneous; likewise where the judgment entered up, is not consistent with the finding of the issue or issues, as when there is one or more issues found for the plaintiff, and one found for the defendant, and judgment given for the plaintiff. The superior court are more indulgent and less critical with respect to judgments of justices of the peace, now than formerly, and will not set them aside for any informality; but where it does not appear that any issue has been joined, or what the issue is, or how it has been found, or whether it has been found at all or not; where all the issues have not been decided, or where judgment has not been rendered according to the finding of the issue; in these cases the judgment will be reversed.

Of appeals.

Where the sum demanded by the plaintiff shall exceed seven dollars, except in action on notes or bonds, vouched by two witnesses and given for money only, either party may appeal from the decision of a justice of the peace to the next county court. In actions of book debt where the defendant demands more than seven dollars as due to him from the plaintiff, the party aggrieved by the judgment, in such case shall have the same right of appeal as he would have had if the action had been brought by the plaintiff demanding more than seven dollars. If however the defendant in his plea demands more than thirty-five dollars, the justice cannot try the cause; but such plea shall not be received unless the defendant shall pay a duty of thirty-four cents, and enter into a recognizance with sufficient surety to the adverse party, to remove said cause to, and pursue his plea before the next county court, and to answer all damages in case he fail to make his plea good. The justice must take, and record such recognizance, and also record the payment of the duty of thirty-four cents. If the defendant in his plea demands more than thirty-five dollars, as a balance due to him, but refuses to enter into such recognizance or to pay the duty, yet persists in his plea, the justice must give judgment against him on *nihil dicit*—his refusing to plead.

In actions demanding not more than seven dollars, charging the defendant with obstructing any stream, river, creek or arm of the sea, wherein the defendant shall justify the same by a special plea alleging a right ; and also in actions charging the defendant with an injury done to land, wherein the defendant shall justify the same by a special plea alleging a right of way, although less than seven dollars are demanded, an appeal is allowable. Where in an action of trespass the defendant puts in a plea of title to the land, he must enter into a recognizance to the adverse party, and the cause must be removed to the next county court. If the defendant puts in a plea of title to the land, in an action of trespass, but refuses to enter into a recognizance, the court must give judgment against him on *nihil dicit*.

In all cases which are appealable, either party may appeal from the decision of the justice as a matter of right ; there is no discretion to be exercised on the subject. But in doubtful cases the court must decide whether the action is appealable or not. If a justice refuses to allow an appeal where a cause is appealable, the superior court will compel him to do it, by a writ of mandamus. In all cases where an appeal is allowed the party appealing must give bond with surety to the adverse party to prosecute his appeal to effect, and pay all damages in case he make not his plea good. He must also in all cases pay a duty of fifty cents on his appeal, and if he refuse or is unable to give bond with surety, or to pay the duty, the appeal must be disallowed and the court may issue execution and enforce the judgment. Where, in case of a plea of title to land, or in actions of book debt, the defendant in his plea demands more than thirty-five dollars, and the action is removed to the county court, the duty of fifty cents is not payable as on an appeal ; for in such case there has been no trial before the justice, and the proceeding is not an appeal, but a removal of the action.

Where an action is appealed, the record of the judgment should be made as in other cases, and then add : And the plaintiff or defendant (as the case may be) appeals from this judgment to the next county court, to be holden &c. and paid me a duty on his said appeal of fifty cents, and the plaintiff as principal and A. B. as surety recognized to

the adverse party, in the sum of dollars, to prosecute his said appeal to effect, and answer all damages in case he make not his plea good. The recognizance must be entered in full, and form a part of the record. It is the duty of the justice to furnish copies of the record to the party appealing, for which he is entitled to receive twenty-five cents a page. When an appeal is taken and the action is not appealable, the county court will erase such cause from their docket; but they cannot remand it to the justice to be proceeded in & finally disposed of, as the superior court can do where a cause is appealed to that court from the county court, which is not appealable. In such case, a writ of error must be brought, and the judgment of the justice reversed, as allowing the appeal is a part of the judgment. When the party appealing does not procure copies and enter his action in the docket of the county court, by the second day of the court, the other party may procure the cause to be entered at any time during the term, and have the judgment of the justice affirmed. But if neither party enter the cause during the term to which it is appealed, it cannot afterwards be entered; but the judgment of the justice is dead. The surety on the bond is holden for the bill of cost only, the adverse party may recover and not for the damages.

Of Execution.

The last thing is the issuing of an execution to enforce the judgment. The execution must agree with the judgment, and is ordinarily issued against the goods, lands and body of the debtor; but where the judgment is against an executor or administrator for the debt of the deceased the execution should issue only against the estate of the deceased in their hands. So when the debtor has been liberated from arrest by the superior court under the insolvent law, the execution should issue against the goods and estate of the debtor only; and likewise where a judgment is rendered against a corporation, the execution should be granted against the goods and estate of such corporation only; but when judgment is obtained against a town or society, the law is, that the execution issue against the goods and estate of the legal inhabitants of such town, or society, and not against the property of such corporation; and if

the estates of individuals are taken and sold they will have a remedy against such town or society.

Executions issued from the higher courts may be made returnable to the next term of the court, or in sixty days ; but justices of the peace must make their executions returnable in sixty days from their date. After the expiration of the sixty days, and return of the first execution, an alias or second execution may be issued if the judgment has not been satisfied. When the first execution has been satisfied in part, the endorsement on the first execution should be copied on to the second, and certified by the justice to be a true copy of the original. When an execution has been discharged by a mistake, or by a void levy, or endorsement made through mistake, the justice rendering the judgment may grant a new execution (*e*). Where the execution is levied by mistake on the goods of another person which are sold, and the execution endorsed satisfied, a new execution may be granted. Where land belonging to the debtor, as tenant in common or joint tenant, is set off, as though he was sole owner, or where the debtor has only an equity of redemption in land, and it is set off by metes and bounds, the levy will be void, and a new execution may be granted. Where a new execution is granted, in consequence of a void levy, or of the first's having been discharged or endorsed satisfied, by a mistake, the ground and reasons of granting the new execution, ought to be entered on the file and form a part of the record. Where the debtor is arrested on the execution, and voluntarily discharged by the officer, with or without the consent of the creditor, a new execution cannot be granted, nor can the debtor be arrested again on the same execution ; and it has recently been decided by the court of errors, that the judgment in the former case is discharged ; and where the debtor is committed to gaol and he is discharged on the poor debtors' oath, a new execution cannot issue, but an action must be brought on the judgment. So if either of the parties die, a scire facias, or other action must be commenced on the judgment, as an execution cannot be issued.

(*e*) 1 Swf. Dig. 795

It was formerly doubted whether executions issued on the judgment of a justice of the peace, could be levied on land, but it is now provided that they may in all respects be executed in the same manner as executions issuing on the judgments of the higher courts. They must be directed to some proper officer to serve, and the party cannot alter the direction. When an execution is returned, it becomes a part of the records of the case, and should be kept on file, and an entry made of the time of its being returned, for if it is not returned within the life of it, the officer becomes liable to the creditor.

CHAPTER VII.

Of the powers of Justices of the Peace to preserve order, &c.

It is important to the purposes of justice, as well as to the authority of the laws, and to maintain respect even towards the lowest tribunals of justice, that order be maintained during trials before Justices of the Peace. They are clothed with the same authority to preserve order as other courts, although their power is more limited in degree.

If a witness refuses to be sworn, unless in case of scruples of conscience, or refuses to testify after being sworn, he may be committed for contempt.

Form of Mittimus.

To A. B. Sheriff of, &c. Greeting—

Whereas, at a court holden this day before me, an action wherein John Doe is plaintiff, and Richard Roe is defendant, being on trial, Peter Brown having been summoned by the said plaintiff as a witness in said cause, and having appeared before said court, and being required by me to take the witnesses oath, obstinately and contemptuously refused so to do, and has no scruples of conscience as to taking said oath—or, (if he has been sworn and refuses to testify,) and having appeared before said court, and been duly sworn to testify therein, on being required and demanded, wilfully and contemptuously neglects and refuses to testify in said cause, Wherefore, you are hereby commanded to take the

said Peter Brown, and him commit to the keeper of the gaol, in and for the county of who is hereby required to receive the said Peter into his custody, and him safely keep within said gaol, until he shall consent to give his testimony in said cause, and be legally discharged.—Hereof you are not to fail, but due service make, and leave with said keeper this mittimus.

In criminal cases, where a witness has been summoned, and refuses to *appear* or attend before the justice, as well as where he refuses to be sworn or to testify, he may be apprehended and committed to gaol, there to remain at his own cost, until he shall give evidence. The mittimus in such cases would be the same, except that it must be stated that the cause on trial was a public prosecution and of a criminal nature, and that the witness having been summoned, wilfully and contemptuously refused to appear before said court, and the officer must be directed to apprehend and arrest the person and him commit, &c. But it is most common in such cases to issue a capias, to bring the witness before the court. In civil cases too, where the witness has been summoned and received, or had tendered to him his fees, and refuses to attend, the Justice is empowered to issue a capias and bring him before the court. We have given a form of a capias in treating of depositions, to which we must refer.—See page 24.

The power of punishing by fine and imprisonment for contempt, is incident at common law, to any court of record, without which they could scarcely exist, for every tribunal must be able to prevent its authority, and the authority of the laws, from being trampled upon, and to protect itself from insult. It is provided by statute, that if any person in the presence of any court, shall either by words or actions behave contemptuously or disorderly, it shall be in the power of the court to inflict such punishment upon him by fine or imprisonment, as shall be judged reasonable ; provided, that no single minister of justice shall inflict a greater fine than seven dollars, or a longer term of imprisonment than one month, and no other court shall inflict a greater fine than one hundred dollars, nor a longer term of imprisonment than six months (*f*). The imprisonment

(*f*) St. 174.

must be in the common gaol of the county, and the Justice must issue a mittimus for the commitment of the offender. The offence must be committed in open court, and if committed immediately before or after a trial, the case will not be within the statute. The court may impose a fine on the offender, and commit him for refusing to pay the same; or it may sentence him to imprisonment directly; in either case a record must be made of the sentence or order, stating what the person did, or that he behaved contemptuously or disorderly in open court:

"At a court holden before me, this day of A. D. at my office in a cause then and there being on trial, wherein A. B. is plaintiff, and C. D. is defendant, one J. S. of then and there being present, with intent to disturb and interrupt said court, and to insult the same, did in open court, and during said trial, behave in a contemptuous and disorderly manner towards said court, by talking loud and offensively, which he persisted in, after being commanded to be silent; whereupon it is considered and ordered by me that the said J. S. pay a fine to the treasury of the said town of of five dollars, and that on failure thereof, he be committed; or, it is considered that the said J. S. be punished by imprisonment in the common gaol of said county seven days; and having issued a mittimus, the said J. S. was committed accordingly."

Form of Mittimus.

To the Sheriff, &c. Greeting: Whereas, at a court holden this day of A. D. before me, at my office in in the county of a cause then being on trial, wherein A. B. is plaintiff, and C. D. defendant, J. S. of was fined by me for contemptuous and disorderly conduct in open court during said trial, in the sum of seven dollars, for the use of the treasury of the said town of and the said J. S. having neglected and refused to pay said fine; (or, the said J. S. was sentenced by me to he punished by imprisonment in the common gaol of said county for the term of seven days from the date hereof).—Wherefore, you are hereby commanded to take the said J. S. and him commit to the keeper of the gaol in and for said county; who is hereby commanded to receive

him, the said J. S. into said prison, and him safely keep therein until he pay said fine, or be legally discharged; or, (where he is sentenced to be imprisoned) and him safely keep therein during said term, or until he is duly discharged. Hereof you are not to fail, but make legal service, and leave this mittimus with said keeper, which shall be his authority for the safe keeping and imprisonment of the said J. S.

A. B. Justice of the Peace.

CHAPTER VIII.

Forms in Civil Actions.

Of Assumpsit.

Actions of assumpsit are either special or general: where a particular contract is declared upon and set out, they are special.

1. *Declarations on notes.*—In actions brought by the original promisee against the promisor, the form is the same, whether the note is negotiable or not.

To the Sheriff of the county of his deputy, or either Constable of the town of within said county, Greeting—

By authority of the state of Connecticut, you are hereby commanded to summon John Stiles, of in the county aforesaid, to appear before A. B. Esquire, Justice of the Peace for the county of at his office in in said county, on the day of A. D. at 9 o'clock, A. M. then and there to answer unto Joseph Crafts, of aforesaid, in an action or plea of the case, whereupon the plaintiff declares and says, that the defendant, in and by a certain writing or note under his hand, by him well executed, and dated the day of A. D. promised the plaintiff to pay to him on demand, thirty-five dollars with the interest: as by said writing or note ready in court to be shewn, appears. Now the plaintiff further says, that the defendant, his promise aforesaid not regarding, hath never performed the same, (although often re-

quested and demanded,) which is to the damage of the plaintiff the sum of thirty-five dollars, and for the recovery thereof, with just costs, the plaintiff brings this suit. Hereof fail not, and of this writ make lawful service, and return.

Dated at the day of A. D.

A. B. Justice of the Peace.

Where the note is executed by, or to, partners in business, having a company name, it is to be varied as follows: To summon A. B. and C. D. both of merchants and traders in company, and carrying on business under the name and firm of A. B. and Company. *And stating the promise, say:* The defendants, in and by a certain writing or note by them executed, and signed by their said company name, promised the plaintiff. *Where the plaintiffs are partners, and the note is made to them by their company name, say:* To answer unto A. B. and C. D. both of merchants and traders in company, and carrying on business under the name and firm of A. B. & Co. *In stating the promise:* promised the plaintiffs to pay to them by their said company name. *Where the suit is brought by an executor:* then and there to answer unto A. B. executor of the last will and testament of C. D. deceased, late of . In a plea of the case, whereupon the plaintiff declares and says that the defendant, in and by his certain writing or note by him executed, his own hand being thereunto subscribed, promised the said C. D. he then being in life, to pay to him, &c. *In alleging the breach:* his promise aforesaid disregarding, hath never performed the same, either in the life time of the said C. D. or since his decease. *Where the plaintiff is administrator:* there and then to answer unto A. B. administrator of the goods and estate of C. D. late of deceased. *The promise will be stated the same as in case of executor. Where an executor or administrator is sued:* to summon A. B. of executor of the last will and testament of C. D. deceased, late of : *or*, administrator of the goods and estate of C. D. deceased. *In alleging the promise:* that the said C. D. in his life time, in and by a certain writing or note, under his hand and by him well executed, promised the plaintiff. *In alleging the breach;*—and which said prom-

ise the said C. D. never performed in his life time, nor hath the same been performed by the defendant since the decease of the said C. D.

Form of Judgment and Execution, where an executor or administrator is sued.

H county, ss. H

At a court holden before me, on the day of A. D. A. B. against J. S. executor of the last will and testament of C. D. late of deceased, in an action on the case for that, the said C. D. in his life time, in and by a certain note by him executed, promised the said A. B. the sum of dollars on demand and interest; and which said promise the said C. D. never performed in his life time, nor the defendant since his death, to the damage of the plaintiff the sum of thirty-five dollars; and the defendant pleads and says thot the said C. D. did not in his life time assume and promise in manner and form the plaintiff hath alleged, and hereof for trial puts himself on the court, and the plaintiff does the same, as by the pleadings more fully appears: and having heard the parties with their witnesses and exhibits, I do find that the said C. D. did assume and promise, in manner and form the plaintiff in his declaration hath alleged, and thereupon it is considered by me that the plaintiff recover of the goods and estate of the said C. D. in the hands of the defendant, as executor of his said last will, the sum of dollars damages and his costs, taxed at and that execution issue against the goods and estate of said deceased in the hands of the defendant, to recover the same, with seventeen cents more for said execution, and returnable according to law.

Dated, &c.

Execution.

To the Sheriff, &c.—Greeting—

Whereas A. B. of recovered judgment against the estate of C D. late of deceased, in the hands of J. S. executor of the last will of the said C. D. before me, a Justice of the Peace, for the county of on the day of A. D. for the sum of dollars damages, and for the sum of dollars costs of suit, as appears on record: whereof execution remains to be done. These are therefore to command you, that of the

moneys, goods and chattels of the said C. D. deceased, in the hands of the said J. S. to be by him shown unto you, within your precincts, you cause to be levied, paid and satisfied unto the said A. B. the aforesaid sums, being dollars and cents in the whole, with seventeen cents more for this writ, together with your own fees. Hereof fail not and make due return of this writ, with your doings, within sixty days next coming. Dated, &c.

Q. R. Justice of the Peace.

NOTE.—If the executor does not pay the execution, and he has not represented the estate of the deceased *insolvent*, after return of the execution, a *scire facias* may issue against him and judgment be obtained, upon which, execution will issue in common form against him and his estate. An executor or administrator is not liable to be sued until the time for settling the estate has expired; and then if the estate was represented insolvent, he is liable for such sum or proportion of each debt, or dividend, as the creditors are entitled to receive, where the estate is not sufficient to pay the whole of the debts. In such cases he may be sued directly for the dividend, or on the original claim, as executor, and judgment given only for the amount of the dividend, or portion of his claim, to which the plaintiff may be entitled.

2. DECLARATION *by the holder of a note not negotiable against the endorser.*

In case of a general or blank endorsement, the contract or legal liability of the endorser is not an absolute one, but conditional. It is an undertaking to pay the note in case it cannot be collected of the maker, with *due diligence* on the part of the endorsee or holder. In ordinary cases he must sue the maker, and can only come upon the endorser, after failure of collecting the debt by suit.

In a plea of the case, for that, on the day of A. D. the defendant had in his possession a certain writing or note, made and executed by A. B. whereby and wherein the said A. B. promised for value received, to pay to the defendant the sum of twenty dollars on demand and interest; and that afterwards, viz. on the day and year last aforesaid, for a valuable consideration, the defendant by his

endorsement on the back of said note, assigned and transferred said note to the plaintiff, and authorised him to collect and receive the contents of said note to his own use and benefit. And afterwards, viz. on the day of A. D. the plaintiff caused said note to be put in suit, by a writ of attachment issued by Q. R. justice of the peace, and directed to a proper officer to serve, of the date last aforesaid, and returnable before said Q. R. justice of the peace for the county of on the day of A. D. at in said county; and which said writ of attachment the plaintiff delivered to O. P. constable of said town of who thereupon made diligent search for goods or estate of the said A. B. but finding none, he attached the body of the said A. B. and took bail for his appearance at court, and returned said writ to said Justice more than twenty-four hours before the time the same was made returnable. And on the said day of the plaintiff obtained judgment in the name of the defendant, before said Justice, Q. R. in said suit against the said A. B. for the sum of dollars damages, and the sum of dollars costs of suit; for which said sums execution was duly issued, and for seventeen cents more, the price thereof, by the said Justice, Q. R. and directed to a proper officer to serve, returnable within sixty days from the date thereof, and bearing date the day of A. D. ; and the plaintiff delivered said execution into the hands of said O. P. then a lawful constable of the said town of who thereupon, and by virtue thereof made diligent search for goods and estate of the said A. B. whereon to levy to satisfy said execution, and his fees thereon, but could find none, and none were shewn unto him by the said A. B. whereupon the said constable levied said execution on the body of the said A. B. and him committed to the keeper of the gaol in and for said county of to be confined in said prison on said execution. And the plaintiff further says, that afterwards, viz. on or about the day of in the year aforesaid, the said A. B. had legally administered to him, by C. D. Justice of the Peace for said county, the oath by law provided for poor debtors in prison, and the said A. B. was thereupon discharged from confinement in said gaol on said execution; and which said execution, with the said constable's doings endorsed thereon, was re-

turned to said Justice, Q. R. during the life thereof. And the plaintiff says that said execution hath not in any otherwise been satisfied than by the aforesaid levy, and that the same with the said constable's fees thereon, amounting to dollars cents, is now justly due unto the plaintiff, and that said judgment hath not been reversed or set aside, but is now in force. And the plaintiff says that by reason of the premises, the defendant became liable to pay the plaintiff the debt and costs in said execution, and the said officer's fees thereon, and in consideration thereof, afterwards, viz. on the day of A. D. at said assumed upon himself and faithfully promised the plaintiff to pay him said several sums contained in said execution, and the officer's fees thereon, amounting to the sum of and the interest thereon, when requested; yet the plaintiff says, that the defendant his promise aforesaid not regarding, hath never performed the same, although often requested and demanded, to the damage of the plaintiff the sum of dollars, &c.

[Where the debtor in the assigned note was *notoriously* insolvent, at the time the note was assigned, the endorser may be sued without bringing a suit on the note. In such case the declaration will be the same to the allegation of the assignment of the note to the plaintiff, and then as follows:]

And the plaintiff presented said note with the endorsement thereon, to the said A. B. at and requested payment of the same; but the said A. B. then and there neglected and refused to pay said note or any part thereof. And the plaintiff says, that the said A. B. was at the time said note was assigned to him as aforesaid, and ever since, hath been insolvent, and wholly unable to pay the contents of said note, and that he did not at the time of the assignment of said note, or at any time since, possess any goods or estate except what are by law exempted from being taken, that could be attached to secure said debt, which is now wholly unpaid and justly due to the plaintiff. And the plaintiff says that by means of the premises the defendant became liable to pay to him the contents of said note, and in consideration thereof afterwards (viz.) on the day of at assumed and promised the plaintiff to pay to him on request, the contents of the same note;

but his promise not regarding, hath not performed the same although often requested, &c.

[If the debtor absconds before the note becomes due or before demand, say :]

And the said A. B. before said note became due, (or immediately after the assignment of said note if then due) absconded out of this state to parts to the plaintiff unknown ; and at the time of the assignment of said note, and when the said A. B. absconded as aforesaid, he was not in the possession of any goods or estate liable to be taken for debt ; but was totally insolvent and wholly unable to pay said note, and known by the defendant so to be, when he assigned said note. And the plaintiff says, that by means of the premises the defendant became liable to pay the contents of said note, and being so liable &c.

[Where the endorser interferes with the collection of the note or discharges the same, the declaration will be the same until you state the interference of the defendant :]

And the defendant appeared before said justice Q. R. on the said day of A. D., and then and there withdrew said suit and prevented the plaintiff from obtaining judgment on said note and collecting the same ; and which said note hath never been paid by the said A. B. to the plaintiff, but is now justly due to him. And the plaintiff says, that by means of the premises the defendant became liable &c.

[Or where the defendant gives a discharge of the note, say :]

And the said A. B. appeared before said justice at the time and place aforesaid and answered to said action ; and then and there as a defence to the same, plead or gave in evidence, a discharge from the defendant to the said A. B. of all claims and demands, executed after the date and assignment of said note, and before the said A. B. had had notice of said assignment ; and the said justice did then and there give judgment for the said A. B. to recover his costs ; and by means of the defendant's giving said discharge the plaintiff was defeated in the collection of said note, and put to great cost and charge (viz.) the sum of dollars, and the said note hath never been paid to the plaintiff, but is now justly due to him, together with his said cost and charges. And the plaintiff says, that by means of the premises the defendant became liable to pay the

contents of said note and his said costs and charges, arising from said suit &c.

[Where there has been a discharge, or payment, and no suit commenced on the note, say :]

And after the assignment of said note (viz.) on the day of A. D. the defendant settled with the said A. B. and received from him the contents of said note in full, and the said A. B. then and there paid to the defendant said note, the said A. B. not having been notified by the plaintiff of said assignment ; or, And after the assignment of said note and before the said A. B. had been notified of such assignment (viz.) on or about the day of A. D. the defendant executed to the said A. B. for a valuable consideration, a discharge of all claims and demands, whereby said note was cut off, and discharged, and the plaintiff prevented from the collection of the same ; and which said note hath not been collected or paid to the plaintiff, but is now justly due to him. And by means of the premises the defendant became liable &c.

3. Declarations *on Negotiable Notes.*

Justices of the peace have now jurisdiction of negotiable notes, where they are for the sum of thirty-five dollars, and expressed not to be on interest. A note less than thirty-five dollars, cannot be negotiable, and unless expressed not to be on interest, all notes now draw interest, consequently the accruing interest will immediately take away the jurisdiction of the justice. But it sometimes happens that justices have occasion to make writs returnable to the county court. A negotiable note must be for thirty-five dollars or more, payable in money only, to any person or his order or bearer. The only difference whether a note is payable to order or bearer, is, that the latter pass by delivery, and the former by endorsement. A negotiable note when assigned or negotiated, is completely transferred, so that the assignee can sue it in his own name, and the original promisee cannot discharge or controul it. It is the duty of the holder of a negotiable note in order to charge the indorser, to make demand of the maker of payment of the note on the third day after the note falls due, being the last day of grace as it is called. If the maker neglects or refuses to pay the note, the hold-

er must immediately give notice to the endorser of the failure of payment. If the endorser lives in the same town he must have actual notice; but if he lives out of town he may be notified by a letter put into the post-office. When the note is over due at the time it is negotiated, still a demand must be made of the maker with due diligence, and notice immediately given to the endorser as in other cases (*a*).

The Indorser against the Maker.

In a plea of the case for that, the defendant in and by a certain note or writing under his hand, and by him well executed, promised, for value received, to pay to one A. B. of or order, the sum of with the interest, in ninety-five days from the date of said note, and which was dated the day of A. D. ; and the said A. B. afterwards (viz.) on the day of A. D. by his endorsement of the same note in writing under his hand, ordered the contents thereof to be paid to the plaintiff or his order, according to the tenor of said note, of which the defendant then and there had notice, and thereby became liable, and in consideration thereof, then and there promised the plaintiff to pay to him, the contents of the same note, according to the tenor thereof, yet, although often requested and demanded, the defendant had never paid said sum or any part thereof, but wholly neglects & refuses so to do, to the damage of the plaintiff, &c.

Indorsee against the Indorser.

In a plea of the case for that, one A. B. of on the day of A. D., made his certain writing or promissory note, his own proper hand being thereunto subscribed, dated the same day & year last aforesaid, thereby and therein promised the defendant to pay to him or order, for value received, the sum of dollars with interest, in ninety-five days from the date thereof. And afterwards (viz.) on the day of A. D. by his endorsement of the same note in writing under his hand, the defendant ordered the contents of the same note to be paid to the plaintiff or his order, according to the tenor thereof. And the plaintiff says that afterwards, on the day said note became due and payable (viz.) on the day of A. D. at

(*a*) 2 Conn. Rep. 419.

he presented said note with the said endorsement thereon, unto the said A. B. and requested him to pay the contents of the same note, according to the tenor thereof, and of said endorsement; but the said A. B. then and there neglected and refused to pay the sum of money contained in said note, nor hath he yet paid the same or any part thereof; of which the plaintiff afterwards (viz.) on the day and year last aforesaid, gave notice to the defendant. And the plaintiff says, that by means of the premises, the defendant became liable to pay to the plaintiff the sum of money mentioned in the same note, and being so liable and in consideration thereof, afterwards (viz.) on the day and year last aforesaid, assumed and promised &c.

[Where the note has passed through several hands say:] One A. B. made and executed his certain promissory note, dated &c. wherein he promised to pay to C. D. or order, the sum of and the interest, in ninety-five days from the date thereof; and that afterwards (viz.) on the day of A. D. the said C. D. by his endorsement in writing made on said note, his own hand being thereto subscribed, ordered the contents of said note to be paid to J. S. or order, for value received; and afterwards the said J. S. (viz.) on the day of A. D., the said sum contained in said note being unpaid, by his endorsement made on said note, under his hand, and for value received, ordered the contents of said note to be paid to the plaintiff &c.

[Or if you please, you may declare against a prior endorser in the same manner as though there were no subsequent endorsers, alleging the note to have been directly endorsed by the prior endorser to the holder, taking no notice of the intermediate endorsements; but in such cases you must strike out the subsequent endorsements.]

4. DECLARATION *on a Receipt taken by an Officer for the safe keeping and delivery of property taken on Execution.*

In a plea of the case for that, the plaintiff says, on the day of A. D., he was and ever since hath been a constable of the town of in said county; and that afterwards (viz.) on the day and year last aforesaid, there was delivered into his hands to levy a writ of execution issued by J. P. justice of the peace for the county of

upon a judgment recovered before said justice, by A. B. against C. D., and of the sum of dollars damages, and dollars costs including seventeen cents for said writ of Execution, and which was directed to the sheriff of said county of his deputy or either constable of said town of and was in due form of law. And the plaintiff afterwards repaired with said execution to the usual place of abode of the said C. D. in and then and there made demand of the debt, or sum due on said execution, and his fees for executing the same, which the said C. D. then and there neglected and refused to pay; whereupon the plaintiff afterwards (viz.) on the day of A. D. at said said execution being in full life, levied the same on a certain horse, the proper goods of said C. D., took the same into his possession, and thereupon drew a description of said horse, and posted up the same on the public sign-post in the society of in said town, within which society said property was taken; and with said description of said property, the plaintiff also set up a declaration that the same would be disposed of at public vendue at the place where posted, at the end of twenty days from the day of that day having been previously named at the hour of o'clock in the afternoon. And the plaintiff says that afterwards (viz.) on the day of A. D., whilst he held said property to satisfy said execution and his fees thereon, at their special request, he delivered said horse into their hands for safe keeping and re-delivery; and thereupon and in consideration thereof the defendants executed and delivered to the plaintiff a certain writing or receipt, dated the day and year last aforesaid, their hands being thereunto subscribed, wherein they acknowledged the receipt of said property, and promised the plaintiff safely to keep said horse, and to re-deliver the same at said sign-post, on the day and hour mentioned aforesaid, for the disposal of the same according to law.

And the plaintiff says that the defendants did not re-deliver said horse to the plaintiff at said sign-post on said day of although he was then and there ready to receive the same; nor have they at any time since delivered said horse to the plaintiff, although often requested

and demanded. And the plaintiff says that said judgment hath not been reversed or set aside, and that said execution hath not been satisfied otherwise, than by the aforesaid levy, but that the same is now justly due to the plaintiff, together with the interest, and his lawful fees thereon, amounting to dollars and cents, which several sums, the defendants have neglected and refused to pay, although often requested and demanded. And the plaintiff says, that by means of the premises he has been injured and damaged the sum of dollars, to recover which, with costs, this suit is brought &c.

5. Declaration *by the Payee against the Acceptor of an Order.*

In a plea for that, on the day of A. D. one A. B. of drew his certain order in writing, his own hand being thereto subscribed, dated the day and year last aforesaid, directed to the defendant, therein requesting him to pay to the plaintiff or his order dollars on demand ; and the said A. B. then delivered the said order to the plaintiff, for value received of him ; and the plaintiff afterwards (viz.) on the day of presented said order to the defendant for his payment or acceptance, and the defendant then neglected to pay said order, but accepted the same, whereby he became liable and in consideration thereof afterwards (viz.) on the same day and year last aforesaid, assumed and faithfully promised the plaintiff to pay to him the said sum mentioned in said order and the lawful interest thereon when requested ; yet the defendant his said promise disregarding, hath never performed the same, although often requested, to the damage &c.

Against the Drawer on an order not accepted.

In a plea for that, on the day of A. D. the defendant for value received of the plaintiff, drew his certain writing or order, of the date last aforesaid, his own hand being thereto subscribed, directed to A. B. therein requesting the said A. B. to pay to the plaintiff or his order, the sum of dollars on demand ; and the plaintiff afterwards (viz.) on the day of A. D. presented said writing or order to the said A. B. for his acceptance and payment ; and the said A. B. then and there refused to pay or accept said order, of which the defendant

afterwards, (viz.) on the day of A. D. had due notice from the plaintiff, whereby the defendant became liable to pay to the plaintiff the contents of said order, and in consideration thereof, assumed and promised &c.

6. Declaration *on Account stated.*

In a plea of the case for that, on the day of A. D. the plaintiff and defendant reckoned and accounted together of sundry sums of money and dealings which before that time had passed between them ; and the defendant was found in arrear to the plaintiff in the sum of dollars, and being so in arrear, the defendant in consideration thereof, assumed and promised to pay said sum when requested &c.

7. Declaration *of assumpsit on Due Bill.*

In a plea of the case for that, on the day of A. D. the defendant being indebted to the plaintiff in the sum of executed under his hand, and of the date last aforesaid, his certain writing or due-bill, wherein he acknowledged himself to owe and be indebted to the plaintiff in the said sum of dollars, whereby he became liable to pay to the plaintiff said sum of dollars on demand, and in consideration thereof, afterwards (viz.) on the day of assumed and promised the plaintiff to pay to him said sum, when thereto requested ; yet his promise disregarding, he hath never performed the same, although often requested, to the plaintiff's damage &c.

8. *General count or declaration for money had and received.*

In a plea of the case, whereupon the plaintiff declares and says that on the day of A. D. the defendant was indebted to the plaintiff in the sum of one hundred dollars, for money before that time lent by plaintiff to the defendant at his request, and by him received of the plaintiff for the plaintiff's use ; and being so indebted, and in consideration thereof, afterwards, on the day of A. D. assumed upon himself and faithfully promised the plaintiff to pay to him said sum of one hundred dollars when requested ; yet his said promise not regarding, the

defendant hath never performed the same, although often requested, &c.

9. *General count, for goods sold and delivered.*

In a plea of the case whereupon the plaintiff declares and says, that on the day of A. D. the defendant was indebted to the plaintiff in the sum of one hundred dollars for goods, wares and merchandize, before that time sold and delivered by the plaintiff to the defendant, at his special instance and request; and being so indebted, and in consideration thereof, afterwards, viz. on the day of A. D. the defendant assumed upon himself and faithfully promised the plaintiff to pay him said sum of one hundred dollars and the interest thereof, when requested; yet his promise not regarding, he hath never performed the same, although often requested, &c.

Or, where the price is not agreed on.

In a plea of the case for that, on the day of A. D. in consideration that the plaintiff before that time, at the special request of the defendant, had sold and delivered to the defendant divers goods, wares and merchandize, then and there undertook and promised the plaintiff to pay to him for the said goods, wares and merchandize, so much money as the same were reasonably worth at the time of their sale and delivery as aforesaid, when requested. And the plaintiff says that said goods, wares and merchandize were reasonably worth the sum of dollars, of which the defendant afterwards, viz. on the day of had notice, yet his promise disregarding, he hath never performed the same, &c.

10. *Declaration for labour and services performed, where no price is agreed on.*

In a plea of the case for that on the day of A. D. in consideration that before that time. the plaintiff had performed for the defendant divers services and days labour upon his farm, at his special request, the defendant undertook and promised the plaintiff to pay to him so much money as said services and labour were reasonably worth at the time they were performed for the defendant as aforesaid, when thereto requested. And the plaintiff says that said services and labour were reasonably

worth the sum of dollars, of which the defendant afterwards, viz. on the day of had notice, yet his promise and undertaking disregarding, he hath never performed the same, &c.

11. *Declaration for use and occupation of real estate, when the rent is agreed on.*

In a plea of the case, whereupon the plaintiff declares and says that on the day of A. D. the defendant was indebted to the plaintiff in the sum of for the use and occupation of a certain piece or parcel of land belonging to the plaintiff, and bounded and described as follows, viz. [here describe the land] by the permission and consent of the plaintiff, and at the request of the defendant, for months and days, viz. from the day of A. D. to the day of A. D. ; and in consideration thereof afterwards, viz. on the day of A. D. undertook and faithfully promised the plaintiff to pay to him, the same sum when requested ; and although often requested, &c.

12. *Where the rent is not agreed upon.*

Whereupon the plaintiff declares and says that on the day of A. D. the defendant, in consideration that before that time, at his own special request, and by the permission and consent of the plaintiff, had used and occupied a certain messuage, consisting of a dwelling house and other buildings, and the garden and yard belonging thereto, situated in and bounded and described as follows, viz. for the space of months and days, viz. from the day of A. D. to the day of A. D. undertook and faithfully promised the plaintiff to pay to him so much money as the use and occupation of said messuage during the period aforesaid, was reasonably worth, when thereto requested. And the plaintiff says that the use and occupation of said messuage during said time was worth dollars, of which the defendant afterwards had notice, viz. on the day of A. D. yet disregarding his said promise and undertaking, he hath never performed the same, although often requested, &c.

13. *Writ and Declaration by and against a town for supporting a Pauper.*

To the Sheriff, &c. Summon A. B. and C. D. two of

the principal inhabitants, and the rest of the inhabitants of the town of W in the county aforesaid, by leaving a true and attested copy of this writ with the said A. B. one of the select men of the said town of W or with the said C. D. clerk of said town, to appear before J. M. Justice of the Peace within and for the county of on the day of A. D. at 9 o'clock, forenoon, then and there to answer unto O. P. one of the principal inhabitants, and the rest of the inhabitants of the town of H in the county of in a plea of the case for that, the plaintiffs declare and say, on the day of A. D. the defendants were indebted to plaintiffs in the sum of dollars for monies before that time laid out, paid and expended by the plaintiffs in support of one S. T. a pauper, of and belonging to said town of W and then and ever since having a legal settlement therein, the said S. T. being, when said money was so expended for his support within the said town of H and wholly unable to provide for or support himself, entirely destitute of property, and in a distressed and suffering condition, of all which the defendants afterwards viz. on the day of A. D. at the said town of had notice, and thereupon became liable to pay to the plaintiffs the aforesaid sum of dollars, and in consideration thereof, assumed upon themselves and faithfully promised the plaintiffs to pay to them the same sum of money when thereto requested; yet the defendants their promise and undertaking aforesaid not regarding, have never performed the same, although often requested and demanded, and particularly on the day of A. D. at said town of W to the damage of the plaintiffs, &c.

CHAPTER IX.

ACTION OF ACCOUNT.

1. *Declaration.*

In a plea that to the plaintiff, the defendant render his reasonable account, during the time in which he was the plaintiff's bailiff and receiver, whereupon the plaintiff de-

clares and says, that from the day of till the day of the defendant was the bailiff and receiver of the plaintiff, and did during that time, receive of the plaintiff divers goods and merchandize, viz. to sell and dispose of, to merchandize with, and make profit thereof, and to render his reasonable account thereof to the plaintiff when he should afterwards be thereto requested: yet the plaintiff says, that the defendant has hitherto refused and still does refuse to render his reasonable account thereof, though often requested, which is to the damage of the plaintiff the sum of and to recover the same, and that the defendant render his reasonable account, during the time he was bailiff and receiver as aforesaid, the plaintiff brings this suit.

Plea.

The defendant pleads and says that he is not bailiff and receiver of the plaintiff's said goods, &c. to account, in manner and form the plaintiff hath alleged, and hereof for trial puts himself on the court.

Plaintiff for himself.

And the defendant does likewise. Defendant for himself.

Record.

H county, ss. H , day of A. D.

At a court holden before me, A. B. against C. D. in an action of account, wherein the said A. B. declares and says that from the day of A. D. to the day of the said defendant was bailiff and receiver of the plaintiff, and during that time received of the plaintiff divers goods, &c. viz. to sell and dispose of, and to render his reasonable account thereof when requested; yet that he hath neglected and refused so to do, although often requested, to the damage of the plaintiff the sum of dollars; to which the defendant pleads that he is not bailiff and receiver of the plaintiff, to account as the plaintiff hath alleged, and hereof puts himself on the court for trial, and the plaintiff does likewise;—having fully heard the parties with their evidences, this court do find that the defendant is bailiff and receiver as alleged, and consider and give judgment that he do account; whereupon I proceeded to take and examine the said accounts of the said parties, and having fully heard them under oath, with their witnesses and exhibits, do find

that the defendant is in arrear to the plaintiff the sum of dollars, whereupon it is considered that the plaintiff recover of the defendant the said sum of dollars damages and his costs, taxed at making in the whole the sum of dollars and cents, and that execution issue, &c.

J. B. Justice of the Peace.

ACTION OF BOOK DEBT.

2. *Writ and declaration, husband and wife against the same.*

To the Sheriff, &c. Summon A. B. and C. B. his wife, of in said county, to appear before J. P. Justice of the Peace, at &c. then and there to answer unto E. F. and G. F. his wife, of said in a plea that to the plaintiffs the defendants render the sum of dollars, which the said C. B. when sole and unmarried, owed to the said G. F. when sole and unmarried, on book—as by the plaintiff's book ready in court to be produced, may appear; which said debt the said C. B. never paid whilst she was single, and before her intermarriage with the said A. B. nor hath the said A. B. her husband paid the same, since said marriage, although often requested and demanded, to the damage of the plaintiffs the sum of dollars, to recover which, &c.

Plea.

The defendants defend, plead and say that the said C. B. when sole and unmarried, did not owe the said G. F. on book, when sole and unmarried, in manner and form as the plaintiffs have alleged, and hereof for trial put themselves on the court.

3. *Plea in an action of book debt, where the defendant claims a balance.*

The defendant defends, pleads and says, that he does not owe the plaintiff on book in manner and form he hath alleged, and further pleads and says that the defendant is indebted and in arrear to him to balance book account dollars, and hereof for trial puts himself on the court.

And the plaintiff does likewise.

[If there is a balance found to be due the plaintiff, judgment must be given therefor and costs of suit.]

Where the defendant in his plea claims a balance of more than thirty-five dollars, such plea is not to be received, un-

less the defendant will pay a duty of thirty-four cents, and enter into a recognizance with surety to the adverse party to remove said cause to the county court, and pursue his plea before such court. If the defendant does this, the justice cannot try the cause, but must make a record of the proceedings, and on request of the defendant, and at his charge, a copy thereof, to be delivered to the clerk of the county court.

[*Plea*, same as above, except that the defendant demands a balance of more than thirty-five dollars.]

4. *Record and recognizance.*

At a court holden before me this day of at in the county of A. B. against C. D. in an action of book debt, wherein the said A. B. demands of the said C. D. the sum of dollars to balance book accounts; the defendant pleads and says that he does not owe the plaintiff on book as he hath alleged, and further pleads and says that the plaintiff is indebted and in arrear to him on book to balance book accounts the sum of fifty dollars, and moves to have said plea received and recorded; and thereupon paid to me for the use of this state a duty of thirty-four cents, and the defendant, as principal, and J. H. of in said county as surety, recognized in the sum of seventy dollars to the said A. B. the adverse party, to remove said cause, to, and pursue his said plea before, the next county court, to be holden at within and for the county of and to answer all damages in case he fail to make his plea good; whereupon the aforesaid plea of the defendant was received and recorded.

J. P. Justice of the Peace.

Recognizance.

Appeared before me at in said county, on the day and year above written, the aforesaid C. D. and J. H. and acknowledged themselves, the said C. D. as principal, and the said J. H. as surety holden, & bound jointly and severally, in a recognizance unto the aforesaid A. B. in the sum of seventy dollars, to be made and levied from their goods, estate and lands, or the goods, estate and lands of either of them, and for want thereof, upon their bodies, in case the said C. D. shall fail to remove the afore-

said cause to, and pursue his aforesaid plea before, the county court next to be holden at in and for the county of and answer all damages, in case he shall fail to make his said plea good.

J. P. Justice of the Peace.

[Where the defendant in an action of book debt neglects to exhibit his account on trial, and shall afterwards bring an action against such plaintiff for the recovery of his book account, which might have been settled and adjusted in the former action, he shall not be allowed his cost, unless he make it appear, to the satisfaction of the court, that he had no knowledge of the former suit, or was inevitably hindered from appearing and exhibiting his account.]

ACTION OF DEBT.

5. *Declaration on Bond.*

In a plea that to the plaintiff, the defendant render the sum of dollars, which to the plaintiff the defendant justly owes and from him unjustly detains: Whereupon the plaintiff declares and says, that on the day of A. D. the defendant, in and by his certain writing, obligatory of the date last aforesaid, signed with his hand and sealed with his seal, acknowledged himself to be holden and firmly bound and obliged to the plaintiff in the sum of dollars, to be paid to the plaintiff on demand; as by said writing obligatory, ready in court to be produced, may appear; yet the defendant hath not paid said sum, but unjustly detains the same, though often requested and demanded, to the damage, &c.

6. *Debt on Judgment.*

For that at a court holden before A. B. Justice of the Peace for the county of at in said county, on the day of A. D. the plaintiff, by the consideration of said court, recovered judgment against the defendant for the sum of damages, and the sum of costs of suit, as by the records of said justice, or an authenticated copy thereof, ready in court to be produced, appears; which said judgment hath never been satisfied, reversed or annulled, but is now in full force, whereby an action hath accrued to the plaintiff to demand and recover of the defendant the aforesaid several sums, and seventeen cents more for the execution which issued

on said judgment, together with the interest thereon; yet the defendant, although often requested and demanded, hath not rendered and paid the said several sums and the interest thereon, nor either of them, nor any part thereof, but unjustly detains the same, to the damage of the plaintiff, &c.

7. *Declaration of Debt on an Award.*

In a plea that to the plaintiff, the defendant render the sum of which he justly owes to him, and from him unjustly detains: Whereupon the plaintiff declares and says, that on the day of A. D. the plaintiff and defendant mutually and amicably agreed to, and did submit, certain matters then in controversy and dispute between them, to the arbitrement and determination of A. B. and C. D. to hear and determine the same, and make their award thereon, on or before the day of A. D. ; and the said A. B. and C. D having agreed to act as arbitrators, and to examine and decide said matters, afterwards, viz. on the day of A. D. the plaintiff and defendant appeared before them, and were fully heard with their witnesses and exhibits in the premises whereupon the said arbitrators did adjudge, decide, and make and publish their award of and upon the said matters in controversy submitted to them as aforesaid, that to terminate and put an end to said controversies, the defendant should pay to the plaintiff the sum of dollars, in a reasonable time; yet the defendant hath never paid said sum nor any part thereof, although often requested and demanded, and although a reasonable time hath long since elapsed; but refuses so to do, and unjustly detains the same to the damage of the plaintiff, &c.

8. *Debt on Recognizance.*

Whereupon the plaintiff declares and says, that the said defendant, A. B. brought his action of the case against the plaintiff by process, returnable before J. P. Justice of the Peace for the county of on the day of A. D. and during the trial of said cause, on the same day the defendants appeared before said justice and acknowledged themselves holden and bound, in a recognizance to the plaintiff, the said A. B. as principal, and the said C. D. as surety, in the sum of dollars, to be paid to him in case

the said A. B. should fail to prosecute his said action to effect, and pay all damages in case he fail to make his plea good; and the plaintiff says that afterwards, viz. on the same day said justice J. P. gave judgment in said cause for the plaintiff to recover of the defendant A. B. his costs of suit taxed at the sum of dollars; and thereupon the said Justice issued an execution on said judgment for the said sum of and seventeen cents more for said execution, and afterwards, viz. on the day of A. D. the plaintiff delivered said execution to O. P. then and ever since a constable of the town of to levy and collect, and afterwards, viz. on the day of said constable made return of said execution into the office of said Justice, J. P. with an endorsement made thereon, that he could find neither goods, chattels, or the body of the said A. B. whereon to levy the same, and to his said endorsement he annexed his fees amounting to dollars cents, all of which may more fully appear, from the files and records of said cause, ready in court to be produced. And the plaintiff says that said judgment hath not been reversed, or satisfied, and that said recognizance hath not been cancelled or vacated; and that A. B. did fail to prosecute his said action to effect, and that he hath also failed to satisfy the damages and costs sustained by the plaintiff thereby, to the damage of the plaintiff the sum of to recover which, &c.

[*Where a recognizance is given on an attachment, say:*]

For that on the day of A. D. A. B. applied to J. P. Justice of the Peace for the county of for a writ of attachment in his own favour and name, against the plaintiff, and the said Justice, J. P. then and there filled up a writ of attachment in the name and behalf of the said A. B. against the plaintiff, dated the day and year last aforesaid, and returnable before the said Justice, J. P. on the day of A. D. and thereupon the defendant appeared before said Justice J. P. and acknowledged himself holden, bound and obliged unto the plaintiff in the sum of dollars, to be paid to him in case the said A. B. should fail to prosecute his said suit to effect, and answer all damages and costs the plaintiff might sustain if he did not make his plea good; and thereupon said Justice J. P. issued said writ of attachment in due form of law. And the plaintiff further says, that afterwards, viz. on the day of A. D.

the plaintiff recovered judgment in said action before said justice J. P. for his costs of taxed and allowed by said Justice, at dollars and cents. [The remainder of the declaration the same as the last.]

9. *Of Scire Facias.*

A writ of *scire facias* may be brought upon a recognizance taken before a Justice of the Peace, or upon a judgment when the Justice dies, or is removed from office, or where either the plaintiff or defendant dies, or against a garnishee in case of foreign attachment, or factorising suit. Where a *scire facias* is brought upon a recognizance or judgment of a Justice of the Peace, it should be signed by the Justice rendering the judgment, and made returnable before him if the demand does not exceed thirty-five dollars. If the demand exceed thirty-five dollars, the writ must be signed by the justice, and returnable to the county court. If the Justice rendering the judgment is dead, the writ may be signed and made returnable before any other Justice. On recognizances, however, it is now most common to bring an action of debt, of which we have already given a form of declaration.

Of Scire Facias against Garnishee.

[A foreign attachment or factorising suit, is a suit in common form, at the bottom of which there is a direction to the officer to leave a copy with the debtor, agent, or factor of the defendant. At the bottom of the writ say as follows :]

And the officer to whom this writ is directed, and who may serve the same, is also commanded to leave a true and attested copy of this writ, with C. D. of or at his usual place of abode, at least fourteen days before the day the same is made returnable, who is the agent, trustee, factor and debtor of the defendant in this writ, and has of the monies and goods of the said defendant, in his hands; and you are likewise to leave a like copy at the last usual place of abode of the defendant, if he hath had any in this state— Plaintiff recognized in the sum of to prosecute, &c.

J. P. Justice of the Peace.

As we have elsewhere stated, the cause must be adjourned if the defendant is not an inhabitant of this state, not less than three, nor more than nine, months. On judgment be-

fore the county court in such cases execution cannot issue until a bond with surety is given to refund the amount of the judgment, if on a petition for a new trial, the court should so determine; but this is not necessary in judgments before Justices of the Peace, no bond being required by the statute, but the defendant within six months after his return to this state, may bring a petition to the county court for a new trial. The return of the execution unsatisfied, and also that demand of the same was made of the garnishee or the person factorised, and of his refusal to pay the execution, or expose the property in his hands, lays the foundation for a *scire facias*, against the garnishee.

10. *Declaration of Scire Facias against Garnishee.*

To the Sheriff, &c. Greeting. Whereas A. B. of brought his action of the case on a note against C. D. an absent and absconding debtor, by writ of attachment dated the day of demanding thirty-five dollars, and returnable before J. P. Justice of the Peace for the county of on the day of A. D. ; and which said writ was duly served on the said C. D. by leaving a true and an attested copy thereof at his last usual place of abode in this state, and also, agreeably to the direction therein, a like copy with the officer's doings thereon endorsed, was left with E. F. of attorney, agent, trustee and debtor to the said C. D. more than fourteen days before the day said writ was made returnable, and which said writ was duly returned to the office of said Justice; and on the said day of A. D. the C. D. not appearing to answer to said action, the same was adjourned to the day of being more than three months from the day said action was made answerable, when the said A. B. recovered judgment against the said C. D. before said Justice, for the sum of dollars damages, and costs of suit, and thereupon said Justice issued execution for said sums, with seventeen cents more for said execution, dated the same day and year, directed to the sheriff of the county of his deputy, or either constable of the town of and returnable in sixty days from its date, and which said execution the said A. B. put into the hands of C. P. then and ever since constable of the said town of who on the day of made return of the same into the office of said Justice, J. P. with

his endorsement thereon, that he had made diligent search for goods of the said C. D. and for his body, whereon to levy, but could find neither, and that on the day of he made demand of the said E. F. agent, trustee and debtor to the said C. D. of the sums contained in said execution, and of the monies and goods of the said C. D. in his hands to satisfy said execution and his fees thereon, but the said E. F. refused to pay said execution, or to turn out or expose any goods or estate of the said C. D. whereon to levy to satisfy the same; and to his said endorsement said constable annexed his fees, charged at ; as by the files and records of said justice, J. P., in said cause may more fully appear. And now the plaintiff says that the said C. D. at the time of the service of said writ, was an absent and absconding debtor, and that E. F. at the time the copy of said writ was left with him, was agent, trustee, debtor and attorney to the said C. D. and justly indebted to him in a greater sum than the amount of said execution and the officer's fees thereon; yet the defendant would not pay the same, nor expose or discover any estate, whereon the said execution might be levied and satisfied, whereby the defendant hath become liable to satisfy the said execution and the officer's fees thereon, out of his own estate; and the plaintiff says that said judgment hath never been reversed or satisfied, but the same, with the officer's fees on said execution are now justly due to him, with the interest thereon. Wherefore, by authority of the state of Connecticut, you are hereby commanded to attach (or summon) the goods, &c. of the said E. F. to the value of &c. and for want thereof attach his body, and him have to appear before J. P. justice of the peace for said county of on the day of then and there to shew reasons, if any he have, why judgment should not be rendered against him in favour of the plaintiff, for the amount of said sums contained in said execution, and the officer's fees thereon and costs of this suit. Hereof fail not, but due service and return make.

The plaintiff recognized in the sum of to prosecute. &c. Dated at, &c.

J. P. Justice of the Peace.

Plea.

The defendant defends, pleads, and says, that at the time of the issue of the writ mentioned in the plaintiff's decla-

ration, he was not agent, trustee or debtor of the said C. D. and that he had not any monies, goods or estate of the said C. D. in his hands and was not indebted to him in any sum whatsoever, and hereof for trial puts himself on the court and prays to be examined on oath, as is by statute in such cases provided. E. F.

And the plaintiff does likewise. A. B.

11. *Scire facias on judgment of a justice who is deceased.*

To the sheriff &c. Whereas A. B. of on the day of recovered judgment against C. D. before J. P. then justice of the peace for the county of for the sum of dollars damages, and the sum of costs of suit, upon which said judgment execution was issued by said justice, which has never been levied, and was returned unsatisfied, as by the files and records of said justice in said cause will appear. And whereas since the return of said execution, the said J. P. is deceased, and no execution can be issued on said judgment, which hath never been reversed or in any other way satisfied. Wherefore by authority of the State of Connecticut, you are hereby commanded to make the said C. D. to know that he appear before Q. R. justice of the peace for the county of on the day of then and there to show cause, if any he hath, why the said judgment of said justice J. P. deceased, should not be affirmed and judgment rendered, against the said C. D. in favour of the said A. B for the several sums, damages and costs, of the aforesaid judgment, the interest thereon, and costs of this suit. Hereof fail not &c.

[Where the justice is left out of office, or has removed out of the State, allege that fact instead of his being dead.]

12. *Scire facias against Administrator or Executor.*

To the sheriff &c. Whereas A. B. of on the day of recovered judgment against C. D. of before J. P. justice of the peace for said county of for the sum of damages, and the sum of costs, and took out execution for said sums, and seventeen cents more for said execution, which was dated the same day of A. D.; and whereas since the rendering of said judgment, and granting of said exe-

cution the said A. B. died; and whereas E. F. of is administrator (or executor of the last will,) of the goods and estate of the said C. D. deceased, and has taken upon him the burden of said trust. And the plaintiff says that said judgment hath not been reversed, and the same, and said execution have never been in any way satisfied, but are now justly due. Wherefore you are required to cause the said E. F. as administrator of the estate of the said C. D. deceased to know that he appear before J. P. justice of the peace for the county of on the day of at then and there to show cause, if any he hath, why judgment shall not be rendered against the goods and estate of the said C. D. deceased, delivered into the hands of the said E. F. as administrator as aforesaid.

Hereof fail not &c. J. P. Justice of the Peace.

13. *Scire facias by an Administrator or Executor.*

To the sheriff &c. Whereas A. B. of on the day of recovered judgment against C. D. before J. P. justice of the peace for the county of for the sum of damages and the sum of costs of suit, and took out execution therefor, dated the day and year last aforesaid; and whereas afterwards (viz.) on the day of the said A. B. died; and E. F. of is executor of the last will and testament of the said A. B. and hath taken upon him the execution of the said trust. And the said E. F. as executor as aforesaid saith that said judgment hath never been reversed, and that the same and said execution have never been paid or satisfied, and thereupon prays remedy in the premises. Wherefore, you are hereby commanded to cause the said C. D. to know that he appear before the said justice J. P. at &c. on the day of &c. then and there to shew reason why judgment shall not be rendered against him in favour of the said E. F. executor of the last will of the said A. B. deceased, for the several sums aforesaid, amounting to , the interest thereon, and the costs of this suit. Hereof &c.

J. P. Justice of the Peace.

14. Declaration *of Covenant.*

A covenant differs from other agreements only from its being under seal. Actions of covenant are now seldom

brought except upon the covenants in deeds, which as they relate to lands are called covenants real, and go with the title. Although an action for the breach of covenants in a deed cannot be brought before a justice of the peace, as the title is directly brought in question, yet we give a form of the declaration.

In a plea of covenant broken, whereupon the plaintiff declares, and says, that on the day of for the consideration of he purchased of the defendant a certain tract of land, lying described as follows: and that the defendant on the day aforesaid, made, executed, and delivered to the plaintiff a deed of conveyance of said lands, in which, among other things, the defendant covenanted with the plaintiff, that at, and until the ensealing of said deed, he the defendant was well seized of the premises, as a good indefeasible estate in fee—as by said deed ready in court to be shewn, appears. Now the plaintiff says, that at the time of executing said deed, the defendant was not well seized of the premises, as an estate in fee, and that he was not owner of said land, but the same belonged to C. D. and thereupon the plaintiff says that the defendant his said covenant not regarding has wholly failed to keep, and perform the same, though often requested, but has broken the same, and refused, and still does refuse to keep the same, to the damage of the plaintiff.

CHAPTER X.

OF THE ACTION OF TRESPASS.

Actions of trespass are either for injuries done to things real, to things personal, or to persons. A parent or master may maintain trespass for an injury to his child or servant, on the ground of loss of service. The first is commonly called trespass *quare clausum fregit*, and the last assault and battery. Minors, and persons *non compos* are liable for trespasses, and when they are sued, their parents, guardians, conservators or overseers should be notified, if they

have any, but if they are not, the court must stay the proceedings and cause them to be notified. Where a minor has no parent or guardian, the court will appoint a guardian to defend him in the suit, otherwise the judgment will be erroneous.

1. *Declaration of Trespass quare clausum fregit.*

In an action of trespass, whereupon the plaintiff declares, and says, that on the day of he was and ever since has been possessed of a certain tract of land, lying in butted, and bounded, and described as follows and the plaintiff says that on the day of the defendant with force, and arms did break, and enter into, and upon said described tract of land of the plaintiff, and did tread down, consume and destroy the herbage then and there growing, and did cut down one hundred trees, then, and there standing, and growing, to the damage of the plaintiff.

Where the damage is done by cattle, the declaration must charge the defendant with breaking into, and entering upon the land of the plaintiff, and treading down, and destroying the grass, and herbage with his cattle, viz. horses, oxen, sheep, &c.

Plea.

The defendant defends, pleads and says, that of having & maintaining his said action the plaintiff ought to be barred, because he says that although true it is, he entered on the said land, described in the plaintiff's declaration, yet he says he had a good right so to do ; that he is the owner of said land, and at the time of the acts complained of, the title of said land was in the defendant, and that ever since the title to said land hath been and is still in the defendant, which he is ready to verify, and hereof prays judgment.

Defendant for himself.

Record.

At a court holden &c. A. B. against C. D. action of trespass, whereupon the plaintiff declares and says that on the day of he was seized and possessed of a certain piece of land, bounded and that afterwards (viz) on the day of the defendant

with force and arms entered into and upon said piece of land, trod down the herbage and cut and carried away one hundred trees, then and there standing &c. ; to which, the defendant pleads and says that true it is, he entered upon said land and cut said trees, but he further says that at that time and ever since he was owner of said land and that the title thereof was then and is still in the defendant, which he is ready to verify ; and thereupon the defendant with surety entered into a recognizance in the sum of dollars to the plaintiff conditioned that he would enter said cause and prosecute his said plea to effect in the next county court of the county of within which the said land lies, and pay all damages and costs, if he fail to make his plea good. J. P. Justice of the Peace.

Recognizance.

H county, ss. H ,

Appeared before me on the day and year above written, C. D. and E. F. and acknowledged themselves jointly and severally, the said A. B. as principal and the said E. F. as surety to be indebted and bound and holden unto the aforesaid C. D. in the sum of dollars to be paid, in case the said A. B. shall neglect and fail to enter the aforesaid cause in the docket of the county court to be holden at within and for the county of and prosecute his aforesaid plea to effect, and pay all the damages and costs, the said A. B. plaintiff in said action, may sustain in case he fail to make his said plea good.

J. P. Justice of the Peace.

If the defendant after pleading title, refuses to recognize with surety, the action must proceed, and his plea be rejected by the court ; yet if he refused to plead any other, judgment may be given against him on *nihil dicit.*

2. *Declaration of Trespass to personal property.*

In an action of trespass, whereupon the plaintiff declares and says, that on the day of he was the lawful owner of a certain bay horse, six years old, of the price and value of one hundred dollars, and the defendant on said day, did with force, and arms, take and carry away said horse out of the possession of the plain-

tiff, to some place unknown, whereby the plaintiff has wholly lost the same, to his damage.

In an action of trespass, whereupon the plaintiff declares and says, that the defendant, on the day of at did with force and arms, break into the dwelling house of the plaintiff, and did him assault and beat, and unlawfully imprison for the space of twenty-four hours, and did with force take, and carry away his goods and chattels, viz. one thousand hats of the price, & value of one thousand dollars, &c. whereby the plantiff lost the same, to his damage.

Plea.

And the defendant defends, pleads and says, that he is not guilty in manner and form the plaintiff hath alleged, and hereof for trial puts himself on the court.

A. B.

And the plaintiff does likewise. C. D.

3. *Declaration of Assault and Battery.*

In a plea of trespass, whereupon the plaintiff declares and says, that on the day of at he then and there being in the peace of this State, the defendant with force and arms, viz. with fists and clubs, and with great violence, did an assault make upon the body of the plaintiff and him beat and strike many blows, whereby he was greatly injured, and other injuries and enormities the defendant then and there did and committed upon the person of the plaintiff, against the peace, and to his damage dollars &c.

4. *Declaration of False Imprisonment.*

In an action of trespass, whereupon the plaintiff declares and says, that the defendant on the at did with force and arms an assault make upon the body of the plaintiff, and him did beat and wound, and unlawfully imprison, and detained and confined him in prison for the space of twenty-four hours, and then and there did to him many other injuries, against the peace and to his damage

5. *Declaration—Trespass for Debauching the Plaintiff's Daughter.*

In an action of trespass, whereupon the plaintiff declares and says, that the defendant on the day of

and at divers other times since, did with force and arms, break and enter into the house of the plaintiff, and assaults make upon the body of A. B. the plaintiff's servant and daughter, under the age of twenty-one years; and the defendant did then and there seduce and debauch the said A. B. and carnally know her, and get her with child. By which the plaintiff lost the company and service of his said servant and child for a long time, viz. from and was put to great labour and trouble, and was forced to expend one hundred pounds in maintaining and taking care of her lying in of said child, to his damage.

ACTION OF TROVER.

Trover is brought for the recovery of the value of personal property, which was either unlawfully *taken*, or is unlawfully *detained* by the defendant. Where property has been found or loaned, and demand made of the same by the owner and a refusal to deliver it up, trover may be brought.

6. *Declaration—Trover.*

In a plea of the case, whereupon the plaintiff declares, and says, that on the day of he was possessed of ten yards of broadcloth, of the value of ten pounds lawful money, which was his own proper estate, and being so thereof possessed, he afterwards on the day of lost said broadcloth, out of his hands and possession, which afterwards on the day of came into the hands and possession of the defendant, by finding: and the plaintiff says, that the defendant well knew that the said cloth belonged to the plaintiff, but contriving, and intending to deceive, and defraud him, he the defendant has at all times neglected and refused to deliver said cloth to the plaintiff, though often requested, particularly on the day of and the defendant afterwards on the day of converted, and disposed of the same, to his own use, to the damage of the plaintiff.

7. *Declaration in the action of Slander.*

In a plea of the case, whereupon the plaintiff declares and says, that from his youth to the present time, he has ever sustained a good character, and has never been guil-

ty of the crime of theft, yet the defendant minding and intending to injure and destroy the character of the plaintiff, did on at maliciously, falsely, and openly, utter and publish in the hearing of sundry citizens of this state, the following false, and scandalous words of and concerning the plaintiff viz. A. B. (meaning the plaintiff) is a thief and has stolen my horse (meaning the defendant's horse) and the plaintiff says that by reason of the defendant's speaking said words, he has been greatly injured in his good name and reputation, has been put to great trouble and expense and exposed to a criminal prosecution for the crime of theft, which is to his damage.

8. *Declaration—Malicious Prosecution.*

In a plea of the case, whereupon the plaintiff declares and says, that he has from his youth to the present time, sustained a good character, has never been guilty of perjury, of which the defendant was not ignorant, but contriving and maliciously intending to injure the character of the plaintiff, and bring him to public scandal and disgrace, did falsely and maliciously and without any reasonable, or probable cause whatever, on the day of cause and procure the plaintiff to be informed against, and indicted for the crime of perjury, in the following manner (*recite the information or indictment with the whole proceedings and the acquital*). And the plaintiff says that he was innocent of said crime of perjury charged in said information, yet the defendant well-knowing the innocence of the plaintiff, but intending to injure him did falsely, and maliciously and without any reasonable or probable cause whatever, cause, and procure the plaintiff to be informed against, indicted and prosecuted for the crime of perjury as aforesaid, whereby the plaintiff has been greatly injured in his reputation, and has been put to great trouble and cost in his necessary defence ; to his damage.

OF TRESPASS ON THE CASE.

This action is brought either for misfeasance or a nonfeasance ; a wrongful act not *immediately* and *directly* injurious, for if so, trespass is the proper action, but only injurious in its *consequences ;* and for any omission or of what the law requires a person to do. This action is a most extensive remedy, and is brought against all officers,

agents, trustees, &c. whether public or private, for neglect of duties; and is the usual remedy in cases of warranties, &c. The doctrine of *implied warranty* in the sale of personal property, has been adopted in this State. So that if a person sells a horse or other article of personal property, for a fair price, *and as for a sound horse*, the law implies a warranty that it is sound. In such case it is not necessary to prove any *deeeit*, or that the vendor *knew* the horse was unsound, for he is liable if he did not know it. Where a person knows a horse to be unsound, and sells it, representing it to be sound, or without such representation, if he neglects to inform the purchaser of its defects, he is liable on the ground of deceit or fraud. In an action on an implied warranty the declaration will be the same as if it was an express warranty. In all cases when a person sells an article of personal property the law implies a warranty that he is owner of it.

9. *Declaration of Trespass on the case for Warranty.*

In a plea of the case whereupon the plaintiff declares and says, that on the day of he purchased of the defendant, a certain horse and paid him therefor, the valuable consideration of one hundred dallars, and the plaintiff says, that at the time of the sale and delivery of said horse, the defendant did affirm, declare and warant to the plaintiff that the same was sound, wind and limb, and free from any defect or disease whatever, and the plaintiff says that at the time of said sale, delivery and warranty of said horse, the same was disordered and defective, and for a long time before, and then had a certain incurable disease, called——whereby said horse was rendered of no value, and the plaintiff has wholly lost the same: and the plaintiff says that the defendant has not kept his said warranty, but has broken the same,
to his damage, &c.

10. *Declaration on the case for Fraud.*

In a plea of the case, whereupon the plaintiff declares and says, that on the day of he purchased of the defendant a certain horse—and paid him therefor, the valuable consideration of one hundred dollars, and the plaintiff says, that he purchased said horse as, and for a sound horse, and that the defendant at the time of said

sale and delivery, did affirm and declare to the plaintiff, that said horse, was sound wind and limb, and free from any defect or disease whatever. And the plaintiff further says, that at the time of said sale and delivery, said horse was unsound, and then and for a long time before, had an incurable disease, called——which was then well known to the defendant, but wholly unknown to the plaintiff: and that the said disease has rendered said horse of no value, and that the plaintiff has wholly lost the same, to his damage, &c.

11. *Declaration against an officer for neglecting to levy or return an Execution.*

To the sheriff &c. To summon O. P. of by reading this writ in his hearing or leaving a copy with him or at his usual place of abode at least fourteen days before the same is made returnable, to appear &c. &c.

In a plea of the case for that, the plaintiff declares and says, that on the day of he recovered judgment before J. P. justice of the peace for said county of in his own name and favour against A. B. of for the sum of damages, and the sum of costs of suit, and thereupon took out an execution for said sums, with seventeen cents more for the same, and which said execution was dated the day and year last aforesaid, directed to the sheriff of the county of his deputy or either constable of the town of in the county last aforesaid, to serve, and return, and was returnable within sixty days next coming from the date thereof; and was all in due form of law signed by the said justice J. P., as by the files and records of said justice may appear; and afterwards, viz. on the said day of the plaintiff delivered said execution into the hands of the defendant then and ever since constable of said town of to levy and collect, and return the same execution according to law; yet the plaintiff says that the defendant neglecting and disregarding his duty did not serve, levy or collect said execution or return the same into the office of said justice J. P. within the life of the same execution. And the plaintiff says that said judgment hath not been reversed, and that the same and said execution are wholly unsatisfied, and now justly due, and that by means of the premises he has been injured and damaged the sum of dollars, to recover which with costs &c.

12. *Where the officer makes a false return within the sixty days.*

[The same as the above until alleging the delivery of the execution into the hands of the defendant, then say :]

And afterwards viz. on the day of the defendant returned said execution into the office of said justice J. P. with his endorsement thereon made that he had demanded said execution and his fees of the said A. B. who had neglected and refused to pay the same, and that he had made diligent inquiry and search for goods and estate of the said A. B. whereon to levy to satisfy said execution but could find none within his precincts ; and also that he had made like search for the body of the said A. B. wheron to levy, but could not find the same ; as by the files & records of said justice J. P. in said cause may appear. And the plaintiff says that the said return and endorsement of the defendant are false and untrue, and that during the life of said execution and whilst the same was in the defendant's hands to levy and collect as aforesaid, the said A. B. was in possession of goods and estate liable to be taken on execution, within the said precincts of the defendant, of greater value than the damages and costs of said execution and sufficient to have satisfied the same, which might have been found, taken and levied on, with due diligence. And the plaintiff says that said judgment hath not been reversed or satisfied, or said execution satisfied or paid, and that by the aforesaid wrong doings of the defendant, he hath lost his remedy for the collection of said execution and judgment to his damage, &c.

13. *For not taking property on attachment.*

In a plea of the case for that, on the day of the defendant prayed out a writ of attachment in his own name and behalf, against C. D. dated the day and year last aforesaid, signed by J. P. justice of the peace for the county of and directed to the sheriff or his deputy or either constable of the town of them commanding to attach to the value of thirty-five dollars of the goods or estate of said C. D. and for want thereof attach his body ; and returnable before said justice J. P. on the day of at in said county, and demanding thirty five dollars damages ; and afterwards, viz. on the said day of the plaintiff delivered said writ of attachment into the hands of the defendant then and ever

since a constable of said town of to serve and return acccording to law. And the plaintiff says that afterwards, viz. on the day of the defendant returned said writ into the office of said justice J. P. with his endorsement thereon made, that he could not find any goods or estate of the said C. D. whereof to attach, he having made diligent search within his precincts, and that for want thereof he attached the body of the said C. D. and took sufficient bail for his appearance at court. And the plaintiff says that said return and endorsement were false and untrue, and that the said C. D. was at the time of the service and return of said attachment, possessed of goods and estate to a greater value than thirty-five dollars, liable to have been attached and taken for debt, within the precincts of the defendant, which might have been found and attached, with due diligence and enquiry. And the plaintiff says that afterwards on the day of he recovered judgment against the said C. D. in said action before said justice J. P. for the sum of damages and the sum of costs for which sums execution was then and there issued in due form, and for seventeen cents more, which afterwards, viz. on the day of was put into the hands of the defendant to levy and collect, who afterwards and whilst said execution was in life and after having made demand of the same, for want of goods and estate of the said C. D. levy the same on his body and him committed to the keeper of the gaol in the county of and returned said execution with an endorsement of his said doings thereon; and afterwards, on the day of the said C. D. had duly administerd to him the oath by law provided for poor debtors in prison and was thereupon discharged from confinement in said gaol on said execution. And the plaintiff says that said judgment hath never been reversed or satisfied, and that said execution hath never been paid or otherwise satisfied, than by the aforesaid levy, and that by the said wrong doings of the defendant, he hath wholly lost said judgment, and the officer's fees on said execution, charged at to his damage the sum of

[In case of the default of a deputy sheriff a suit may be brought against him or the sheriff.]

14. *Declaration in case for injuries arising from negligence.*

In a plea of the case whereupon the plaintiff declares and says, that the defendant on the day of instant, long before, and ever since was, and hath been an inn-keeper or licensed public taverner in said and as such hath been used and wont to entertain guests and their horses for certain hire: whereupon the plaintiff declares and says, that the plaintiff on the day aforesaid, at aforesaid, being a guest at the defendant's house, by him the defendant entertained as taverner aforesaid, he the plaintiff then and there delivered to the defendant to feed and keep his the plaintiff's certain horse, of the price of thirty-five dollars lawful money, and also a good saddle and bridle to the value of three dollars lawful money, which the defendant received and for his certain reasonable hire to be paid, undertook safely to keep and re-deliver to the plaintiff whenever thereto requested. Yet nevertheless, the defendant so carelessly and negligently looked after said horse, saddle and bridle, as that by the defendant's so negligently and carelessly keeping as aforesaid, the plaintiff's said horse, soon after the said day, strayed away out of the defendant's keeping and custody, and away from the plaintiff and out of his reach and knowledge; and the said saddle and bridle were also lost, contrary to the defendant's undertaking and trust as aforesaid. And thereby the plaintiff is damnified and made worse as he saith, the sum of lawful money, and therefor and for costs he brings this suit. Fail not, dated, &c.

OF THE ACTION OF REPLEVIN.

Replevin is a remedy to regain the possession of goods which have been wrongfully distrained or taken, and is the proper action to regain the possession of beasts which have been impounded, and property attached. In replevin of cattle the plaintiff alleges them to have been wrongfully taken, and summons the defendant to appear before the court and answer to a plea of trespass for wrongfully taking and unjustly impounding his beasts. The defendant if he admits and justifies the taking by a claim of title to the land is said to make avowry, which is in substance, a declaration, setting forth his right or title, and the trespass of the plaintiff's beasts, and claiming damage.

15. *Writ and Declaration of replevin of beasts impounded.*

To the sheriff of F. &c. Greeting.

By authority of the state of Connecticut, you are hereby commanded, justly and without delay, to cause to be replevied to T. C., of S. his beasts, to wit, now distrained or impounded by S. H. of N., and by him unjustly detained, as it is said: and you are to summon the said S. H. to appear before J. P. justice of the peace for the county of on the day of A. D. then and there to answer unto the said T. C., in a plea of trespass, wherein the said T. C. complains, that the said S. H., on the day of, &c. at M., in a certain place, called &c. took the said beasts, that is to say, and them unjustly impounded and detained as aforesaid, until this time; which is to the damage of the said T. C., as he saith, the sum of dollars, and therefor brings this suit, &c. (the said T. C. having given bond according to law.) Hereof fail not, and make due return of this writ, with your doings thereon, &c.

Dated &c. J. P. Justice of the Peace.

The justice who issues a writ of replevin should take a bond of the plaintiff with surety, or he will be liable himself, which should be annexed to the writ.

Bond, or Recognizance.

You, A. B. and C. D. of acknowledge yourselves, jointly and severally, bound to E. F. of in a recognizance of dollars, that G. H. of shall prosecute the writ of replevin, he hath now taken out against the said E. F. at the next county court, to be holden at on the Tuesday of next, (or, before the justice of the peace to whom the same is returnable,) to full effect; and in case he make not his plea good, satisfy such demands and dues as the said E. F. shall recover against him.

Avowry.

And the said C. D. comes into court and defends the force and inquiry, &c. and avows the taking the said beasts in the place alleged in the plaintiff's declaration, and avers that said place where said beasts were taken is in and a part of a certain parcel of land situated at W containing acres, and bounded which said parcel of land

was at the time said beasts were taken, the soil and freehold, and in the possession and occupation of the said C. D.; and he further says that said beasts at the time they were taken at the place aforesaid, were depasturing the grass, and doing damage on the avowant's said soil and freehold, and for the doing which said damage, the said C. D. avows the taking said beasts, which he is ready to verify, and prays judgment for the damage done to his said land by the plaintiff's said beasts, in manner aforesaid, which he says is dollars, together with costs and charges.

C. D.

Plea in bar of the Avowry.

And the said A. B. says that the said C. D. ought not to avow the taking of said beasts, as he has alleged, because he says that said beasts entered into & upon said piece of land described by the avowant, from an adjoining lot of land belonging to the plaintiff, through and over that part of the fence dividing the said lot of the plaintiff from the said lot of the avowant, belonging to, and which is the fence of, the said C. D. and his duty to keep and maintain the same; and that the said fence of the avowant through which said beasts broke and entered, was not at the time said beasts broke and entered through the same, a good and substantial fence, five rails high, or a stone wall four feet high, well erected, or equivalent to such five rail fence, or stone wall; but said fence was weak and defective, from which cause the plaintiff's beasts broke through the same, and entered upon the avowant's said land, from whence they were unjustly taken, impounded and detained, until delivered and replaced by the plaintiff's said writ; all which he is ready to verify, and he prays that damages for the unjust taking and detention of his said beasts, and costs may be adjudged to him.

A. B.

Replication.

And the said avowant replies to the said plea in bar of the said A. B. and says that the part of the division fence between the said lot of the plaintiff and that of the avowant, whereon said beasts were taken, belonging to the said A. B. is not a five rail fence, or a stone wall four feet high, or equivalent thereto, and that the said beasts broke and entered on the said land of the said C. D. through his the said A. B.'s part of said fence, in consequence of its defect-

iveness, without that, that the said part of said division fence belonging to the avowant at the time said beasts entered on said land and were taken, was not a five rail fence, or a stone wall four feet high, or equivalent thereto, and without that, the said beasts broke and entered into and upon the said land of the avowant where they were taken, through and over the said C. D.'s part of said division fence, between said lots of land, and hereof puts himself on the court. C. D.

And the plaintiff does likewise. A. B.

Record.

H county, ss. H , day of A. D.

At a court holden before me, A. B. against C. D. in an action of Replevin of certain beasts of the said A. B. alleged by him to have been unlawfully taken and impounded by the said C. D. who avows the taking of said beasts damage feasant on a certain parcel of land situated in the soil and freehold belonging to him the said C. D. as he avers, and to which avowry the said A. B. pleads in bar that said beasts broke and entered on the said land of the avowant, through and over a part of the fence dividing and separating the said lot of the avowant from an adjoining lot of the plaintiff, belonging to the said C. D. and that the same was not a five rail fence or a stone wall four feet high or equivalent thereto; and the said avowant replies to the plaintiff's plea in bar, and traverses the facts or allegations therein, of the insufficiency of the avowant's said fence, and of said beasts' having entered through the same, and puts himself on the court for trial; and the plaintiff doth likewise, as by the pleadings of said parties on file more fully appears; and having fully heard the parties with their evidences, I do find that the facts and allegations contained in the plaintiff's said plea in bar are true, whereupon it is considered that the said A. B. recover of the said C. D. the sum of damages, for the unlawful taking and detention of the plaintiff's said beasts, and his costs taxed at &c.

[If the issue is found for the avowant, say:]

I do find that the facts and allegations contained in the plaintiff's said plea in bar are not true, whereupon it is considered that the said C. D. recover of the said A. B. the sum of damages, for the injury done by the said

A. B.'s beasts on his said land, and his costs, taxed at and that execution issue in due form.

J. P. Justice of the Peace.

[If the avowant demands more than thirty-five dollars damages, or an issue is joined as to the title to the land whereon the beasts were taken, the cause must be removed to the county court, in the same manner as where the defendant pleads title in an action of trespass on land.]

16. *Writ and declaration to replevy goods attached.*

To the Sheriff of the county of, &c.

By authority of the State of Connecticut, you are hereby commanded justly and without delay, to cause to be replevied unto C. D. of his goods, viz. [here describe them] now attached and detained by A. B. of by virtue of a writ of attachment in his favour against the said C. D. issued in due form, and returnable before J. P. justice of the peace for said county, on the day of And you are to return this writ with the said writ of attachment, into the office of the said justice J. P. twenty-four hours at least before the said writ of attachment is made returnable, and to give notice of the same and of your doings hereon to the said A. B. (the said C. D. having given bond with sufficient surety according to law). Hereof fail not, but due service and return make. Dated, &c.

J. P. Justice of the Peace.

The same bond must be taken as in the preceding case, and the writ, when it can be done, should be delivered to be served by the same officer who attached the property. The bond should be sufficient to indemnify the attaching party, and equal to the value of the goods attached. The bond must be annexed to the writ, and kept on file by the Justice, as surety to the attaching creditor.

17. *Declaration in Replevin, where property is attached belonging to a third person.*

To the Sheriff, &c.

By authority of the State of Connecticut, you are hereby commanded justly and without delay, to cause to be replevied to C. D. his goods, viz. [here describe them] wrongfully attached or taken by A. B. of by a writ of at-

tachment in his name and favour, against E. F. of and by him unjustly detained in the custody of O. P. the officer who served said writ of attachment, and you are hereby commanded to summon the said A. B. to appear before J. P. justice of the peace within and for the county of at his office in in said county, on the day of then and there to answer unto said C. D. in a complaint or plea of trespass, wherein the said C. D. complains that the said A. B. on the day of at wrongfully took the aforesaid goods, then, ever since, and still the property of the said C. D. from and out of the possession of ; the same having been so wrongfully taken on a writ of attachment duly issued in favour of the said C. D. against E. F. returnable before J. P. justice of the peace, for said county, on the day of at as and for the property of the said E. F. and to respond the judgment that might be recovered against him the said E. F. in said action; but the said C. D. says that said goods were not the property of said E. F. when so attached or taken, but were then and still are the property of the said C. D. and which said goods so wrongfully taken, have ever since been and still are unjustly detained from the said C. D. until this time, which is to the damage of the said C. D. as he saith, the sum of dollars, and therefore he brings this suit (the said C. D. having given bond, with sufficient surety according to law). Hereof fail not and make due return of this writ, with your doings thereon endorsed.

Dated at J. P. Justice of the Peace.

The following bond must be taken by the justice issuing the writ, and annexed thereto:

You A. B. and C. D. of acknowledge yourselves, jointly and severally, bound to E F. of in a recognizance of dollars, that G. H. of shall prosecute the writ of replevin, that he hath now taken out against the said E. F. at the next county court, to be holden at on the Tuesday of next, (or, before the justice of the peace before whom the same is made returnable,) and in case he fail to make his plea good, to return and deliver the goods directed to be replevied to J. K., the officer, who attached the same, in a suit in favour of said E. F. against L. M. of so that they may be forthcoming to be taken

on the execution that may be recovered by said E. F. in said suit; and on failure thereof, to pay the debt, damages and costs, that may be recovered in said suit.

The defendant if he intends to justify, must make avowry, or he may plead the general issue, and by giving notice, may under that plea set up a justification. Cases of this kind will usually depend on the right of property in the goods attached. If the court is of opinion that the goods belonged to the plaintiff in replevin, the judgment should be for him to retain the goods, and also to recover damages for the unlawful taking and detention of them, and his costs; but if the plaintiff fail to make out a title to the property, judgment should be rendered against the plaintiff, that he return the goods to the officer who attached them, and that on failure thereof, he pay the value of such goods, when they do not exceed the amount of the debt or damages and costs that might be recovered in the suit on which they were attached, and where they do exceed it, that he pay the amount of the judgment, damages and costs that may be recovered in the attaching suit (*a*). The judgment must be according to the statute, and the execution must follow the judgment.

Record of judgment for the Plaintiff.

At a court, &c. [state the action, the avowry, or justification, the reply to it, and the issue joined by the parties, as in the first case] and having heard the parties with their witnesses, I find the issue for the plaintiff; whereupon it is considered that the plaintiff retain the said goods described in his said declaration, and that he recover his costs of suit taxed at and that execution issue for said costs, and seventeen cents more for the same, returnable according to law.

Judgment for the Defendant.

——And having heard the parties, I find the issue for the defendant, and am of opinion that the plaintiff has failed to make out a title to the goods described in his said declaration, and do find said goods to be of the value of dollars, and less than the judgment that may be recovered in the action in which they were attached; whereupon it is considered that he return the said goods to O. P. of the officer who attached the same at the suit of the defend-

(*a*) St. 383.

ant against E. F. that they may be held to respond the judgment that may be recovered in said suit, and that on failure of the plaintiff to return said goods, or deliver the same to the officer who may execute this judgment, that the defendant recover of the plaintiff the sum of dollars damages, being the value of said goods and his costs of suit taxed at and that execution issue therefor.

Execution.

To the Sheriff, &c. Whereas A. B. of recovered judgment before me, J. P. justice of the peace for the county of on the day of against C. D. of in an action of replevin, brought on a certain statute law of this state, by the said C. D. against the said A. B., that the said A. B. return the goods replevied to him in said suit, viz. [here describe the goods] to O P. of the officer who attached the same at the suit of the said A. B. against E. F. that the same may be held by said officer to respond the judgment that may be recovered by the said A. B. against the said E. F. in said action; and that on failure of the said C. D. to return said goods, the said A. B. recover of the said C. D. the sum of dollars damages, being the value of said goods, the same being of less value than the judgment that may be recovered by the said A. B. against the said E. F. in said action, and the sum of costs of suit; whereof execution remains to be done:— These are therefore by authority of the State of Connecticut to command you to demand the said goods of the said C. D., & on the same being delivered to you, or found by you within your precincts, you are to take said goods & return and deliver the same unto the said O. P. to be held by him for the purposes aforesaid, and on failure of said C. D. to deliver said goods to you, to be returned as aforesaid, and in case you cannot find the same so as to return them, you are further commanded that of the goods, chattels or lands of the said C. D within your precincts, you cause to be levied, and the same being disposed of or appraised as the law directs, paid and satisfied unto the said A. B. the aforesaid sum of dollars damages, and the sum of costs, &c. [as in common cases.]

[Where the goods are of greater value than the judgment that may be recovered in the original suit at which the goods were attached, the rule of damages is not the va-

lue of the goods, but the amount of such judgment, which it would seem the court must inquire into. There seems to be great difficulty in rendering judgment in conformity to the statute where the plaintiff fails of making out a title to the goods, and it would have been better to have given judgment only for the costs in such cases, and left the defendant to his remedy on the bond; and as the law now is, he has a remedy on the bond, if the judgment in the replevin is in his favour, and is not so rendered as to afford him redress, or is not enforced, or cannot be enforced from the inability of the plaintiff.]

Where several persons in distinct suits attach the same property, all must be joined in the action of replevin; the declaration must state each attachment or taking of the property severally, and all of the attaching creditors must be cited to appear and defend in the suit. This could not be done according to the principles of the common law, applicable to actions of trespass, as the attachment of the goods by each creditor would be a distinct trespass, and the defendants could not be joined; but the joining of all of the attaching creditors in one suit, seems to be the only mode in which the statute can be carried into effect, as there can be but one judgment rendered. The statute is attended with great difficulty.

CHAPTER XI.

OF ACTIONS ON STATUTES.

Bastardy.

The form of proceeding upon the statute, providing for the support of bastard children, is of a criminal nature, although in its consequences it is only a civil action. (*a*) Any single woman who is pregnant with a bastard child, or after her delivery may exhibit her complaint to a justice of the town where she resides, against the person she charges with being the father of such child; to the truth of which

(*a*) Stat. 91.

complaint, she must make oath before said justice, who thereupon may grant a warrant, as in criminal cases, to arrest the person charged and bring him before him, and if on enquiry he finds probable cause he may order such person to become bound with surety to appear before the next county court, to abide the order of said court, and on his failure to procure surety, he is to be committed as in criminal cases. The woman in such cases is admitted a witness; but she must have been examined on oath, and put to the discovery in the time of her travail, and have continued constant and uniform in her accusation.

If the mother of a bastard child neglect or refuse to proceed against the reputed father of such child, the town interested in the support of such child, when security shall not be offered to indemnify such town against the support of such child, may by their select-men institute a suit against the person accused; or the select-men may take up and pursue in the name of the town, any suit commenced by the mother, in case she fails to prosecute the same to final judgment. Where the mother fails to prosecute, or having commenced a suit neglects to pursue it, thereby giving the town a right to prosecute, whether the select-men commence an original suit, or take up and pursue one commenced by the mother, they must do it in the name of the town, not in the name of the select-men, and they are to pursue such suit as the agents of the town (*b*). When a suit has been commenced by the mother, and a bond taken to the adverse party, and she afterwards fails to prosecute such suit, and it is pursued by the select-men, a suit on such bond or recognizance must be in the name of the town, not in the name of the select-men (*c*). It has been decided that the proceeding under this statute is a civil suit, and if the plaintiff is an infant, she must sue by guardian, or if she has no parent or guardian, by her next friend, which is any person who will permit the suit to be brought forward in his name and become responsible for the cost, in case of failure.

Complaint during Pregnancy.

To J. P. Justice of the Peace for the county of comes A. B. of and complaint makes, that she is, and for more than ten months last past hath been, a single and unmarried woman; that she is pregnant and with child,

(*b*) 2 Con. Rep. 338. (*c*) ib.

begotten upon her body by C. D. of a single man, on or about the day of at and which child when born will be a bastard; and the complainant says that said C. D. is the father of said child, with which she is now pregnant; and she prays process against the said C. D. that he may be arrested and brought before your worship, or some other justice of the peace of the town of proper to hear the same, that he may be examined in the premises and dealt with agreeably to the statute in such case provided.

Dated, &c. A. B.

[The complainant must make oath to the truth of the complaint, which the justice must certify on the same.]

H county, ss. H , day of A. D.

Personally appeared before me the aforesaid A. B. and made oath to the truth of the foregoing complaint by her subscribed, and to the matters therein contained.

J. P. Justice of the Peace.

Warrant.

To the Sheriff, &c. By authority of the State of Connecticut, you are hereby commanded without to delay to arrest the body of C. D. of mentioned in the aforesaid complaint, and him forthwith have before the undersigned authority or some other justice of the peace of said town of to answer to the foregoing complaint, and be dealt with therein, agreeably to the statute in such case provided. Dated, &c.

State duty of thirty-four cents is paid hereon, and E. F. recognized in the sum of dollars for prosecution.

Signed.

Plea.

The said C. D. defends, pleads and says, that he is not guilty in manner and form as is alleged in said complaint, and hereof for trial puts himself on the court.

Defendant for himself.

And the said complainant doth likewise. A. B.

H county, ss. H

At a court holden before me, on this day, A. B. against C. D. the latter having been arrested by virtue of a warrant issued upon the complaint of the said A. B. and brought

before me to answer to said complaint, wherein the said A. B. allegeth that she is, and for more than months hath been a single woman, that she is pregnant and with child, begotten upon her body on or about the day of by the said C. D. which child when born will be a bastard, and that the said C. D. is the father of said child; and the said C. D. being required to answer to said complaint says he is not guilty, and puts himself on the court for trial; and the said complainant doth the same; and having fully heard the parties with their witnesses, and examined the said complainant on oath, I am of opinion that the said C. D. is guilty, as charged in said complaint, and it is thereupon considered, that the said C. D. become bound in a recognizance with sufficient surety unto the said A. B. in the sum of dollars, conditioned that he appear before the next county court to be holden at within and for the county of on the Tuesday of then and there to answer to the charges contained in said complaint, and abide the decision of said court thereon, and stand committed until sentence be complied with.

Recognizance.

You C. D. of named in the aforesaid complaint as principal and E. F. as surety, acknowledge yourselves jointly and severally bound to A. B. of named in the foregoing complaint, in a recognizance of dollars, that the said C. D. shall appear before the county court to be holden at in and for said county on the Tuesday of A. D. and then and there answer to the charges contained in the aforesaid complaint, and abide the decision of said court thereon.

Taken and acknowledged in H this day of A. D. before me.

J. P. justice of the peace.

If the party neglects or refuses to recognize he must be committed.

Mittimus.

To the sheriff &c. Greeting.

Whereas C. D. of was this day brought before me by virtue of a warrant issued on the complaint of A. B. of wherein the said A. B. complains that on or

about the day of she was begotten with child by the said C. D. with which she is now pregnant, that she was at that time and still is a single woman ; that the said C. D. is the father of said child, which when born will be a bastard ; and the said C. D. being required to answer to said complaint, said he was not guilty, and put himself on the court for trial : and the complainant likewise ; and having heard the parties with their evidence, and examined the said A. B. on oath, did find that the said C. D. was guilty, as alleged in said complaint ; whereupon it was considered that he become bound with sufficient surety, in a recognizance to the adverse party the said A. B. in the sum of dollars, that he appear before the county court to be holden at H in and for the county of H on the day of then and there to answer to said complaint, and abide the decision of said court thereon ; and the said C. D. having neglected and failed to recognize with surety as required ; These are therefore by authority of the state of Connecticut, to command you forthwith to convey the said C. D. and him commit into the custody of the keeper of the gaol, in and for said county of who is hereby commanded to receive the said C. D. and him safely keep in said gaol, until delivered by due course of law ; and you are also to leave with said keeper this mittimus. Hereof fail not, but due service make.

Dated &c. J. P. Justice of the Peace.

Complaint after delivery.

To J. P. Esq. of the town of justice of the peace for H county, comes A. B. of in said county, and complaint makes, that on the day of she was delivered of a female child, which is a bastard and begotten upon her body as she saith by C. D. of on or about the day of ; that when said child was begotten she was and ever since hath been a single woman ; and she further saith that during her travail with said child, she was put to the discovery of the truth as to who was the father thereof, and that she then accused the said C. D. of having begotten said child of her body, on or about the said day of and that she hath ever since continued constant and uni-

form in her accusation against the said C. D. and that she hath at all times charged him with being the father of said child. And the complainant saith that said child is now living and that she is subjected to great expense for its maintenance; and the complainant prays process against the said C. D. that he may be arrested and examined touching the charges herein, and be dealt with agreeably to the statute in such cases provided.

Dated at &c. A. B.

The oath, warrant, state duty and bond, the same as the preceding. The judgment or record will vary from the foregoing only in reciting the complaint, which must be set out as it is alleged. The recognizance and mittimus will be the same.

Complaint by Select-men.

To. J. P. Esq. of H justice of the peace for the county of comes A. B., C. D. and E. F. a majority of the select-men for said town of H in said county of H and in the name and behalf of said town of H complain that G. H. of said town of H on the day of at said H was delivered of a male child, born of her body, and that the said G. H. now is and for more than ten months before the birth of said child was a single woman. And they further complain that said child was begotten upon the body of the said G. H. by J. N. of on or about the day of at H , that said child is now living and a bastard, and chargeable (or likely to be chargeable) to said town of H , that said G. H. hath neglected and doth still neglect and decline to bring forward a complaint or suit to recover maintenance for said child, and that the said G. H. and the said J. N. have neglected and declined to give bond to indemnify said town against the maintenance of said child; wherefore said complainants in the name and behalf of said town, pray that process may issue against the said J. N., that he may be arrested and examined touching the premises, and be dealt with therein, agreeably to the statute in such case provided.

[To be signed by the Select-men.]

SUMMARY PROCESS TO RECOVER POSSESSION OF HOUSES OR LANDS.

To J. P. Esq. justice of the peace for the county of H , comes A. B. of H , in said county, and makes complaint, that he is owner of certain messuage, consisting of a dwelling-house, out buildings, and the yard and garden appurtenant thereto, situated in said and bounded and described as follows, viz (describe the premises): that on the day of he leased the same by poral lease to C. D. of said H for the term of months, next following, and the said C. D. entered into the possession of the same; that afterwards viz. on the day of the complainant drew a written notice in the words and figures following, viz. I hereby give you notice that you are to quit possession of the house, (land or apartment as the case may be) now occupied by you, on or before the day of A. D. Dated at H the day of A. B.

[*The time in the notice must be thirty days or more.*]

And the complainant saith that he made duplicate copies of said notice, one of which he left on the day of the date thereof, at the said residence of the said C. D. (or delivered to him) in the presence of one credible witness; and the other he hath in possession, ready to be produced in court; and the complainant farther informs that said C. D. hath not quit said dwelling house, although the time on or before which, he was, so as aforesaid notified to quit the same, hath elapsed, and although he has been often requested, and demanded so to do; but he doth neglect and refuse to quit said premises; whereupon the complainant prays that the said C. D. may be summoned to appear before your worship to answer to this complaint, and show reasons, if any he hath, why he should not quit said premises; and also prays that six disinterested freeholders of said town of H may be summoned to appear before your worship at the time and place the said C. D. may be summoned to appear and answer to said complaint, to enquire whether the said C. D. is the lessee of the complainant and holds over the term of his lease, and also whether notice has been given to the said lessee to quit said premises as aforesaid, agreeably to the provisions of

the statute in such case provided, and whether said C. D. has held possession of said premises since the expiration of said term, as stated herein.

Dated at &c. A. B.

To the sheriff of H Greeting:

By authority of the state of Connecticut you are hereby commanded to summon C. D. of mentioned in the foregoing complaint to appear before me the undersigned authority, at my office in said town of H on the day of at o'clock, P. M. then and there to answer to the foregoing complaint of A. B. and shew reason, if any he hath, why he should not quit the possession of the premises described in said complaint, and leased to him by the said complainant. Hereof you are not to fail, but make due service and return. Dated &c.

The said A. B. as principal, and E. F. as surety, recognize jointly and severally in the sum of dollars for prosecution, before me.

J. P. justice of the peace.

Plea, not guilty.

Venire, or summons for Jury.

To the sheriff of &c. Greeting:

By authority of the state of Connecticut you are hereby commanded to summon or cause to appear before me the undersigned authority on the day of A. D. at my office in H in said county at o'clock, P. M. of said day, six disinterested freeholders of said town of then and there to enquire whether C. D. of is lessee of A. B. of of a certain messuage, consisting of a dwelling house, out buildings, &c. situated in said H and bounded and described as follows, and whether the said C. D. holds over his lease, and also whether said C. D. has been notified to quit the possession of said premises agreeably to the requirements of the statute in such case provided; and likewise whether the said C. D. hath held possession of said premises, after the time at or before which, he was notified to quit the possession thereof. Hereof fail not &c.

Dated &c. J. P. justice of the peace.

Officer's return.

H county, ss. H

By virtue hereof I summoned the six freeholders whose names are hereunto annexed, all of said H and disinterested between the parties, and in the matter mentioned herein, to appear at the time and place named within.

[Here annex their names.]

C. P. constable.

[Oath to the Jurors same as in civil cases.]

Verdict.

H county, ss H

A. B. against C. D. complaint for holding over term of lease. In this case the jury find that the said C. D. is the lessee of the complainant, that notice in writing agreeably to the statute has been given him to quit, that he holds over his lease, and also, that he holds possession since the time at or before which, he was notified to quit, as the complainant hath alleged.

[Signed by all the Jurors, one signing as Foreman.]

Record of Judgment.

H county ss. H

At a court holden before J. P. Esq. of aforesaid, one of the justices of the peace of said county, on this day of A. B. of said H complainant against C. D. of wherein the said complainant saith that the said C. D. is his lessee of a certain messuage situated in H and described in his said complaint, that he has been notified agreeably to the statute in such case provided, to quit said premises; that he holds over his lease and continues in possession after the time, at or before which, he was notified to quit; and the said C. D. being required to answer to said complaint, says he is not guilty, and for trial puts himself on the country agreeably to the statute in such case provided: and the said complainant does likewise; and the parties having been fully heard, with their witnesses, the cause was duly committed to a jury summoned for the trial of the same, agreeably to the statute in such case provided, and duly sworn, who on their oaths say, that the said C. D. is lessee of the said A. B. of the premises described in his said com-

plaint, and holds over the term of his lease, that notice has been given him to quit, and that he holds possession after the time, at or before which he was notified to quit said premises, as is alleged in the complaint of the said A. B.; and thereupon it is considered by this court, that the said A. B. recover the possession of his said premises, and his costs taxed at dollars and cents, and that execution issue accordingly.

Execution.

To the sheriff &c. Greeting.

Whereas A. B. of recovered judgment before J. P. Esq. of H , justice of the peace for said county, in pursuance of the statute in such case provided, on the day of for the possession of a certain messuage consisting of a dwelling house, out houses, and the garden and yard thereunto appertaining, situated in H , and bounded and described as follows: (here describe the premises) against C. D. of who unjustly holds over his lease, and continues in the possession thereof, after the expiration of the time, at or before which he was notified to quit the same; and also for his costs of suit, taxed at dollars, whereof execution remains to be done. These are therefore by authority of the state of Connecticut to command you without delay to cause the said A. B. to have possession of and in the premises aforesaid, situated in said H consisting of a dwelling-house, out-houses, the land whereon they stand, and the yard and garden thereunto appertaining; and also, that of the monies, goods and chattels of the said C. D. you cause to be levied (and the same being disposed of as the law directs) paid and satisfied unto the said A. B. the aforesaid sum of with seventeen cents more for this writ, together with your own fees: and for want of such monies, goods and chattels of the said C. D. to be by him shewn unto you or found within your precincts, for satisfying the aforesaid sums, you are commanded to take the body of the said C. D. and him commit to the keeper of the gaol in H in the county of H who is hereby commanded to receive the said C. D. and him safely keep until he pay to the said A. B. the aforesaid sum, and be by him released, and also satisfy your fees. Hereof fail

not, but make due return of this writ, with your doings thereon, within sixty days next coming.

Dated at the day of A. D.

J. P. Justice of the Peace.

FORCIBLE ENTRY AND DETAINER.

Complaint.

To L. W. Esq. judge of the county court for the county of H and J. P. justice of the peace for said county comes A. B. of H in said county of H and complaint makes, that on the day of he was well seized and possessed of a certain parcel of land and the dwelling house thereon standing, situated in said H and bounded as follows, viz.

and that afterwards on the day of C. D. of said H the said A. B. then being so possessed of said premises, did with a strong hand make forcible entry into and upon the aforesaid premises, and with like force disseize and dispossess the said A. B. of the same premises, and with a strong hand and great force doth continue unto this time to hold possession of said premises and to deforce and keep the said A. B. out of the possession of the same, against the peace and contrary to the form of the statute entitled "An act directing proceedings against forcible entry and detainer." And the said complainant prays process against the said C. D. that he may be summoned to appear before said judge and justice to answer to this complaint, and be dealt with herein agreeably to the statute aforesaid. And also that you cause to be summoned twelve freeholders of said county qualified to act as jurors, to appear before said justice of the peace and said judge, at the time and place the said C. D. may be summoned to appear, to fill a pannel to inquire into the matters alleged herein.

Dated at H day of A. B.

Summons.

To the sheriff of the county of H &c. Greeting:

By authority of the state of Connecticut you are hereby commanded to summon C. D. of mentioned in the foregoing complaint to appear before us, L. W. judge of the county court for said county and J. P. justice of

the peace for said county at the office of said J. P. in said H on the day of at o'clock in the forenoon, [there must be six days notice given as in other cases and not more than eight] then and there to answer to the matters contained in said complaint, and be dealt with therein as to law and justice appertaineth. Dated &c.

L. W., Judge.
J. P., Justice of the Peace.

Venire Facias.

To the sheriff &c. Greeting :

Whereas A. B. of hath exhibited his complaint to us, in pursuance of the statute in such case provided, wherein he saith that C. D. of on the day of made forcible entry into a certain dwelling-house situated in said H of which the said complainant was then in peaceable possession, and disseized the said A. B. and with a strong hand detains the same and forcibly holds the said complainant out of the possession thereof. Wherefore you are hereby commanded to cause to appear before us at the office of J. P. justice of the peace for said county, in H on the day of at o'clock in the forenoon, twelve freeholders of said county, qualified to act in the matter aforesaid, to form a pennel, and inquire on their oaths into the allegations and matters set forth in said complaint of said A. B. Dated at H day of

L. W., Judge.
J. P., Justice of the Peace.

Plea—Not guilty.

Verdict.

A. B. against C. D. complaint, for forcible entry and detainer. In this case the jury find that the said C. D. is guilty in manner and form the said A. B. hath alleged in his said complaint, and that he have restitution of his said premises, and recover his costs.

[Signed by the Jurors.]

Record of Judgment.

[State the cause and recite the complaint as in the case of holding over the term of a lease.]

And the said C. D. pleads not guilty to said complaint and puts himself on the country ; and the said A. B. does the same ; and the parties being fully heard, with their witnesses, the cause was committed to a jury summoned

and impanneled agreeably to the statute in such case provided, and duly sworn, who return a verdict that the said C. D. is guilty as alleged in said complaint; and thereupon it is considered that the said A. B. be restored to and re-seized of the said premises described in the said A. B's complaint, and that the said A. B. recover of the said C. D. his costs of suit, taxed at and that execution issue therefor accordingly.

Execution.

To the sheriff &c. Greeting:

Whereas A. B. of recovered judgment against C. D. of both in the county of H before us, L. W. judge of the county court for said county of H and J. P. justice of the peace for said county, on the day of holding a court of inquiry of forcible entry and detainer, that he the said A. B. be restored to, and re-seized of a certain parcel of land, and the dwelling-house thereon standing, situated in said H and bounded as follows, (here describe the premises,) and also for his costs of suit, taxed at dollars, whereof execution remains to be done. These are therefore by authority of the state of Connecticut to command you to cause the said C. D. (taking with you the power of said county of H if necessary) to be immediately removed from said premises, and the said A. B. restored to, and re-seized of the same premises; and also that you cause to be levied of the goods and chattels of the said C. D. to be shewn unto you or found within your precints (and the same being disposed of agreeably to law) paid and satisfied unto the aforesaid A. B. the said sum of and seventeen cents more for this writ, together with your fees hereon; and for want of such goods and chattels of the said C. D. to satisfy the aforesaid sums, and your fees, you are commanded to take the body of the said C. D. and him commit to the keeper of the gaol in and for said county of H , who is hereby likewise commanded to receive the said C. D. and him safely keep within said prison, until he pay to the said A. B. the sum aforesaid, and be by him released, and also to satisfy your fees. Hereof fail not but make due return of this writ within sixty days next coming, with your doings thereon endorsed.

Dated &c.

L. W., Judge.

J. P., Justice of the Peace.

[If the defendant shall neglect to appear, the court must proceed and inquire into the facts and render judgment in the same manner as though he was present. The court must be held in the town where the land lies. If the defendant is found not guilty, judgment is to be rendered for him to recover his costs.]

ACTION ON THE STATUTE FOR CUTTING TIMBER.

Declaration.

In a plea of trespass with force and arms, whereupon the plaintiff declares and says, that on the day of he was well seized and possessed of a certain parcel of land situated in W , in said county, and bounded as follows, viz. ; and that afterwards on the said day of the plaintiff being then seized of said land as aforesaid, the defendant wilfully and with intention to injure the plaintiff, entered into and upon said piece of land, and with force and arms, then and there cut, fell, and carried away twenty trees of greater dimensions than one foot diameter, and forty poles or trees of less dimensions than one foot diameter, then and there standing and growing on said premises. And the plaintiff says that said trees of greater dimensions than one foot diameter, were worth, when so cut and carried away, three dollars each ; and that the aforesaid wrong doings of the defendant are contrary to the form of the statute, entitled " An act for detecting and punishing trespasses in divers cases, and directing proceedings therein ;" and that by means of the premises and by force of said statute the defendant hath forfeited and become liable to pay to the plaintiff for said trees of greater dimensions than one foot diameter, one dollar and sixty-seven cents for each tree, and also three times the value thereof; and for each tree or pole under the dimensions of one foot diameter cut and carried away by the defendant as aforesaid, he hath forfeited the sum of eighty-four cents, amounting in the whole to the sum of dollars, which sum the defendant hath never paid, although often requested, but unjustly refuses so to do. And the plaintiff says that by means of the premises and by force of said statute he hath been injured and damaged the sum of dollars, to recover which &c.

ACTIONS ON THE STATUTE TO RECOVER THE VALUE OF COUNTERFEIT BILLS.

When a person receives a counterfeit bank bill, it is his duty to deliver it to some justice of the peace, who, if he is satisfied the bill is counterfeit, must deface it, enter the name of the person of whom he received it on the back of it, and retain it in his possession. The person so delivering up a counterfeit bill must give notice to the person of whom he took the bill with whom it is left, and demand payment, and on neglect or refusal, may bring an action for the recovery of the amount thereof on the statute. He must not offer to *return* the bill to the person of whom he received it, and if he does, it will bar him of his remedy on the statute, but he could maintain an action at common law, if he has common law testimony. The object of this provision is to stop the circulation of bad bills. A suit may be brought without notice and demand of payment, where the plaintiff can make oath before the justice issuing the writ that he verily believes it necessary in order to secure the demand. In an action on this statute the parties may be examined, on oath. The action need not be brought before the same justice with whom the bill is left.

Declaration.

In an action brought on a certain statute entitled "An act to prevent the passing of counterfeit bills or coins," whereupon the plaintiff declares and says, that on the day of at the defendant uttered and put off, and the plaintiff then and there took and received of the defendant for a valuable consideration, a certain false, forged and counterfeit bank bill or note purporting to have been issued by the president, directors & Co. of the Phœnix Bank, a bank incorporated by the laws of this state ; and which is of the denomination and sum of five dollars, payable to or bearer on demand, and purporting to have been signed by C. S., president, and countersigned by G. B., cashier, and numbered ; and which said counterfeit bill the plaintiff received as for a true bill, he then believing the same so to be, and paid the defendant the full amount thereof. And the plaintiff says, that afterwards on the day of discovering said bill to be false and forged, he in pursuance of said statute lodged the same

bill with J. P. Esq. justice of the peace for the county of H , and thereupon viz. on the said day of at gave notice to the defendant that said bill was counterfeit, that he had lodged the same with said the J. P. and at the same time and place demanded of the defendant payment of the same bill or note, which the defendant then and there neglected and refused to pay, and hath ever since neglected and refused to pay the plaintiff the amount of said counterfeit bill, although often requested and demanded. And the plaintiff says that by means of the premises, and by force of said statute, an action hath accrued to the plaintiff to recover of the defendant his just damages in the premises, which he says are seven dollars, which the defendant hath never paid, nor any part thereof, although often requested and demanded, and to recover which and his costs, his suit is brought, &c.

Action on statute to prevent gaming.

Any person losing any money or other property not less than one dollar in gaming or by betting on any game played by others, may recover the same back at any time within three months; and after three months if the loser has not brought an action to recover the same, any other person may sue for it and recover treble the value thereof. Where the loser brings this suit he may call on the defendant to disclose under oath.

Declaration by the loser.

In a plea that to the plaintiff the defendant render the sum of dollars which to the plaintiff the defendant justly owes and from him unjustly detains, whereupon the plaintiff declares and says, that on the day of the defendant won from the plaintiff the said sum of dollars by playing at cards with him, and the plaintiff then and there lost said sum by gaming with the defendant as aforesaid, contrary to the statute entitled "An act to prevent gaming." And the plaintiff says that by means of the premises and by force of said statute, an action hath accrued to him to recover of the defendant the aforsaid sum, yet the defendant hath never paid the same nor any part thereof, although often requested and demanded, to the damage of the plaintiff the sum of to recover which and costs he brings this suit.

Action on statutes for preventing mischief by dogs.

Every person is responsible not only for the mischief or damage done to the person or property of another, by his own dog, but also for that done by the dog of his minor child or servant.

Declaration where the dog of the defendant's son injures the son of the plaintiff.

Then and there to answer unto A. B. of in an action brought on a certain statute, entitled "An act for preventing mischief by dogs," whereupon the plaintiff declares and says, that C. D. of is and for more than one year last past has been the owner and keeper of a dog called and that said C. D. is a son of the defendant and a minor under the age of twenty-one years; and the plaintiff says, that on the day of at the said dog of the defendant's said son, being a mischievous and ferocious dog, attacked E. F. a child of the plaintiff of about ten years of age, and did bite and wound him severely, whereby the plaintiff was put to great trouble and expense for surgical assistance, nursing and taking care of his said child. And the plaintiff says that by means of the premises and by force of said statute, an action hath accrued to him to recover of the defendant the damage he hath sustained in the premises, which he says is the sum of dollars, which sum the defendant hath never paid, although often requested and demanded, and to recover which with costs this suit is brought.

Declaration where the defendant's dog killed the plaintiff's sheep.

In an action brought on a statute entitled "An act for preventing mischief by dogs," whereupon the plaintiff says, that on the day of a certain dog, of which the defendant was then and ever since hath been the owner and keeper, called tiger, killed two of the plaintiff's sheep in his pasture at H of the value of three dollars each. And the plaintiff says, that by means of the premises, and by force of said statute an action hath accrued to him to recover of the defendant his damages in the premises, which he says are seven dollars, which the defendant hath neglected and refused to pay, although often requested, and to recover which &c.

Action on statute regulating Drivers of Stages and other Carriages.

In an action brought on a statute entitled "An act for the regulation of drivers of stages & other carriages;" whereupon the plaintiff declares and says, that on the day of he was travelling on the road leading from S to H in a pleasure waggon of four wheels drawn by one horse, when he was met by the defendant at W travelling in an opposite direction on said road in a large four wheel carriage or waggon, drawn by two horses, of which the defendant was the driver, the plaintiff turned to the right hand, leaving ample room for the defendant to pass, without injury to his own or the plaintiff's carriage, and leaving him more than half of the travelled path, and affording him fair and equal advantage to pass, but the defendant then and there drove his said carriage or waggon so carelessly and negligently, that he run the same forcibly against the carriage of the plaintiff, whereby the same was over-set and much injured and broken, and himself greatly exposed. And the plaintiff says that the aforesaid wrong doings of the defendant are contrary to the form of the aforesaid statute, and to his damage five dollars; and that by means thereof and by force of said statute, the defendant hath forfeited and become liable to pay to the plaintiff the sum of fifteen dollars, being treble the said damages sustained by the plaintiff, and that an action hath accrued to the plaintiff to demand and recover the same; which the defendant hath neglected and refused to pay, although often requested and demanded, and for the recovery of which &c.

CHAPTER XII.

OF QUI-TAM ACTIONS ON STATUTES.

This is a mixed action, brought in the name of a common informer, or the person injured, where by a breach of some statute, a penalty or forfeiture is incurred, a part of which is given to the public, and a part to the party injured, or a common informer; or where a fine or other punishment is incurred for a breach of a statute, and damages

given to the party injured. In the former case, where there is a forfeiture or penalty incurred, part to the public, either a town, county, or the state, and a part to the person injured, or some common informer, a *qui-tam* action may be brought in the name of the state and the common informer, to recover the whole penalty. This is a mere civil suit, and the same notice must be given as in other cases, and it is entirely under the control of the person who commences it. Where a part of the penalty is given to a town or county, the action should be brought in the name of the state and the common informer. In cases of a forfeiture, part to the public and part to the person who prosecutes for the offence, a public prosecution may be brought for the whole penalty previous to the commencement of a suit by a common informer.

Information qui-tam on statute, is different from an action qui-tam; this is a criminal proceeding brought forward and prosecuted by a common informer, or the person injured, in his own name and that of the state. An information qui-tam can only be brought where the statute expressly provides that remedy, in case of a forfeiture, part to the public & part to the party injured or a common informer; or where an offence is prohibited by statute and a fine or other punishment inflicted, and also damages to the party injured, and the statute makes no provision as to the remedy. This is a practice which has grown up in this state, but ought not to be extended. An information *qui tam* is essentially a criminal proceeding, and the form is much the same as a public prosecution; it is however under the control of the plaintiff and can be withdrawn by him (*a*).

Qui-tam for Pound Breach.

To answer unto A. B. of who sues in his own name and behalf, as well as in the name and behalf of the state of Connecticut, in an action brought on a certain statute entitled "An act to provide pounds and to regulate the impounding of creatures," whereupon the plaintiff declares and says, that on the day of he found the cattle of the defendant, consisting of (describe them) doing damage on his land, situated in said town of and which said land is en-

(*a*) Swf. Dig. 586-7.

closed by a sufficient fence, and then and there took the same and proceeded with the said beasts and caused them to be confined and lawfully impounded in a pound kept by C. D. in said town of and which said pound is nearest the place where said beasts were taken; and thereupon the plaintiff gave notice to the defendant of his having so taken and impounded his beasts, damage feasant. And the plaintiff says that afterwards, viz. on the said day of in the night season at said the defendant broke the said pound, and conveyed from and out of the same, his said beasts, whereby the plaintiff hath wholly lost his poundage and damage. And the plaintiff says, that by means of the premises and force of the statute aforesaid, the defendant hath forfeited, and that an action hath accrued to the plaintiff to recover of the defendant the sum of seven dollars, the one half to and for the use of the treasury of said town of and the other half for his own use, and also the damages sustained by the plaintiff by said pound-breach, which the plaintiff says is seven dollars; which sums the defendant hath never paid, although often requested and demanded, and to recover said several sums, for the uses herein specified, and his costs, this action is brought, hereof fail not, &c.

Qui-tam for gaming against the winner.

To answer unto A. B. of who sues as well in the name and behalf of the state of Connecticut as in his own name and behalf, in an action brought on a certain statute entitled "An act to prevent gaming," whereupon the plaintiff declares and says, that on or about the day of at the defendant and one J. S. played divers games of cards together, for the space of more than one hour, and that in and by said games the defendant won of the said J. S. the sum of ten dollars, and that the said J. S. lost in playing said games at cards the said sum of ten dollars, which was won by the defendant and then and there paid and satisfied to him by the said J. S. contrary to the form of the statute aforesaid. And the plaintiff says, that the said J. S. has not brought his action on this statute against the defendant to recover said money so won from him by the defendant, although three months from the time the same was so won, has long since elapsed. And the plain-

tiff says, that by means of the premises and by force of said statute, the defendant hath forfeited and become liable to pay, and that an action hath accrued to the plaintiff to recover of him the sum of thirty dollars, being treble the value of ten dollars, so won by the defendant, of said J. S. at said games, one half thereof to and for his own use, and the other half for the use of the said county of H , which said sum the defendant hath never paid, nor any part thereof, although often requested and demanded; and to recover which, for the uses aforesaid, with costs, this suit is brought, &c.

Information qui-tam for Breach of Peace.

To J. P. of Esq. justice of the peace for the county of comes A. B. of said and complains as well in the name and behalf of the State of Connecticut, as in his own, that on the day of at in said county, C. D. of said with force and arms, did assault, beat and wound the complainant, then and there in the peace of this state being, and about his lawful business, whereby he was greatly injured in his person, suffered much bodily pain, and for a long time was unable to attend to his business; and which said wrong doings of the said C. D. are against the peace and contrary to the form of the fifty-ninth section of the statute, entitled "An act concerning crimes and punishments," and of evil example. And the complainant prays process against the said C. D. that he may be arrested and examined touching this complaint, and be dealt with therein, agreeably to said statute. Dated &c.

A. B.

[*Warrant*, the same as in criminal cases, as the delinquent is to be arrested forthwith.]

Record of Judgment.

At a court holden at this day of C. D. was brought before me by virtue of a warrant issued on the complaint of A. B. for that on the day &c. [recite the allegations in the complaint] and the said C. D. being required to answer to said complaint says that he is not guilty, and puts himself on the court for trial; and having fully heard the parties, I do find that he is guilty in manner and form as alleged in said complaint; whereupon it is consid-

ered that the said C. D pay a fine of seven dollars to the treasury of the said town of [and that he be imprisoned ten days in the common gaol of said county,] and it is further considered that he pay to the said A. B. the sum of five dollars damages, and the costs of this prosecution, and stand committed until judgment be complied with.

[If the offence is of a very aggravated nature, and requires greater punishment than a fine of seven dollars and one month's imprisonment, the justice may bind the offender over to the next county court.]

Qui-tam for trespasses committed in the night season.

To J. P. of Esq. justice of the peace for the county of comes A. B. of said and complains as well in the name and behalf of the state of Connecticut as in his own name, that one C. D. of on the day of at said in the night season of said day, viz. about the hour of o'clock, in a secret and clandestine manner, with force and arms, did wantonly, wilfully and maliciously, shear and cut off the mane and tail of a certain bay horse, the property of the plaintiff, whereby the same was greatly injured and rendered unfit for use for a long time; and which said wrong doings of the plaintiff are contrary to the statute entitled "An act to detect and punish trespasses committed in the night season;" and the said complainant prays process against the said C. D. whereby he may be arrested and brought before your worship, that he may be examined touching said offence in the manner provided in said statute, and be dealt with in the premises as to said statute, and to justice appertaineth.

A. B.

[*Warrant*, same as in criminal cases, except that the offender must be brought before the same justice to whom the complaint is presented, and who issues the warrant. If the complainant produces proof so as to render it probable the accused did the acts complained of, he must be adjudged guilty unless he shall offer to be examined on oath. If he offers to be sworn the justice must admit him to his oath, and if from his testimony he can satisfy the court that he did not commit the injury complained of, or was not aiding therein, he must be acquitted and recover his costs. If he is found guilty, judgment is to be rendered against

him for the damages and the costs, but he is not to be fined as was the case before the revision of the statutes.]

Record of Judgment.

At a court holden &c. was brought before me, C. D. by virtue of a warrant issued on the complaint of A. B. for that &c. [recite the charges] and being required to answer thereto, the said C. D. says he is not guilty and puts himself on the court for trial; and having heard the testimony introduced by the plaintiff, and the said C. D. refusing to be examined on oath, touching said trespass, I do find that the said C. D. is guilty in manner alleged in said complaint, whereupon it is considered that he pay to the said A. B. the sum of twenty dollars damages for said injury, and the costs of the prosecution, taxed at , and stand committed until judgment be performed.

Qui-tam for theft.

To J. P. Esq. of justice of the peace for the county of comes A. B. of and complains as well in the name and behalf of the State of Connecticut as in his own, that on the day of A. D. at , one C. D. of with force and arms, feloniously did take, steal and carry away one ox-chain, of the value of three dollars, of the property of the said A. B. then and there being, against the peace, contrary to the form of the statute in such case provided, and of evil example: and said complainant prays process against the said C. D. that he may be arrested and examined touching this complaint, and be dealt with therein as to law and justice appertaineth.

A. B.

[*Warrant* same as in criminal cases. The judgment will be the same as in a public prosecution for theft, except that damages are also to be given to the complainant; the justice must expressly find the value of the property, and give judgment that the offender pay treble the amount to the complainant, in addition to a fine, and whipping, when the latter is required by the statute.]

CHAPTER XIII.

PLEAS.

Pleas in abatement.

1. To the jurisdiction of the court.

A. B. vs. C. D. action of assumpsit on note: the defendant comes into court and pleads and prays the opinion of the court, whether it will take cognizance of the plaintiff's said action; for that he says the note in and by which it is alleged the defendant assumed and promised, including the interest which has accrued thereon, is of greater amount than thirty-five dollars, and the promise set up and alleged in the plaintiff's said declaration, is to pay a greater sum than thirty five dollars, which he is ready to verify, and hereof prays judgment, &c.

C. D.

2. Abatement for defect in writ.

The defendant defends, pleads and says, that the plaintiff's said writ and process ought to abate, and the defendant be no longer held to answer thereto, for that, the defendant says the plaintiff's said writ was filled up on the day of by M. S. then and ever since a lawful constable of the town of and that said writ was in no otherwise drawn and filled up, than by said constable, who served the same, which he is ready to verify; and he prays judgment of the plaintiff's said writ and process, that the same may abate and be dismissed.

C. D.

General issue to an action of Assumpsit, with notice that special matter will be given in evidence.

The defendant defends, pleads and says, that he did not assume and promise, in manner and form the plaintiff hath alleged, and hereof for trial puts himself on the court.

A. B.

The plaintiff will take notice that on trial of the above action, under said plea, the defendant intends to give in evidence the payment of said note, wherein the plaintiff declares the defendant assumed and promised &c.: (or that he intends to give in evidence the following special matter,) viz. That on or about the day of the plaintiff caused the defendant to be falsely arrested and taken into cus-

tody, on a pretended writ of attachment, and demanded in said writ the sum of five hundred dollars, under the false pretence that the defendant had slandered the character of the plaintiff; and that the said pretended writ of attachment was not signed by any proper authority, and that his pretended arrest was illegal, and his detention thereon false imprisonment; and he was so falsely arrested, detained and threatened with imprisonment to oppress him, and extort money from him, and that whilst so falsely arrested and detained, and to obtain his releasement and liberty, he executed said note, on which &c., which the defendant saith was obtained by duress of imprisonment.

A. B.

A general notice is not sufficient, but it must set out the particular matter which the defendant proposes to give in evidence. In such state of pleadings, if the court is of opinion that the defendant did assume and promise, but finds the special matter contained in the notice to be true, as claimed by the defendant, the judgment however must be that the defendant *did not assume and promise*, as that is the only issue formed.

Of Several pleas in pursuance of the statute.

The defendant pleads, defends and says, that he did not assume and promise, in manner and form as the plaintiff has alleged, and hereof for trial puts himself on the court. And for further plea in this behalf, leave of court having been obtained, he pleads and says, that of having and maintaining his said action, the plaintiff ought to be barred, because he says that the note on which &c. is corrupt and usurious, for that he says, that on or about the day of it was corruptly and usuriously agreed by and between the plaintiff and defendant, that the plaintiff should loan to the defendant the sum of dollars for the period of ninety-five days, and that the defendant should give him for the use and forbearance of said sum for said time, more than at the rate of six dollars, for the use and forbearance of one hundred dollars for one year, to wit, the sum of five dollars, which said sum of five dollars was and is included in said note; and that these was and is included in said note the sum of dollars and cents over and above the rate of six dollars, for the forbearance of one hundred dollars for one year, usuriously and corruptly, and

that said note was executed in pursuance of said usurious and corrupt agreement, and to carry the same into effect; and that the same is usurious and corrupt, which he is ready to verify; prays judgment &c.

And for further plea in this behalf he pleads and says, that on the day of A. D. and since the said promise alleged in the plaintiff's said declaration is declared to have been made, the plaintiff in and by a certain receipt or release of that date, for the consideration of dollars discharged and released the defendant from all demands whatsoever, as by said release or writing ready in court to be produced, may appear; and which he is ready to verify; judgment &c.

C. D.

Replication.

And now the plaintiff replies to the defendant's said several pleas, by him pleaded, and says, that as to the defendant's said first plea he joins issue thereon; and as to the defendant's second plea, the plaintiff says that, on the day of the defendant borrowed of the plaintiff the sum of dollars, for the period of ninety-five days, when it was agreed by said parties, that the defendant was to pay the plaintiff for the use and forbearance of said money, after the rate of six dollars for the forbearance of one hundred dollars, for one year, and no more; and that in pursuance of said agreement the defendant executed a note for said sum of , payable in ninety-five days from the said day of , and which is the same note on which &c. without that, that the said note on which &c. was given in pursuance of a corrupt and usurious contract, and upon a corrupt and usurious consideration, and that there is included in the same, corruptly and usuriously, the sum of dollars and cents, for the use and forbearance thereof, more than at the rate of six dollars for the forbearance of one hundred dollars for one year, and this he is ready to verify: prays judgment. And as to the third plea, by the defendant pleaded, the plaintiff says he ought not to be barred any thing alleged therein notwithstanding, because he says that previously to the date and execution of said discharge, pleaded by the defendant, viz. on or about the day of , the note on which &c. had been assigned and transferred by the plaintiff, to one

E. F. for a valuable consideration, and notice of such assignment given to the defendant previous to the execution of said discharge, viz. on or about the day of at , and the plaintiff says that the defendant obtained said discharge, with a full knowledge of the fact, that said note had been assigned as aforesaid, for a valuable consideration, and with intent to defeat the collection of said note and defraud the said E. F. of the same, which he is ready to verify : judgment &c.

A. B.

Rejoinder.

And now the defendant rejoins to the replication of the plaintiff and says, that as to the second plea, by him pleaded, the note on which &c. is usurious and corrupt, that it was corruptly agreed between the plaintiff and the defendant on the day of that the defendant should pay the plaintiff for the use and forbearance of the sum of dollars ninety-five days, the sum of five dollars, and that the note on which &c. was executed in pursuance of said corrupt agreement and upon said usurious consideration, and that there is contained in said note usuriously and corruptly the sum of dollars and cents, and hereof puts himself on the court. And as to the replication of the plaintiff so far as relates to the third plea by the defendant pleaded, he says that the plaintiff ought to be barred, without that, that previous to the execution of said discharge, on or about the day of the note on which &c. was assigned, *bona fide*, and for a valuable consideration by the plaintiff to the said E. F. and without that, that at the time, or previous to the executions of said discharge the plaintiff had notified the defendant of said assignment which he is ready to verify : judgment &c.

C. D.

Sur-rejoinder.

And the plaintiff sur-rejoins to the rejoinder of the defendant and joins in the issue tendered as to the second plea of the defendant ; and as to the defendant's rejoinder relating to the third plea, the plaintiff says, that previous to the date and execution of said discharge, the note on which &c. had been assigned by the plaintiff to the said E. F. bona fide, and for a valuable consideration, and also that previous to the execution of said discharge, the said E. F. notified the defendant of the assignment of said note,

and that the same was his property, and hereof for trial puts himself on the court. A. B.

And the defendant does likewise. C. D.

Record of Judgment.

At a court &c. A. B. against C. D. action of assumpsit on note, demanding thirty-five dollars damages; the parties appeared and the defendant pleads, first, that he did not assume and promise, as alleged; and with leave of court further pleads, that the note on which &c. was a corrupt and usurious note give in pursuance of a usurious agreement, and that there is usuriously included therein, the sum of dollars and cents, more than at the rate of six dollars for the forbearance of one hundred dollars, for one year, and further pleads a general release and discharge of all demands executed subsequently to said note; the plaintiff replies to the plea of the defendant and joins in the issue tendered in the first plea; and as to the second traverses the facts alleged therein; and as to the third plea, he says, that previous to the execution of said discharge, the note on which &c. had been assigned to E. F. and notice thereof given to the defendant prior to the execution of said discharge; and the defendant rejoins to the replication of the plaintiff and affirms over his second plea and puts himself on the court; and as to the replication of the plaintiff so far as relates to the third plea, the defendant traverses the facts alleged therein of the assignment of said note and notice thereof, and prays judgment; the plaintiff sur-rejoins to the rejoinder of the defendant, and joins in the issue tendered as to the second plea; and as to the third plea, he affirms over the facts alleged in his said replication as to the assignment of said note and notice, and puts himself on the court; and the defendant does likewise, as by the pleadings on file may more fully appear; and having heard the parties I find the first issue for the plaintiff, that the defendant did assume and promise, and I also find the second and third issues for the plaintiff, whereupon it is considered &c. or I find the first and second issues for the plaintiff, but find the third issue for the defendant, that at or previous to the execution of said discharge, he had not been notified of the assignment of said note, and thereupon it is considered that the defendant recover his costs &c.

General issue and notice of set-off to action on note.

The defendant defends, pleads and says, that he did not assume and promise in manner and form the plaintiff hath alleged. C. D.

The plaintiff will please to take notice, that on the trial of this action it is proposed under the above plea to give in evidence a set off; for that the defendant says, that at the date and issuing of the plaintiff's said writ, the plaintiff was and now is indebted to the defendant on book, in a greater sum than the amount due on the note on which &c. viz. the sum of sixty dollars, and that the plaintiff's said debt secured by said note and the defendant's claim on book are mutual debts, that the plaintiff is wholly insolvent, and that he has always been willing and ready, and is now ready and offers to set-off his said debt or claim on book, against the said note of the plaintiff; and the defendant says that the sum due him on book exceeds the sum due from him to the plaintiff on said note the sum of thirty dollars, which he claims to recover and his costs.

C. D.

General issue in an action of Trespass against several.

The defendants in court severally defend, plead and say, that they are not guilty in manner and form as the plaintiff hath alleged, and hereof severally put themselves for trial on the court. A. B.

C. D.

Judgment.

At a court holden &c. J. S. against A. B. and C. D. in an action of trespass for taking and carrying away the plaintiff's goods; the defendants severally plead not guilty, and put themselves on the court for trial, and the plaintiff does likewise, as may more fully appear by the pleadings on file; and having fully heard the said parties, I do find that the said A. B. is not guilty of the wrong alleged against him in the plaintiff's declaration, and do further find that said C. D. is guilty in manner and form, as is alleged in the plaintiff's declaration, and also find that the plaintiff is damaged by the said trespass and wrong of the said C. D. the sum of dollars; whereupon it is considered that the plaintiff recover of the said C. D. the sum of dollars damages, and his costs of suit, taxed at , and that exe-

cution issue therefor; and it is further considered, that the said A. B. recover of the plaintiff his costs, taxed at and that execution issue therefor accordingly.

Demurrer.

And the plaintiff says, that the defendant's said plea, and the matters therein contained, are insufficient in the law, judgment &c. A. B.

And the defendant says his said plea, and the matters therein contained, are sufficient in the law, judgment, &c.

C. D.

Special Demurrer.

And the plaintiff says that the said plea of the defendant, and the matters therein contained, are insufficient in the law, and for causes of demurrer the plaintiff says, that said plea is informal, and double, and that it amounts to the general issue and nothing more: and prays judgment &c.

A. B.

Judgment by confession.

A justice may take a confession of judgment to the amount of seventy dollars

On Book.

H county ss. H day of A. D.

You A. B. of confess and acknowledge yourself to owe and be indebted unto C. D. in the sum of dollars on book, to balance book accounts, and hereby acknowledge a judgment against yourself in favour of the said C. D. for that sum, and for twenty-five cents costs, before me; whereupon it is considered that the said C. D. recover of the said A. B. the sum of dollars damages, and the sum of twenty-five cents costs, and that execution issue therefor accordingly.

J. P. Justice of the Peace.

On Note.

You A. B. of , confess and acknowledge that you are justly indebted on the within note, [where the judgment is made on the back thereof] in the sum of seventy dollars, [or, if the record is not made on the note, say in a certain note, dated &c. describe the note,] and hereby acknowledge a judgment against yourself in favour of said C. D. for that sum, and for twenty-five cents costs, before me: whereupon it is considered that the said C. D. re-

cover of the said A. B. the sum of seventy dollars damages and the sum of twenty-five cents costs, and that execution issue therefor &c.

Execution, same as in other cases, except that it should be stated that A. B. of recovered judgment against C. D. of *upon his acknowledgment and confession*, before J. P. Esq. &c. ; so that it may appear upon what authority a justice of the peace rendered a judgment and issues an execution for a greater sum in damages than thirty-five dollars.

CHAPTER XIV.

Of the judicial powers and duties of Justices of the Peace of a criminal nature.

The power of Justices of the Peace in criminal matters consists of authority to cause arrests in all cases, to try and sentence for certain crimes of which they have jurisdiction, and to examing and recognize to the higher courts for offences where they have not jurisdiction, and also in certain cases to order offenders to give bonds to keep the peace, and for their good behaviour. In examining the executive duties of Justices we noticed their power of granting warrants, and need only add here, that a Justice of the Peace is authorized to grant a warrant to arrest and bring before himself or any other justice of the county, all persons charged with the commission of a crime, of however high a nature, that he may be examined and dealt with according to law. All officers of the government, whether of the state or the nation, in the militia, army or navy, must submit to the authority of a Justice's warrant, legally issued upon the complaint of an informing officer, stating the cause of the arrest. A justice may direct his warrant to an indifferent person to be served in any part of this state, or to a proper officer, to be served within his precincts (*a*).

In criminal cases there is no limitation of the authority of a Justice, as to persons ; it is of no consequence who the offender is, or where he belongs ; the only limitation is from the location of the crime. It is a great principle of the common law, which has been adopted in this State,

(*a*) St. sess. 1822.

and every where else, where the common law of England has been introduced, that crimes must be punished where they are committed. This principle is founded primarily upon the consideration that the offender must be punished by the laws of that community which have been violated, and part from considerations of humanity, as it is thought but reasonable that persons accused of crimes, should be tried where they were committed, and where they may be supposed to be best known. In this State all crimes must be punished in the county where they were committed, except theft, which may be punished either where the crime was committed or in any county where the criminal may carry the stolen property, and the crime of bigamy, which may be tried where the parties are apprehended. If a person is maliciously stricken or poisoned in one county and dies in another within a year, he must be tried in the county where the stroke or poison was given. A Justice can only grant a warrant to arrest within his county, for crimes committed therein, but his warrant is sufficient authority to arrest in such cases in any part of the state, if the criminal flees out of the county (*b*). A justice has no more authority to grant a warrant to arrest a person for a crime committed out of his county, triable by the county or superior court, and to bind such offender over for trial, than he has for crimes of which he has jurisdiction.

A Justice has jurisdiction of all offences committed within his county, punishable by fine or forfeiture, not exceeding seven dollars. This is the general extent of his criminal jurisdiction, but by particular statutes it is extended; in case of theft he has jurisdiction, where the property stolen is of the value of thirty dollars, and may inflict a fine of seven dollars, order the offender to be whipped, and sentence him to pay treble the value of the property stolen, to the party injured, where he brings forward a suit in his own name, and that of the state; in a prosecution for breach of the peace, the offender may be fined seven dollars and sentenced to be imprisoned in the county gaol not exceeding one month. In all cases of qui-tam informations where there is a fine to the public, damages are also to be given to the party injured. The jurisdiction of a Justice is not final and conclusive in criminal matters, except for the crimes of drunkenness, profane swearing and cursing, and

(*b*) St. 171.

breach of sabbath ; in all other cases an appeal lies to the county court, and the right of appeal is the same whether the process is a complaint of an informing officer, or quitam information. A writ of error may also be brought upon the judgment of a justice in all criminal cases, to the superior court, for any error apparent upon the record, the same as in civil cases. In all cases where a justice has not cognizance of the offence, and can not proceed to pass sentence upon the offender, he must bind him over as it is called, to the court having jurisdiction of the offence. This is an important branch of the authority of Justices of the Peace and should be exercised with much discretion. They are not to decide upon the *guilt* of the accused, this belongs to the court and jury having final jurisdiction of the offence. The statute provides that in such cases, the Justice shall inquire into the facts charged, and if he shall be of opinion that probable ground exists to support the complaint he may order the accused to enter into a recognizance with surety for his appearance before the court having jurisdiction of the crime. If he acquits a person against whom there exists probable grounds of his guilt, he takes the case away from the court having jurisdiction, and from a jury, which is the proper tribunal in all matters of fact, particularly those of a criminal nature, and decides upon the *guilt* of the accused himself, although he has no jurisdiction of the offence ; and on the other hand, if he binds over persons where the evidence is slight, and where no probable cause exists, he often does a serious injury to the accused and subjects the public to unnecessary expense. The duty of a magistrate in such cases has been considered as analogous to that of a grand-jury ; he is not to try the accused, but to inquire into the matter, and decide whether there is probable grounds of his guilt, so that he ought to be held for trial.

It is provided by statute that any Justice of the Peace, from his personal knowledge may *ex officio* require sureties of the peace and good behaviour of any person, who threatens to beat or kill another, or contends with hot and angry words, or by threats, turblence and violence, or any other unlawful act, terrifies and disturbs the good people of the state (*a*). This authority to order bonds to keep

(*a*) St. 147.

the peace by a justice *ex-officio* does not seem consistent with another statute (*b*), which provides that no judgment shall be rendered for any offence except for drunkenness, profane swearing, and breach of sabbath, without a previous complaint and warrant, not even on personal view or confession. It would be safest in such cases for the magistrate to cause a complaint to be made and signed. When any individual shall complain on oath to a Justice of the Peace against any person that he has just cause to fear that he will imprison, beat or kill him, or procure others to do so, and that he is under fear of death or bodily harm, such justice may require sureties of the peace and good behaviour of the person complained of, and on his failure to procure the same, may commit him to gaol, there to remain till the next county court, or until he is otherwise legally discharged (*c*). The provisions of this statute are only in confirmation of the common law. Surety of the peace may be demanded by all persons having legal discretion; by a wife against her husband, who may threaten to beat or kill her; and even by a husband against his wife, for like causes (*d*). Surety of the peace may be granted against all persons of legal discretion, against minors and *femes covert*, or married women; but in such cases they can not become bound themselves, but must be ordered to become bound by surety, and in case of failure to procure the same, must be committed. It can not be ordered against an idiot or a person *non compos mentis*. All persons who actually break the peace by assaulting or beating another, or by threatening to kill or beat another, or who go armed offensively, or appear with an unusual number of attendants, to the terror of the people, may be required to give sureties of the peace, on complaint of a proper informing officer. Challenging to fight or quarrel, is a cause for binding to keep the peace, and to good behaviour; and threatening to burn or destroy the property of another, as well as threatening to injure their persons; persons guilty of an affray, may also be bound to keep the peace.

If any person shall break the peace by assaulting or beating another, or by tumultuous and offensive carriage, threat-

(*b*) St. 172. (*c*) St. 148. (*d*) Hawk. P. C. 253.

ening, traducing, quarrelling, or challenging any person, in the presence of a constable, he may arrest him, and bring him before a Justice of the Peace, but the Justice can not order him to procure sureties of the peace, without a complaint and warrant, charging him with the offence. Surety for good behaviour may be required of common drunkards, idlers, common cheats, common thieves and gamblers, prostitutes, and common whore-mongers, such as raise the hue and cry, without cause, or lie in wait to rob (*e*).

Justices of the Peace have authority on complaint or information of the District Attorney for the district of Connecticut, to inquire into offences against the laws of the United States, committed within the district or upon the high seas, by any person coming into the district, and to bind them to the circuit court for trial.

CHAPTER XV.

OF PROCESS AND TRIAL.

In criminal cases the process consists of a complaint or information and warrant. Grand-jurors are the proper informing officers, but constables and tything-men, may act as such, in case of offences against the laws relating to the sabbath and disturbing public worship. Grand-jurors are town officers, and can only make complaint of offences committed within their respective towns; if a person commits a crime in one town and goes into another in the same county, he can not be informed against by a grand-juror of the latter town. The complaint too of a grand-juror can only be presented to a Justice of the town where the grand-juror belongs. Constables, if they act as informing officers, are also confined to their town. If any grand-juror refuses to make complaint of any crime committed within the town, that comes to his knowledge, he forfeits two dollars. The several grand-jurors of each town of which there can not be less than two, nor more than six,

(*e*) Burns' Just. 243. 4.—Statutes 250.

may meet when they think proper to advise concerning breaches of the peace, and inquire after offences, and make complaint of the same. They are authorized to summon persons to appear before them as witnesses; and if they refuse, to procure a *capias* and compel them.

The attorneys for the State may also act as informing officers before justices, and can make complaint of all crimes committed in any town in the county, and to any justice of the peace of the county.

A complaint may also be made by a private person for sureties of the peace and good behaviour, where he has just cause to fear that another will imprison, beat or kill him, or procure others to do it, or where he is under fear of death or bodily harm; but in such cases he must make oath to the truth of the complaint, which must be certified thereon by the justice.

The complaint contains a statement of the crime, charged in proper, legal language, the time and place of its commission, and concludes with praying that the offender may be arrested and examined, and must be signed by the grand-juror. A warrant is issued by the justice annexed to the complaint, directed to a proper officer, commanding the arrest of the person accused, and that he be brought before himself, or some other justice of the peace of the county, that he may be examined touching the crime charged in the complaint, and be dealt with according to law. For the crimes of drunkenness, profane swearing and cursing, and breach of sabbath, of which a justice of the peace or constable has personal view, the offenders may be arrested and fined without any complaint or process, but for no other offence can a justice pass sentence, or render a judgment without a complaint and warrant. There are qui-tam complaints or informations or which we have already spoken.

2. *Of Trial in Criminal Cases.*

Trials in criminal cases are essentially the same as in civil. The prisoner must be arraigned, or the complaint publicly read to him, and he then required to plead or answer to the same; and in all cases he must either plead guilty or not guilty. If he pleads guilty the justice proceeds to pass sentence, or orders bonds for his appearance before

the court having jurisdiction, as the case may require ; if he pleads not guilty the court proceeds to inquire into the charges alleged in the complaint. If the prisoner is a minor the justice must appoint a guardian to defend him, in the prosecution, and advise him how to plead. This must be done before he pleads, and an entry of the appointment made on the file. In criminal cases, the rules of evidence are the same as in civil, except that depositions are not admissible ; nor can they be admitted in qui-tam informations, where corporeal or other punishment is inflicted (*e*) ; and that in capital offences the testimony of at least two witnesses is required, or that which is equivalent thereto. When a case is adjourned, a practice has prevailed of returning the process to the officer, by virtue of which, to hold the prisoner ; but this is incorrect, for after the prisoner has been brought before the court and the officer made his indorsement, the warrant has been executed and can give no authority to detain the prisoner. The regular mode is to order him to enter into recognizance ; and if he refuses or is unable to procure surety, he must be committed, or the justice may give a written or verbal order to an officer to take him into his custody, and have him forthcoming ; but he should retain the process in his hands as the grounds of his own authority ; but in cases not bailable, no recognizance can be taken.

Judgment.

Where the court have jurisdiction they must, as in civil cases, find the issue either that the prisoner is, or is not guilty, and in the latter case proceed to render judgment, according to law. A warrant must then be issued to carry the judgment into execution, containing a command to a proper officer, to inflict the punishment, levy the fine and costs, or to commit to prison, the offender. In cases of inquiry where the justice has not jurisdiction, if he finds that the prisoner is guilty, or rather that there is probable grounds to support the complaint, he must order him to become bound in a recognizance, with sufficient surety, that he appear before the court having cognizance of the crime, at its next term. Where the superior court has

(*e*) Swift's Ev. 144.

cognizance of the offence, and the prisoner is bound to appear before that court, the recognizance should be taken to the treasurer of the State; when he is bound to the county court, it must be taken to the treasurer of the county. There can be no fixed rules as to the amount of bonds; this must depend upon circumstances; the nature of the crime, the situation and pecuniary circumstances of the prisoner, the certainty or doubtfulness of his guilt; but the sum ought to be reasonable having reference to the circumstances of the case, as the constitution provides that excessive bail shall not be required. The object of bail is to favour personal liberty, and whilst on the one hand proper regard is to be paid to this object, on the other it must not be forgotten, that the security of the public is the primary object of all punishment, and if such bonds were not required as would be likely to hold the prisoner to trial, the object of the law would be defeated, rogues after they were within the reach of justice be suffered to escape, and society exposed to their depredations.

Of Commitment.

If the prisoner refuses or is unable to procure bonds, or in cases not bailable, he must be committed to gaol to await his trial. This is done by authority of a mittimus or warrant of commitment, which contains a recital of the cause of commitment, and a command to the officer to convey and deliver the prisoner into the custody of the keeper of the gaol of the county, and also a command to such keeper to receive him into such gaol, to be kept therein, until discharged by due course of law.

Of Fines and Costs.

All fines, penalties, and forfeitures, not otherwise disposed of by law, imposed on any person by a justice of the peace, belong to the treasury of the town wherein the offence was committed. When a part of a fine or penalty is given to a common informer, or to the person injured, and part to some public treasury, unless a qui-tam suit has been commenced, a prosecution may be brought by an informing officer, in which case the whole fine or penalty will belong to such public treasury. The treasurers of towns have power to receive all moneys belonging to towns for fines, forfeitures and penalties.

In criminal prosecutions, costs are not taxed against the public, when the prisoner is acquitted, in his favour; but the costs on the part of the prosecution are taxed against the public. Where the prisoner is convicted, costs are always taxed against him, and are to be paid before he is discharged; but if the same can not be obtained of him or out of his estate they are to be paid out of the treasury of the town wherein the prosecution is had; and if the same shall afterwards be recovered of the person convicted, they shall be paid into the treasury of the same town. The justice can immediately draw an order for the amount of the bill of costs, and it is his duty to pay it out to those who are entitled to receive it.

In all cases where a justice of the peace has jurisdiction and renders final judgment, the prisoner can not be discharged until the judgment has been complied with, including payment of the costs, and this is a part of the sentence.

CHAPTER XV.

FORMS IN CRIMINAL CASES.

We shall not in general define the different crimes, as our limits would not admit; neither would it be of any particular use in a work of this kind, as questions of law, as to whether a crime charged has been committed can seldom arise, and when they do, if attended with doubt or difficulty, and in cases of inquiry, it is most proper the justice should send the cause to the court having jurisdiction. We will however make a few observations as to crimes in general.

There is one important distinction between crimes and civil injuiries; the former require the concurrence of the will, and the *intent* with which the act is done, is the characteristic feature of a crime; there must be a criminal intention as well as an unlawful act. No person therefore, who does not possess a sound mind, or legal discretion can be guilty of a crime, nor can a crime be committed where the act is done by mistake, accident or compulsion. Idiots,

lunatics, and persons *non compos mentis*, being without understanding cannot commit crimes. A lunatic, however, during his lucid intervals, may commit and be punished for crimes. As to infants, the law is, that under the age of seven years, they are incapable of committing crimes: at fourteen, which is the period of legal discretion, they are as much responsible for their criminal acts as any other persons; but between these two ages is a doubtful period, yet the law presumes that they are incapable, and in order to make them responsible and punishable for criminal acts, it must be proved that they have understanding and capacity to distinguish between good and evil. A boy of ten years and another of nine, have been executed for killing their companions, it being considered that they showed a consciousness of guilt, one by hiding the body of him he had killed, and the other, by secreting himself. When a person is compelled by threats which give just and well-grounded apprehension of death or bodily harm, he is in some instances deemed innocent of a crime. A wife is considered as so much under the subjection and correction of her husband, that her acts of a criminal nature, done in the company of her husband, are supposed to have been committed by his command and authority, and she is excused from guilt. But in case of crimes against the law of nature, which are morally wrong, she is responsible for her criminal conduct. Intoxication, although it deprive a man of his reason, being a voluntary and a criminal act, forms no legal excuse for the commission of a crime, and a man must be punished when he is sober, for his deeds when in a state of inebriety.

We shall begin with crimes of the highest nature and follow the order of the statute.

1. *Of crimes against the lives and persons of individuals.*

Form of complaint for murder.

To A. B. of Esq justice of the peace for the county of H comes C. D. of in said county, grand-juror of said town of and complains that a transient person, calling himself J. S. on the day of at in the night season, with force and arms, wilfully, and of malice aforethought, did feloniously kill and murder E. F.

of by discharging at him a pistol, the ball of which passed through his body, near the heart, of which wound he immediately expired, against the peace, contrary to the form of the statute, and of evil example. And the said C. D. prays process against the said J. S. that he may be arrested and examined. Dated &c.

C. D. grand-juror.

[In case of man-slaughter, the words of malice aforethought, may be omitted.]

Perjury with intent to take the life of a person.

To A. B. &c. comes C. D. of grand-juror of and complains, that on the day of at H in said county, before the honourable superiour court, then and there in session, then and there being on trial before said court O. P. of on an indictment charging the said O. P. of having wilfully and maliciously burned the dwelling-house of R. S. and thereby caused the death of the said R. S.; and during the trial of said O. P. for said crime of arson, one Y. Z. of having been duly sworn to testify in said case, by Z. H., clerk of said court, did wickedly, wilfully, corruptly, and falsely, and with malice aforethought, and with intention to take away the life of the said O. P. then on trial as aforesaid, and to cause him to be convicted of said crime of arson, testify and swear [here set out the words] which said wicked, corrupt, and false testimony of said Y. Z. was material to the determination of the issue then on trial, and intended to take away the life of the said O. P. and cause his conviction; and which said acts and doings of the said Y. Z. are against the peace, contrary to the form of the statute, and of evil example. Dated &c.

Arson, causing the death, or endangering the life of a person.

To A. B. &c. comes C. D. of grand-juror of the town of and complains, that E. F. of being an evil minded person, did on the day of with force and arms, wilfully, maliciously and feloniously set fire to and burn the store of G. H. of situated in said thereby causing the death of J. S. then in said store asleep, he being burnt and consumed in said building, against the peace, contrary to the statute, and of evil example.

Complaint for Rape.

To A. B. &c. comes C. D. &c. and complains that on the day of at E. F. of with force and arms, did make an assault on the body of E. M. of a single woman of the age of twenty years, then and there in the peace of this State being, and with like force and arms, and with actual violence, did then and there forcibly and feloniously, and against the will of the said E. M. have carnal copulation with the said E. M. and did her ravish, force and know, against her will, and without her consent, against the peace, and contrary to the form of the statute in such case provided, and of evil example.

The warrant in these cases will be in common form. The record of judgment will recite all the material allegations contained in the complaint, and then say: And the prisoner being required to answer to said complaint, pleads, and says that he is not guilty, and having heard the testimony, as well in behalf of the prisoner as of the State, I am of opinion that there are probable grounds to support said complaint, whereupon it is considered, that the said E. F. be committed to the keeper of the gaol in and for said county of H therein safely to be kept until he shall be delivered and discharged according to law.

Mittimus.

To the sheriff &c. Greeting:

Whereas E. F. of on the day of was brought before me by virtue of a warrant issued upon the complaint of C. D. grand-juror of the town of complaining of the said E. F. that on the day of at with force and arms [recite the allegations charging the crime]; to which said complaint the said E. F. plead not guilty, and having heard the evidence and inquired into facts alleged in said complaint, I was of opinion that there were probable grounds to support said complaint, whereupon it was considered that the said E. F. be committed, (the said crime not being bailable,) to the keeper of the gaol in and for the county of H therein to be kept until delivered by due course of law.

These are therefore to command you to take and convey the said E. F. to said gaol, and him deliver into the cus-

tody of the keeper thereof, and leave with him this warrant of commitment; and said keeper is hereby commanded to receive the said E. F. and him safely keep within said gaol until delivered and discharged by due course of law. Dated &c.

The preceding crimes are capital offences, and punished by death.

Complaint for having carnal knowledge of a female under the age of ten years.

——— and complains that A. B of on the day of at , with force and arms, did commit an assault on the body of C. D. a female child of the age of nine years and six months, and with like force did then and there feloniously copulate with said child, and her carnally know and abuse, against the peace, contrary to the form of the statute, and of evil example.

Complaint for an attempt to commit a rape.

——— complains that A. B. of on the day of at with force and arms, feloniously an assault made on the body of C. D. of , a female of the age of fifteen years, with the intention to ravish, carnally know, and commit a rape on the body of the said C. D. against the peace, and contrary to the form of the statute.

Complaint against a woman for concealing her pregnancy.

——— complains that E. F. of was on the day of at , intentionally and feloniously delivered in secret, and by herself, of an issue of her body, being a male child, which child is by law a bastard, and that for nine months previous to the delivery of said child, the said E. F. had intentionally and feloniously concealed her said pregnancy: all of which is against the peace and contrary to the form of the statute in such case provided.

Complaint for administering poison to a woman to procure an abortion.

——— complains that on the day of at A. B. of , with force and arms, did wilfully, maliciously and feloniously administer a certain poisonous medicine and noxious and destructive substance called to C. D. of a female and unmarried, the said C. D. then being

pregnant and quick with child, with intention thereby to cause the miscarriage of the said C. D. of the said child of which she was then pregnant, and by means whereof the said C. D. did miscarry of the child of which she was then pregnant, against the peace &c.

When poison is administered to any person to cause their death, say: did wilfully, maliciously and feloniously and with malice aforethought, administer and cause to be administered to C. D. of a certain deadly poison and noxious and destructive substance, called with an intention him the said C. D. thereby to kill, cause the death of, and murder, against the peace &c.

Complaint for an assault with intention to kill or rob.

——— complains that on the day of at , A. B. of , being an evil disposed person, with force and arms, and with actual violence, and with the intention him to kill and murder, (or with intention him to rob,) an assault made on the body of C. D. of then and there in the peace of this State being, against the peace, and contrary to the form of the statute in such case provided.

Complaint for the concealment of the death of a bastard child.

——— complains that on the day of at A. B. of , then and ever since a single woman, was secretly delivered of an issue of her body, the same being still-born and without life, and which issue, if born alive, would have been a bastard, and that the said C. D. hath intentionally and feloniously, by herself, and the procurement of others, concealed the death of said issue of her body, against the peace &c.

Complaint for kidnapping.

——— complains that on the day of A. B. of with force and arms, did deceitfully and feloniously kidnap, and forcibly and fraudulently carry off and decoy out of this state, C. D. of a free person of colour, and did then and there with like force and fraud, arrest and imprison the said C. D. and him convey and carry off out of this State, he the said A. B. then and there well-knowing the said C. D. to be free, against the peace.

——— complains that on the day of at A. B. of with force and arms, deceitfully, fraudulently

and feloniously, did forcibly arrest C. D. of , a free person of colour, and him with like force imprison and confine in a certain vessel, called the , lying in the harbour of , with the intention him the said C. D. to convey and carry out of this State, he the said A. B. then and there well knowing that the said C. D. was free, against the peace &c.

[The last eight offences are punishable by imprisonment during life, or such other term as the superior court, which has recognizance of the crimes may determine. They are consequently bailable. The record of judgment will be the same until the finding of the issue :] And having inquired into the facts and allegations contained in said complaint, I do find and am of opinion that there are probable grounds for supporting said complaint, whereupon it is considered that the said become bound with sufficient surety, in a recognizance of five hundred dollars, to the Treasurer of the State, that the said appear before the honourable superior court next to be holden at H , on the Tuesday of A. D. for said county of H , then and there to answer to said complaint, and abide the decision of said court thereon, and the said , and G. H. as his surety, became bound accordingly.

Recognizance.

H county, ss. H , the day of A. D.

You C. D. of as principal, and G. H. of as surety, acknowledge yourselves jointly and several bound to the Treasurer of the State of Connecticut in a recognizance in the sum of five hundred dollars, that the said C. D. shall appear before the next superior court to be holden at H on the Tuesday of A. D. in and for said county of H , then and there to answer to the foregoing complaint of E. F. grand-juror, charging the said C D. with the crime of and abide the decision of said court thereon. Taken and acknowledged in H , the day and year above written, before me.

J. P. justice of the peace.

[If the prisoner cannot procure bail, he must be committed, in which case the conclusion of the record will be as follows :]

And the said C. D. neglecting and refusing to become bound with surety as aforesaid, he was ordered to be com-

mitted into the custody of the keeper of the gaol for said county of H , and by virtue of a warrant of commitment by me issued, was committed accordingly.

Mittimus.

To the sheriff &c. Greeting:

Whereas C. D. of , on the day of , was brought before me by virtue of a warrant issued on the complaint of E. F. grand-juror of , for that on the day of at the said C. D. with force and arms, did &c. [here recite the allegations in the complaint charging the crime] and to said complaint the said C. D. plead not guilty, and having inquired into the facts, I did find that there were probable grounds to support said complaint, and thereupon it was considered that the said C. D. become bound with sufficient surety to the Treasurer of this State, in the sum of five hundred dollars, that the said C. D. appear before the superior court, to be holden at H on the Tuesday of A. D. for said county, then and there to answer to said complaint, and abide the decision of said court thereon; and the said C. D. having neglected and refused to become bound as aforesaid. Wherefore, by authority of the State of Connecticut you are hereby commanded to take and convey the said C. D. to the gaol of said county of H , and him to deliver into the custody of the keeper thereof, and to leave with him this warrant of commitment; and said keeper is also commanded to receive and safely to keep the said C. D. within said prison, until he may be delivered and discharged by due course of law.

OF CRIMES AGAINST PUBLIC PROPERTY.

Complaint for Burning a Magazine.

——— complains that on the day of A. D. at H , C. D. of , with force and arms, did wilfully, maliciously and feloniously burn and destroy a magazine of military stores then and there being, belonging to the State of Connecticut, against the peace and contrary to the form of the statute in such case provided, and of evil example.

Complaint for burning public buildings.

——— complains that on the day of at A. B. of with force and arms, did wilfully, maliciously and

feloniously set fire to, and burn a school house, situated in said , used for the purposes of education, and belonging to the school-district in the society of , in said town of , and said house was wholly consumed and destroyed, against the peace &c.

Complaint for forging public sureties.

——— complains that on the day of at in the county of E. F. of , with force and arms, wilfully, fraudulently and feloniously, did falsely make, forge and counterfeit a certain writing or order, purporting to have been made by A. B., C. D and G. H. select-men of the said town of , and purporting to be directed to and requesting J. S., treasurer of said town of , to pay to the said E. F. the sum of twenty dollars, and which said false, forged and counterfeit order is of the following tenor viz. [here copy the order literally] as by the same order ready in court to be produced may appear. And the said grand-juror avers that the said J. S. was on the day of the date of said order, and when the same was so falsely made, treasurer of said town of , and that the same was so falsely made, forged and counterfeited by the said E. F. with the intention to defraud the said town of , being a corporation, against the peace &c.

CRIMES AGAINST PRIVATE PROPERTY.

Complaint for robbery.

——— complains that on the day of at one G. H. of , being an evil minded person, with force and arms, did wickedly, wilfully and feloniously make an assault on the body of A. B of , he then and there being, and did by feloniously putting him the said A. B. in fear of losing his life, or of bodily harm, from him feloniously take and rob three bank bills or notes, one, of the denomination and value of five dollars, issued by the president, directors & co. of the Phœnix Bank incorporated by the laws of this state, of the number of dated , and signed by C. S. president, and countersigned by G. B. cashier of said bank [describe all the bills, or if property is taken, and not money, describe the property]; and which said wrong acts and doings of the said G. H. are

against the peace, contrary to the form of the statute in such case provided, and of evil example.

Complaint for burglary.

—— complains that on the day of at , in the county of a transient person of the name of John Brown, otherwise Peter Foster, then at said , being, in the night season of said day about the hour of o'clock in the night, with force and arms, feloniously and burglariously, did break and enter the dwelling-house of A. B. situated in said , with the intention to steal or commit some other felony, and did then and there feloniously take, steal and carry away [here describe the property stolen] of the proper goods and chattels of the said A. B. and of the value of fifty dollars, against the peace, &c.

Complaint for breaking a dwelling-house in day time and putting any person in fear.

—— complains that on the day of at , in said county of , A. B. otherwise called C. D. a transient person, about the hour of twelve o'clock at noon, with force and arms, feloniously did break and enter the dwelling-house of J. S. situated in said town of , with the intention to steal therein, and E. S. the wife of the said J. S. then and there being alone in said house, he the said A. B. did feloniously and with the like intent, put her the said E. S. in dread and fear of her life, or bodily injury, against the peace &c.

Complaint for arson.

—— complains that on the day of at , E. F. of , being an evil disposed person, with force and arms, did wilfully, maliciously and feloniously, set on fire and burn a certain dwelling-house, situated in said , the property of , against the peace and contrary to the statute in such case provided, and of evil example.

Complaint for burning a house, store, or manufactory by the owner, to defraud insurers.

—— complains that on the day of A. B. of was the owner of a certain manufactory, for the manufacture of cotton goods, situated in , that afterwards,

viz. on the said of the said A. B. procured and obtained a policy of insurance of the Ætna Insurance Company, a body politic and corporate, incorporated by the legislature of this State, underwritten by said corporation, on said factory and the machinery, and stock therein contained, to the amount of five thousand dollars, and which said policy was signed by T. K. president &c. [here describe the policy] as by said policy of insurance ready to be produced appears. And said grand-juror further complains, that afterwards, on the day of at said , the said A. B. then owner of said factory, with force and arms, did wilfully, maliciously, fraudulently and feloniously set on fire and burn said factory, the machinery and stock therein contained, with the intention to defraud said corporation and body politic, and the underwriters of said policy, against the peace &c.

Complaint for Forgery.

—— complains, that on the day of at in said county of , A. B. of , with force and arms, did wilfully, fraudulently and feloniously, falsely make forge, and counterfeit, a certain writing, commonly called a promissory note, the same purporting to be a true and genuine note, made and signed by J. S. wherein he promised to pay O. P. or order, the sum of one hundred dollars at the Phœnix bank, an incorporated bank, and which said false note is in the words and figures following viz. [here copy the note or instrument forged] as by the same note ready in court to be produced appears: and which said forged note was so by the said A. B. falsely made, forged and counterfeited, with the intention to defraud the said Phœnix Bank, being a body corporate, incorporated by the laws of this State, and with the intention to defraud the said J. S., against the peace and contrary to the form of the statute &c.

Where the endorsement is forged.

—— complains that on the day of A. B. of , had in his possession a certain writing, commonly called a promissory note, his own name being thereto subscribed, therein promising to pay to J. S. or order, at the Phœnix Bank, an incorporated bank, incorporated by an act of the legislature of this State, the sum of one hundred dollars:

that afterwards, on the said day of at said , the said A. B. with force and arms, did wilfully, fraudulently and feloniously, falsely make, forge and counterfeit a certain writing or endorsement on the back of said note, purporting to be a true and genuine writing and endorsement of the said J. S. and purporting that the said J. S. thereby ordered the contents of said note to be paid to the said Phœnix Bank; and which said note is in the words and figures following viz. [here copy the note]; and which said falsely made, forged, and counterfeit writing or endorsement thereon is of the tenor following, viz. "J—— S——;" and which said false, forged and counterfeit endorsement was so as aforesaid falsely made, forged and counterfeited by the said A. B. with the intention to defraud the said J. S. and with the intention to defraud the said Phœnix Bank, against the peace &c.

Complaint for publishing a forged instrument.

—— complains that on the day of , at , A. B. of , had in his possession a certain falsely made, forged and counterfeit writing or note, purporting to be the true and genuine note of J. S., wherein the said J. S. promised to pay C. D. or order, one hundred dollars on demand, and which said false note was of the tenor following, viz. [here copy the note] as by said note ready to be produced may fully appear. And said grand-juror further complains, that afterwards on the said day of at , the said A. B. with force and arms, did wilfully, fraudulently and feloniously, utter and publish as true, to O. P. said false, forged and counterfeit note, well knowing the same note to be falsely made, forged and counterfeited, with the intention to defraud the said J. S. and with intention to defraud the said O. P., against the peace &c.

Complaint for Counterfeiting Coin.

—— complains that A. B. of at on the day of , with force and arms, did wilfully, fraudulently and feloniously counterfeit and falsely make, a certain false and counterfeit silver coin, current in this State, called a Spanish milled dollar, in likeness and similitude of the true and genuine silver coin, called a Spanish milled dollar, of certain base and corrupt metals, with intention to defraud the good people of this state, against the peace &c.

Complaint for putting off Counterfeit Coin.

—— complains that on the day of , A. B. of had in his possession a certain falsely made and counterfeited coin, in likeness and similitude of a genuine gold coin, called a half eagle, a coin current in this state; that afterwards on the same day of at said , with force and arms he did fraudulently and feloniously offer to pass and give in payment, and did utter, put off, pass and give in payment, to O. P. as and for a true coin, and for the consideration of five dollars, said false and counterfeit coin, he the said A. B. well-knowing said falsely made and counterfeit coin was spurious, false and counterfeit, with the intention to defraud the said O. P. and other citizens of this state, against the peace &c.

Complaint for making or procuring to be made any plate for counterfeiting.

—— complains that on the day of at , A. B. of , with force and arms, wilfully, feloniously and fraudulently, made, caused, and procured to be made and engraved, a certain plate for falsely making and counterfeiting of bills or notes, for the payment of money in the name of the president, directors and company of the Phœnix bank, an incorporated bank, incorporated by an act of the legislature of this state, with intent to defraud said bank, and the good people of this state, against the peace &c.

Complaint for possessing with intent to pass counterfeit bills.

—— complains that on the day of , at , A. B. otherwise called C. D. a transient person, with force and arms, wilfully, fraudulently and feloniously had in his possession, sundry false and counterfeit bank bills or notes, for the payment of money, viz. one of five dollars, purporting to have been issued by the president, directors and company of the Phœnix bank, an incorporated bank [describe the bills]; that the said A. B. had in his possession said false and counterfeit notes, well knowing the same to be falsely made and counterfeit, and with the intention to utter and pass the same, or to cause and procure the same to be uttered and passed, and with the intention to defraud the several banks aforesaid, and the good people of this state, against the peace &c.

Complaint for selling &c. counterfeit bills with the intent to have the same passed.

—— complains that on the day of at , A. B. of , with force and arms, did wilfully, fraudulently and feloniously sell, exchange, and give in payment to C. D. of , a certain false, forged, and counterfeit bill, purporting to be a true and genuine bill, issued by the president, directors and company of the Phœnix bank, incorporated by an act of the legislature of this state, and which said bill is of description following, viz. [describe the bill] ; he the said A. B. well knowing the same to be falsely made, forged and counterfeited, with the intention to have the same bill uttered and passed, and with the intention to defraud the said Phœnix bank and the good people of this state, against the peace &c.

[In the preceding cases the prisoner must be bound to the superior court.]

Complaint for Horse Stealing.

—— complains, that on the day of at A. B. a transient person, with force and arms, did wickedly and feloniously take, steal, and convey away, from and out of, the possession of J. G. of said a certain bay horse, the property of the said J. G. then and there being, and of the value of dollars, against the peace, contrary to the form of the statute, and of evil example.

[A qui-tam information lies in favour of the owner of the horse, who is entitled to treble the value thereof.]

For stealing from a Person.

—— complains, that on the day of at A. B. of with force and arms, did wilfully and feloniously take, steal, and carry away, from the person of C. D. of said by picking his pocket, sundry bank bills or notes, amounting in all to the sum of dollars, and which said bills were of the following description, viz. [here describe the bills, mentioning the banks by which they were issued] ; of the proper moneys and chattels of the said C. D. and of the value of fifty dollars ;—[*or*, did take, steal, and carry away from the person of the said C. D. a certain gold watch and chain, of the goods of the said C. D. then and there in his possession being, and of the value of thirty dollars, against the peace,] &c.

[If the property stolen is not of the value of twenty dollars, it is only simple theft. If the theft was committed at a fire, say:] did feloniously take, steal, and carry away from the person of C. D. of at at and during an assemblage of people collected for the purpose of extinguishing a fire, &c.

Complaint for breaking and stealing from a building in the day time.

—— complains, that on the day of at R. E. a transient person, with force and arms, feloniously did unlawfully break and enter, about the hour of noon of said day, into the shop, or store, of C. D. of situated in said and therein did feloniously take, steal, and carry away four yards of blue broadcloth, then and there being, of the proper goods of the said C. D. and of the value of twenty dollars, against the peace, &c.

[If the property stolen is not of the value of one dollar, it is only simple theft. In the last five cases the prisoner may be bound either to the next superior or county court.]

Complaint for Simple Theft.

—— complains, that on the day of at A. B. of with force and arms, one silver mounted watch, with a gold seal, of the property of C. D. of and of the value of thirty dollars, feloniously did then and there take, steal, and carry away from and out of the possession of the said C. D. against the peace, contrary to the form of the statute, and of evil example, &c.

Warrant—same as in other criminal cases.

Record of Judgment.

H county H , day of A. D. .

Be it remembered, that on this day of A. B. of was brought before me by virtue of a warrant issued on the complaint of G. H. grand juror of said town of H for that, on the day of at in said county of H with force and arms the said A. B. feloniously did take, steal, and carry away a certain silver mounted watch and gold seal, of the property of C. D. of and of the value of thirty dollars, against the peace, &c. and being required to answer to said complaint, the said A. B. pleads that he

is not guilty ; and having inquired into the facts, and fully heard the parties with their witnesses, I do find that the said A. B. is guilty in manner and form alleged in said complaint, and do further find that said watch is of the value of ten dollars ; whereupon it is considered that the said A. B. pay a fine of seven dollars to the treasury of the town of where said crime was committed, and that he be further punished, by being whipped on his body ten stripes, and that he pay the costs of this prosecution, taxed at dollars cents, and stand committed until this judgment be performed.

[If the goods stolen are found to be of less value than four dollars, and greater than one, the judgment will be as follows :]

I do find that the said A. B. is guilty as charged, and further find that the said goods are of the value of three dollars, and thereupon it is considered that the said A. B. pay a fine to the treasury of of five dollars [not to exceed seven] and the costs of this prosecution, taxed at ; and the said A B. having neglected and refused to pay said fine and costs, or secure the payment of the same, a reasonable time having been allowed him so to do, it is thereupon further considered that the said A. B. be punished by whipping seven stripes on his body, and that he stand committed until the same is performed, and the costs of this prosecution paid.

[Where the value of the goods is found to exceed thirty dollars, the person is to be bound to the county court as in other cases ; and where the value is less than one dollar, he can only be fined and subjected to pay the costs.]

A *qui-tam* information may be brought for theft, for which see page 133, in which case damages are also to be given to the owner of the goods, to the amount of treble the value thereof.

Warrant of Execution.

To the Sheriff of, &c. Greeting.—

Whereas, A. B. of was on the day of convicted before me, of having stolen a silver watch and gold seal of C. D. of and the same was found to be of the value of ten dollars ; and thereupon it was considered that the said A. B. pay a fine to the treasury of the town of of sev-

en dollars, and the costs of prosecution, taxed at and that he be further punished, by whipping seven stripes on his body, whereof execution remains to be done. These are therefore to command you without delay to convey the said A. B. to some suitable place, and there inflict on his body seven stripes ; and that of the moneys, goods and chattels, of the said A. B. to be found within your precincts, you cause to be levied the aforesaid fine and costs, and pay the same to me, to be disposed of according to law, and fifty cents more for this warrant, and also to satisfy your fees ; and for want of goods and chattels of the said A. B. to satisfy said several sums, you are to levy on his body, and him commit into the custody of the keeper of the gaol for said county of who is hereby commanded to receive the said A. B. within said gaol, and him safely keep therein, until he is delivered and discharged by due course of law ; and you are to leave a copy of this warrant with said keeper. Hereof fail not, but make return within sixty days next coming.

Dated, &c. J. P. Justice of the Peace.

[Where the goods are more than one dollar, and less than four, the warrant will be the same as the preceding, until you state the conviction] :—was convicted before me of having stolen a watch, of the proper goods of C. D. and the same was found by me to be of the value of three dollars, whereupon it was considered that the said A. B. pay a fine to the treasury of of five dollars, and the costs of prosecution, taxed at and the said A. B. having neglected and refused to pay said fine and costs, or secure the payment of the same, a reasonable time having been allowed him so to do, it was thereupon further considered that he be punished by whipping ten stripes on his body, and that he pay the aforesaid costs of prosecution, whereof execution remains to be doue. These are therefore, by authority of the state of Connecticut, to command you to convey the said A. B. to some suitable place, and there inflict upon his body ten stripes ; and that of the goods and chattels of the said A. B. to be found within your precincts, you cause to be levied the aforesaid sum of the costs of said prosecution, with fifty cents more for this warrant, and also for your fees ; and for want of goods and chattels of the

said A. B. to satisfy said sums, you are to levy on his body, and him commit into the custody of the keeper of the gaol for said county of and leave with him a copy of this warrant; and said keeper is hereby commanded to receive the said A. B. and him safely keep within said gaol, until he be delivered and discharged by due course of law.—Hereof fail not, but of this warrant, with your doings thereon, make return within sixty days next coming.

Dated, &c. J. P. Justice of the Peace.

[When the goods stolen are of less value than one dollar, the warrant will command the officer to levy the fine and costs, and for want of goods to satify the same, to take and commit the body of the prisoner, to gaol, as in the preceding cases.

Quitam Process for theft and Search-Warrant.

To A. B. of Justice of the Peace for the county of comes C. D. of and complains as well in the name of the state of Connecticut, as in his own name, that one E. F. of on the day of at said one certain piece of woollen cloth, three fourths of a yard wide, containing ten yards, of the proper goods of the said A. B. and of the value of dollars, then and there being, with force and arms, feloniously did take, steal, and carry away, from, and out of the possession of the said complainant, who further complains and informs, that he hath good grounds to suspect, and doth suspect, that the said E. F. hath feloniously secreted and concealed said stolen goods, in his dwelling house, situated in said and that said goods are now so feloniously concealed and secreted by the said E. F. in his said dwelling-house, against the peace, and contrary to the statute in such case provided, and to the damage of the complainant the sum of ten dollars; and the complainant prays that process may issue to search for said stolen goods, and to arrest the said E. F. that he may be examined and dealt with according to law.

Dated, &c. A. B.

County of H ss. H , day of A. D.

Personally appeared before me, A. B. who hath subscribed the foregoing complaint, and made oath to the truth of

the same, and that he hath just grounds to suspect, and doth suspect, that said goods were stolen by the said E. F. and that they are secreted and concealed by him in his said dwelling-house as mentioned in said complaint.

J. P. Justice of the Peace.

Warrant.

To the Sheriff, &c. Greeting—

Whereas the foregoing complaint hath been made to me, and the said complainant hath made oath to the truth of the same; these are therefore, by the authority of the State of Connecticut, to command you forthwith to proceed with the said A. B., taking assistance, if necessary, and in the day time enter into the dwelling-house of the said E. F. described in said complaint, and diligently make search therein for the said stolen goods mentioned in said complaint, and if found, to seize the same, and forthwith bring the same before me or some other justice of the peace of said county; and you are also commanded to arrest the body of the said E. F. if he can be found within your precincts, and him forthwith have before the same justice of the peace, that he may be examined, touching the matters contained in said complaint, and be dealt with according to law.

Dated, &c. J. P. Justice of the Peace.

If the prisoner is found guilty, and the property found to be of the value of four dollars or more, the judgment must be that he be fined not exceeding seven dollars, and whipped not exceeding ten stripes, and also that he pay treble the value of said goods to the said A. B. the party injured. For form of Record, see page 165.

Complaint for receiving and concealing stolen goods.

—— complains, that on the day of at some person to the said grand-juror unknown, feloniously took, stole, and carried away from the possession of C. D. of a certain timber chain, of the length of feet, of the proper goods of the said C. D. and of the value of three dollars, and that afterwards, on the same day of at said E. F, of with force and arms, did feloniously receive the said goods, well knowing the same to have been stolen, and did then and there fraudulently and feloniously conceal

and secrete the same goods, against the peace, and contrary to the form of the statute, &c.

OF CRIMES AGAINST PUBLIC JUSTICE.

Complaint for Perjury.

—— complains that on the day of at in the county of H before the superior court then in session at H for said county, a certain cause then being on trial before said court, wherein A. B. was plaintiff, and C. D. defendant, O. P. of was then and there before said court duly sworn to testify in said cause, and had administered to him by T. C. the clerk of said court, and duly authorized to swear witnesses, to testify before said court, the oath provided by law for witnesses; and that afterwards, on said day of and during the trial of said cause, the said O. P. did wickedly, corruptly and feloniously, falsely testify and swear, that [here set out the words] he, the said O. P. then well knowing that said testimony was untrue and false, and the same was material to the issue joined and on trial between said parties in said cause, against the peace, contrary to the form of the statute in such case provided, and of evil example.

Complaint for Subornation of Perjury.

—— complains that on the day of at A. B. did wickedly, corruptly, and feloniously suborn and procure E. F. of to appear before the superior court, on the day of at the said court then and there being in session for said county of H and then and there corruptly and falsely to testify in a cause then on trial before said court, wherein the said A. B. was plaintiff, and the said C. D. defendant, that [here recite the false testimony]; and the said E. F. was then and there by T. C. clerk of said court, duly sworn to testify in said cause, and did, during the trial thereof, testify the aforesaid false and corrupt words and facts, and which false testimony so falsely and wickedly procured by the said A. B. to be testified, he well knew to be false and corrupt, and the same was material to the issue then on trial between said parties; which wrong and corrupt acts and doings of the said A. B. are against the peace, &c.

Complaint for Bribery.

—— complains, that on the day of at A. B. of did wickedly, corruptly and feloniously offer to J. P. then justice of the peace for the county of H and concerned in the administration of justice, the sum of dollars in money, with the intention to bribe the said J. P. and influence his behaviour in his said office, in relation to a cause then pending before said Justice, wherein the said A. B. was plaintiff, and C. D. of defendant; and which said wrong and corrupt acts and doings of the said A. B. are against the peace, &c.

[The criminal must be bound to the superior court for bribery.]

Complaint for Embezzling any Record.

—— complains, that on the day of at C. D. of with force and arms did wilfully, corruptly and feloniously embezzle, eloine, and take away from the office of J. P. justice of the peace for the county of H and authorized to hold courts of record, a certain writ and process returned before said justice, wherein A. B. was plaintiff and the said C. D. defendant, and which was issued by [here describe the same] and which said writ and process was a part of the files, proceedings and records of said Justice in said cause, and the same writ and process were so embezzled, eloined, and taken away from and out of the office of said Justice, by the said C. D. with the intention to defeat said suit and cause, and to prejudice the rights of the said A. B., against the peace, and contrary to the form of the statute, &c.

Complaint for Resistance to Officers.

—— complains, that on the day of at A. B. of with force and arms did make an assault on M. S. then constable of the said town of while the said M. S. was in the execution of his said office, and attempting to arrest O. P. of said by virtue of a writ of attachment in favour of Q. R. against the said O. P. issued in due form of law by J. P. justice of the peace, and the said A. B. did then and there, whilst the said M. S. was attempting to arrest the said O. P. in obedience to the command in said writ, with like force and actual violence, abuse and resist

the said M. S. in the execution of his said office, against the peace, and contrary to the form of the statute, &c.

[For resisting an officer, the offender must be bound to the county court, and punished by fine and imprisonment.]

OF CRIMES AGAINST THE PUBLIC PEACE.

Complaint for a Riot.

—— complains, that on the day of at A. B., C. D. and E. F. all of and several other persons to said grand juror unknown, with force and arms, riotously and tumultuously assembled together with an intention to do an unlawful act, against the peace, or to the manifest terror of the people, and with force and violence, and against the peace, to pull down and demolish the dwelling-house of O. P. situated in said ; and being so riotously and unlawfully assembled, J. P. justice of the peace for said county, obtaining knowledge thereof, resorted to the place where the said A. B., C. D. &c. were so unlawfully assembled, and then and there, after commanding silence, in their hearing, made proclamation, with an audible voice, as follows, viz. "In the name and by authority of the State of Connecticut, I charge and command all persons assembled, immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, upon the pains and penalties of the law;" that the said A. B., C. D. and E. F. and divers other persons to said grand juror unknown, did not disperse themselves after said proclamation, but continued so unlawfully and riotously assembled together, to the great terror of the good people of this state, against the peace, and contrary to the form of the statute, &c.

Another.

—— complains, that on the day of A. B., C. D. and E. F. and divers other persons, to the said grand juror unknown, with force and arms, and riotously and tumultuously assembled at in said county, to do an unlawful act, and with force and violence, and against the peace, to pull down, demolish, and destroy the dwelling-house of situated in said and being so riotously, tumultuously, and unlawfully assembled together, with force and arms, and with actual violence, and to the manifest terror

of sundry of the good people of this state, did then and there pull down, demolish and destroy the said dwelling-house of the said against the peace, and contrary to the form of the statute in such case provided, and of evil example.

[For this crime the offenders must be bound, either to the next superior or county court, for trial. The record of judgment, recognizance, and mittimus, if necessary, the same as in other cases.]

Complaint for breaking Windows, &c. in the night season.

——— complains, that on the day of at about the hour of twelve o'clock at night, A. B. of with force and arms, did wilfully and maliciously break a window, by forcibly throwing a large stone against the same, in the dwelling-house of C. D. of said , the family of the said C. D. then and there being and residing in said dwelling-house, against the peace and contrary to statute, &c.

[For this crime the justice may give judgment, and fine the offender seven dollars, or bind him to the county court, where he may be fined, not exceeding one hundred dollars, and imprisoned in the county gaol not exceeding six months.]

Complaint for Breach of the Peace.

To A. B. Esq. of justice of the peace for the county of comes C. D. of grand juror of the town of and complains, that on the day of at E. F. of said with force and arms, did make an assault on the body of G. H. of said and with great force and violence did him then and there strike and beat many severe blows, whereby the said C. D. was greatly injured, against the peace, and contrary to the form of the statute in such case provided, and of evil example. And the said grand juror prays process against the said E. F. that he may be arrested and examined touching this complaint, and be dealt with according to law. C. D. Grand-Juror.

Warrant, in common form.

Record of Judgment.

H county, ss. H , day of A. D.

Be it remembered, that on this day of A. D. E. F. of was brought before me, by virtue of a warrant

issued upon the complaint of C. D. grand-juror of for that on the day of at the said E. F. with force and arms did an assault make on the body of G. H. and with like force did then and there him strike and beat many severe blows, whereby he was greatly injured, against the peace, and contrary to statute: and being required to answer to said complaint, the said E. F. pleads and says he is not guilty, and puts himself on the court for trial; and having heard the evidence introduced by said grand-juror in support of said complaint, and that in behalf of the said E. F. I do find that the said E. F. is guilty as charged against him in said complaint, and thereupon it is considered that he pay a fine to the treasury of the town of of seven dollars, and also that he be imprisoned in the common gaol of said county of H for the period of one month from the date hereof, and pay the costs of this prosecution, taxed at dollars and cents, and stand committed until judgment be performed.

Warrant of Execution.

To the Sheriff, &c. Greeting.—

Whereas E. F. of was, on the day of before me convicted of having on the day of at with force and arms made an assault on the body of G. H. of and of having then and there, with like force, him, the said G. H., beaten and stricken many severe blows, whereby he was greatly injured, against the peace and contrary to statute; whereupon it was considered by me that the said E. F. pay a fine of seven dollars to the treasury of and also that he be imprisoned in the common gaol of said county for one month from the day of the date of said judgment, and that he pay the costs of said prosecution, taxed at ; whereof execution remains to be done. These are therefore, by the authority of the State of Connecticut, to command you to convey the said E. F. to the gaol of said county of H and him deliver to the keeper thereof, and to leave with him a copy of this warrant; and said keeper is also hereby commanded to receive the said E. F. within said gaol, and him confine and imprison within the same, during the period of one month from the aforesaid date of said judgment, when he is to be discharged on his paying said fine and costs; but if he neglects or refuses so to do, he is to

be safely kept in said gaol until he pay the same, and the legal costs and charges, or until he is delivered and discharged by due course of law. Dated, &c.

[The justice may impose a fine only, when on the prisoner's failing to pay the same, and costs, a mittimus must be granted in common form. If the offence be of an aggravated nature, it is the duty of the justice to require bonds for his appearance to the next county court, and take a recognizance in common form, or if he fails to procure bonds, to issue a mittimus and commit him to gaol, as in other cases. Or he may be ordered to procure bonds for his appearance to the next county court, and in the mean time to keep the peace and be of good behaviour. In which case the judgment will be as follows :]—

—I do find that the said E. F. is guilty, &c. whereupon it is considered that he become bound in a recognizance, with sufficient surety, in the sum of dollars, to the treasurer of the county of conditioned that he appear before the county court next to be holden at H for the county of H then and there to answer to the foregoing complaint, and abide the decision of said court thereon, and that in the mean time he keep the peace and be of good behaviour.

Recognizance.

You, E. F. as principal, John Doe as surety, jointly and severally acknowledge yourselves bound in a recognizance of dollars to the treasurer of the county of H conditioned that the said E. F. appear before the county court next to be holden at H for the county of H then and there to answer to the foregoing complaint, and abide the decision of said court thereon, and that in the mean time he keep the peace and be of good behaviour.

Taken and acknowledged before me this day of A. D. . J. P. Justice of the Peace.

[In a *qui-tam* information for breach of the peace, for which see page , the court must give damages to the party injured, besides imposing a fine, and sentencing the offender to be imprisoned, if he thinks the case requires it. And the prisoner cannot be discharged without paying the damages, as well as the fine and costs, and must be committed on his failure so to do.]

Complaint by private individuals for surety of the peace and good behaviour.

To J. P. of justice of the peace for the county of comes A. B. of and complains in the name and in behalf of the state of Connecticut, that on the day of at in said county, C. D. of with force and arms did threaten, that he would, before long, beat, wound, or kill him, the complainant, or do him some great bodily harm; and the said A. B. further complains, that he has just cause to fear, and that he doth fear, that the said C. D. will beat, kill, or wound the complainant, or do him some great bodily harm, or procure others to do the same, and that he is under fear of death, or bodily injury from the said C. D, whereupon he requires surety of the peace and good behaviour against the said C. D. and prays that process may issue that he may be arrested and examined touching this complaint, and be dealt with according to law. A. B.

Oath.

H county ss. H , day of A. D.

Personally appeared before me, A. B. who hath presented and subscribed the foregoing complaint, and made oath to the truth of the same.

J. P. Justice of the Peace.

[The warrant to be in the same form as in other criminal prosecutions, to arrest the accused forthwith. If the prisoner is found guilty, the judgment will be]—that he become bound in a recognizance of dollars, with surety, to the treasurer of the county, conditioned that he appear before the next county court, then and there to answer to said complaint, and abide and submit to the order and decision of said court thereon; and that in the mean time he keep the peace and be of good behaviour to all the citizens of this State, and especially towards the said A. B. and that he stand committed until sentence be complied with.

The recognizance will be taken to the treasurer of the county, and be the same as the preceding, only adding the words after good behaviour, "especially to A. B. the complainant." If the delinquent fails to produce bonds, he must be committed.

Complaint by a Wife against her Husband.

To J. P. justice of the peace, &c. comes Mary Smith, wife of John Smith, both of and complains, in the name and behalf of the state of Connecticut, that, &c. [The process in all respects the same as the preceding, the only difference is that the fact appear in the complaint, and the judgment that the complainant is the wife of the delinquent. She must sign the complaint and make oath to the same, &c.]

Complaint for Secret Assault.

To J. P. of H , justice of the peace for the county of H comes A. B. of , in said county, and complains as well in the name and behalf of the state of Connecticut, as in his own name and behalf, that on the day of at , about the hour of eleven o'clock at night of said day, C. D. of , with force and arms, assaulted the said A. B. and then and there with like force and like secrecy, with fists, clubs and stones, and other dangerous weapons, did beat, bruise and wound him the said A. B. whereby he was greatly injured in his body and limbs, and many other injuries and enormities, the said C. D. then and there did and committed, secretly and forcibly, against the peace and contrary to the form of the statute in such case provided, and to the damage of the complainant the sum of one hundred dollars; whereupon the said A. B. prays process against the said C. D. that he may be arrested and examined touching this complaint, and be dealt with as to law and justice appertaineth.

Dated &c. A. B.

Oath.

H county, ss. H day of A. D. appeared before me A. B. who hath made and subscribed the foregoing complaint, and made solemn oath to the truth of the same.

J. P. justice of the peace.

Warrant.

To the sheriff &c. Whereas A. B. of , hath presented to me the aforesaid complaint, and made oath to the truth of the same; and likewise made application to me and exhibited the wounds and bodily injuries he had received by the secret assault mentioned in said complaint; Wherefore, by authority of the state of Connecticut you are hereby commanded without delay, to arrest the body

of C. D. of , mentioned in said complaint, and forthwith bring him before me [he must be brought before the same justice to whom complaint is made, and his wounds shewn] at my office, in , in said county, that he may be examined touching the facts alleged in the aforesaid complaint, and be dealt with therein, as to law and justice may be found to appertain. Dated &c.

J. P. justice of the peace.

[In prosecutions on this statute the complainant is admitted as a witness, and upon his testimony and the exhibition of his wounds and injuries, it is the duty of the justice to bind over to the county court, unless the testimony of the complainant should be contradicted by other witnesses. From the terms of the statute it would seem that the accused was not to be admitted to testify before the court of inquiry, yet as he is expressly admitted to testify before the county court, it is difficult to conceive why he should not be admitted as a witness before the justice on the inquiry.]

The record of judgment will be the same as in other cases of binding over to the county court, except that it is proper to state that the complainant was examined under oath. The recognizance must be taken to the adverse party.

Recognizance.

H county, ss. H day of A. D.

You C. D. of , as principal, and O. P. of , as surety, jointly and severally acknowledge yourselves bound in a recognizance of dollars to A. B. of , that the said C. D. appear before the county court next to be holden at , in and for the county of H , then and there to answer unto the foregoing complaint of the said A. B. and submit to the decision of said court thereon. Taken and acknowledged before me the day and year above written.

J. P. justice of the peace.

If the delinquent neglects or refuses to recognize with surety, he must be committed to gaol, and a mittimus issued in common form.

OF CRIMES AGAINST CHASTITY.

Complaint for Adultery.

—— complains that on the day of A. B. of a single man, at , in said county, with force and arms,

did commit the crime of adultery with E. M. of , a married woman, and the lawful wife of S. M. and did then and there, her the said E. M. carnally know, against the peace, contrary to the form of the statute, and of evil example.

Complaint for Bigamy.

—— complains that on the day of A. B. of , then being a married man, and having a lawful wife named C. B. to whom he was married on or about the day of living, with force and arms, did feloniously and deceitfully, marry N. S. of , a single woman, and hath ever since continued to cohabit and live with the said N. S. as his wife, against the peace, contrary to the form of the statute, and of evil example.

Complaint for Fornication.

—— complains that on the day of at , A. B. of , with force and arms, did commit the crime of fornication with L. M. of , a single woman, and did then and there, her the said L. M. copulate with, and carnally know, against the peace, contrary to the form of the statute, and of evil example.

OF CRIMES AGAINST MORALITY AND DECENCY.

Complaint for Profane Swearing.

—— complains that on the day of , at , A. B. of , did swear rashly, vainly and profanely; and did then and there utter and repeat in the hearing of sundry good people of this state, rashly and vainly, the following profane oaths and words [here recite the words used]; or did then and there sinfully, wickedly and profanely curse C. D. of , and say of and concerning him the said C. D. the following wicked and profane words, viz. [here state the words], against the peace, contrary to the statute in such case provided, and of evil example.

Complaint for distributing Obscene Books.

—— complains that Q. P. of , on the day of at , in said county of with force and arms, did feloniously sell and distribute to A. B. and C. D. both of said and sundry other good people of this state, a certain vicious and obscene book, or pamphlet, containing obscene language, prints and descriptions, called , and did

then and there receive of the said A. B. and C. D. and sundry other persons, sundry sums of money for the sale of said obscene book or pamphlet, against the peace &c.

[For this offence the delinquent must be bound to appear before the county court for trial.]

Complaint for Drunkenness.

—— complains that on the day of at , Q. R. by drinking excessively of spiritous liquors, became and was intoxicated and drunk, whereby he was disabled and bereaved in the use and exercise of his reason and understanding, against the peace & contrary to the statute in such case provided, and of evil example.

[The crime of drunkenness is distinct from that of being a common drunkard; the former is punished by a forfeiture of two dollars only: but in the latter case, the offender may be bound to his good behaviour, or sentenced to the work-house.]

Complaint for breach of the Sabbath.

——— complains that L. M. of , on the day of being the Sabbath or Lord's day, about the hour of of said day, with divers other persons, to said grand-juror unknown, at , in said county, engaged in vain sport and recreation, and then and there with the said persons unknown to said grand-juror, used and played the game of , to the great disturbance of the good people of this state, against the peace and contrary to the statute in such case provided.

Complaint for Disturbing a Religious Meeting.

—— complains that on the day of at , a number of the good people of this state being then and there met and assembled together, for the public worship of God, and whilst engaged in such worship, Q. R. of , did wilfully interrupt and disturb said assembly, and the worship thereof, by speaking with a loud and audible voice in said assembly, and during the religious worship of the same, sundry words, with the intention to interrupt and disturb said assembly, and the worship thereof, against the peace, and contrary to the statute in such case provided, and of evil example.

[For this offence the magistrate may impose a fine not exceeding seven dollars, nor less than one, or bind the offender over to the county court, where he may be fined not exceeding thirty-four dollars. The crime is the same, whether the religious meeting is on the sabbath or any other day.]

OF CRIMES AGAINST PUBLIC POLICY.

Complaint for Selling unauthorized Lottery Tickets.

——— complains that on the day of at , in said county of , T. H. of , did dispose of and sell to A. B. of , a lottery ticket in a lottery called , authorized by the authority of the state of New-York, and which said ticket was duly issued by the managers of said lottery under the authority of said state of New-York, and of the number of and signed by [describe the ticket] ; and for the sale and disposal of said ticket the said T. H received of the said A. B. the sum of dollars ; all of which doings of the said T. H., are against the peace, and contrary to the form of the statute in such case provided.

Complaint for Betting upon a Horse Race.

—— complains that on the day of at , J. B. of , did unlawfully wager and bet with J. S. the sum of dollars, upon a horse race, to be run between a certain horse of the said J. B. and a certain horse of the said J. S. at , on the day of , and which said money so waged and bet, was lodged and staked in the hands of R. R. and a like sum loged in his hands by the said J. S. both of which sums were by said wager, to be delivered by the said R. R. to the said J. B. in case his said horse beat the horse of the said J. S. in said race ; and which said doings of the said J. B. are against the peace, and contrary to the statute in such case provided.

Complaint for the forfeiture of a Horse used in a horse race.

To J. P. justice &c. comes G. H. grand-juror of and complains that on the day of at in said county, a certain bay horse supposed to belong to O. P. of was used and employed in a horse race with another certain horse belonging to R. R. of , on which said race sundry bets and wagers were made of sundry sums of money,

and particularly a bet between A. B. and C. D. of the sum of dollars, whereby, by the force of the statute in such case provided, the said horse hath become forfeited to this state. And the said grand-juror prays process against the said horse, that he may seize the same, and safely keep said horse, that he may be informed against, before the next county court for said county of , and be by said court disposed of according to law.

G. H. grand-juror.

Warrant.

To any constable &c. Whereas the aforesaid complaint hath been made to me: Wherefore you are hereby commanded forthwith to seize the said horse, and take the same into your custody, and the same keep that it may be informed against, before the next county court for said county, and disposed of according to law. And you are hereby required to give notice to O. P. the supposed owner of said horse, to appear, if he see cause, before the county court next to be holden at , in and for the county of and there shew reasons, if any he hath, why said horse shall not be adjudged forfeited to this state, and disposed of according to law. Hereof fail not, but of this process, with your doings thereon, make due return to the said county court.

[The officer's return will be that he seized the horse, and has it in his custody, and that he notified the party.]

Complaint for Playing Cards for Money.

—— complains that on the day of at , R. R. of , did play divers games at cards with A. B., C. D. and E. F. for money, and in and by said games at cards, the said R. R. won the sum of dollars of the said A. B. and C. D., which doings of the said R. R. are against the peace, and contrary to the form of the statute &c.

Complaint for Keeping a Billiard Table.

—— complains that on the day of at L. M. of had and kept, and still has and keeps in his custody and possession, and at or near his dwelling-house, in said , a billiard table, for the purposes of gaming, against the peace and contrary to the statute in such case provided.

Complaint against a Taverner for Permiting Gaming.

—— complains that on the day of , at R. R. of , was a taverner, and previously to that period had been duly and legally appointed and licensed to keep a house of public entertainment in said town of , and that on said day of , sundry persons, viz. A. B., C. D. and E. F. and several others, to said grand-juror unknown, played sundry games at cards, for money, within the house and tavern of the said R. R. and on which said games the said A. B., C. D. and E. F. bet and hazarded sundry sums of money, and divers sums were won and lost by the said A. B , C. D. and E. F. the amount of which is unknown to said grand-juror, and which said gambling, playing and hazarding, was practised with the knowledge, consent and permission of the said R. R. within his said house and tavern, against the peace and contrary to the form of the statute in such case provided.

[The offenders against the statute must be bound to the county court for trial.]

Complaint against Mountebanks.

—— complains that on the day of at , J. K. a transient person, being a mountebank, tumbler and rope-dancer, did exhibit and cause to be exhibited, on a public stage, fitted and prepared for that purpose, in the tavern and public house of entertainment in said , divers games, tricks, shows, tumbling, rope-dancing, and feats of uncommon dexterity and agility of body, to divers good people of this State, then and there collected, to witness the same, and for which the said persons each paid to the said J. K. the sum of twenty-five cents, against the peace and contrary to the statute in such case provided.

[The offender against this statute must, if there is probable grounds of his guilt, be bound to the county court for trial.]

In all criminal prosecutions where a Justice of the Peace has jurisdiction, and renders judgment, except for drunkenness, profane swearing, breach of sabbath, selling unauthorized lottery tickets, and perhaps some other cases specially provided for by statute, an appeal lies from such judgment to the county court, in favour of the prisoner, where judgment has been rendered against him ; but when

the judgment is rendered in his favour, the prosecuting officer has no right to appeal in behalf of the state. The party appealing must enter into a recognizance, with surety, for his appearance, and to prosecute his appeal, and pay a duty of fifty cents, as in civil cases. In qui-tam prosecutions for crimes, the same right of appeal exists.

Form of Appeal.

[After recording the judgment say]: From which judgment the said A. B. moves to appeal to the county court to be holden at H , in and for the county of H , on the Tuesday of A. D. which said motion is allowed: whereupon the said A. B. pays a duty to this state of fifty cents on his said appeal, and himself as principal, and C. D. as surety, recognize before me in the sum of dollars, to the treasurer of said county of H , for his appearance before said county court, to prosecute his said appeal to effect, and that he abide and submit to the decision and order of said court thereon.

J. P. justice of the peace.

Recognizance in case of Appeal.

H county ss. H day of A. D. appeared before me, A. B. of , as principal, and C. D. of , as surety, and jointly and severally acknowledged themselves bound in a recognizance of dollars to the treasurer of said county of H , conditioned that the said A. B. appear before the county court next to be holden at H , in and for the county of H , and then and there pursue and prosecute to effect his said appeal, and abide the judgment that may be rendered by said court thereon. Taken and acknowledged before me the day and year above written.

J. P. justice of the peace.

In case of any error apparent on the record in any criminal prosecution before a justice of the peace, a writ of error may be brought to the superior court the same as in civil cases. Petitions for new trials may also be brought by the prisoner, and in both cases service is to be made by leaving a copy with the attorney for the State, in the same county.

Accessaries, or any person who shall aid, abet, assist, hire, or command any other person, to commit any of the

aforesaid crimes, is equally guilty, and on conviction, must suffer the same punishment as the principal offender. Previously to the revision there was a statute abolishing whipping in all cases as it respects females, which provision as we are informed was unintentionally omitted by the committee of revision, so that females are now liable to be whipped as well as males: but as the legislature has not *intentionally* repealed this provision, it may be considered as virtually in force, and as there is something revolting in corporeal punishment, especially as applicable to females, it would seem most proper that whipping should not be inflicted on females, until the legislature act upon the subject, when it will be known, whether they will restore the law, or make a retrograde movement in legislation, and revive a punishment which belongs to a barbarous age.

No suit or action can be brought on any penal statute, for the recovery of a forfeiture by any person who may lawfully sue for the same, after the expiration of one year from the commission of the offence. No person can be prosecuted for any crime punishable by imprisonment in New Gate prison, unless the complaint shall be exhibited within three years next after the crime shall have been committed; and no person shall be prosecuted for any other crime or misdemeanor, except those punishable with death, unless complaint or information be exhibited within one year after the offence was committed.

All fines, penalties and forfeitures received by justices of the peace in pursuance of any judgment rendered by them, which are not otherwise expressly appropriated, are to be paid to the treasurer of the town where they reside, and it is the duty of the town treasurer, at least within one year after the judgment is rendered, to call on the justices of the town to account for the fines, forfeitures, and penalties they may have received, in pursuance of such judgment.

When for any offence it is provided by statute that the offender be sent to a work-house or house of correction, and there is no work-house in the town, they must be sent to the county gaol, which is the common work-house and house of correction for the whole county—They must be sentenced and ordered to be confined there, as a work-house and house of correction.

A Justice of the Peace is not personally liable for any act done by him, of a judicial nature, whether in civil or criminal proceedings, unless he act corruptly or intentionally transcend his jurisdiction; when he may become liable to the party injured, although he professed to act in his judicial character. But as it respects his ministerial acts and duties, such as signing writs, issuing warrants, administering oaths, taking depositions, and the acknowledgment of deeds, &c. if a justice refuses to act, or is guilty of gross negligence, he makes himself liable to the party injured. Where his authority is discretionary, he does not make himself liable for refusing to do any official act. Taking bonds on issuing writs is a discretionary act, as it respects the sufficiency of them; but where the law expressly requires surety, if the justice neglects to take it, he becomes personally liable to the party injured; but if he takes bonds with surety, where that is required, or without, where surety is not required, which are apparently good, but prove to be insufficient, he is not personally responsible (*a*).

(*a*) Swf. Dig. 546; 1 Root 165.

PART II.

THE POWERS AND DUTIES OF CONSTABLES.

The Office of Constable is of great antiquity in England, the knowledge of it extending beyond the period of any known statute relating to it. This office, like that of justice of the peace, and most others, has undergone a gradual but important change, since its first institution, which was for the conservation of the peace. The office of Constable was brought by our ancestors from England, and has existed here since the settlement of the colony.

It is provided by statute that every town shall, at their annual meeting appoint one Constable, to collect the state taxes, and such additional number, as they may think expedient, not exceeding seven. They must take the oath prescribed in the constitution for executive officers, on or before the first Monday in January in each year, and hold their office until the next annual meeting of the town, or until others are chosen and sworn (*a*). No Constable can be legally chosen but at annual town meeting, except in cases where there is a vacancy by the death, refusal to serve, or removal, of any Constable thus appointed, when such vacancy may be filled at any legal town meeting, whether it be the annual meeting or not. This provision extends to all town officers (*b*). It is the duty of the select-men to cause Constables, and all other town officers, of whom oath is required, immediately after their appointment, to be summoned to appear before some justice of the peace, and to take the oath prescribed by law; and if any such officer refuses to be sworn and execute the duties of his office, he incurs a forfeiture of five dollars to the town, unless he can make it appear to the court, before which he may be sued for the recovery of such forfeiture, that he is oppressed by such appointment, or that others are

(*a*) St. 132. (*b*) St. 458

unduly exempted. If he accepts the office, or does not declare his refusal to accept, yet neglects and refuses to perform the duties thereof, he forfeits three dollars to the town; and in such cases too, would be liable to the person injured by his neglecting or refusing to perform his official duties.

For convenience we copy the *Oath:* "You do solemnly swear (or affirm as the case may be) that you will support the Constitution of the United States, and the Constitution of the State of Connecticut, so long as you continue a citizen thereof; and that you will faithfully discharge, according to law, the duties of the office of [Constable for the town of H ,] to the best of your abilities.—*So help you God.*"

CHAPTER I.

Of the Powers and Duties of Constables, as Peace Officers, &c.

It is provided by statute, that Constables shall receive all hue-and-cries, and the same diligently pursue to full effect; and that when no justice of the peace is near at hand, they may put forth pursuits, or hue-and-cries, after murderers, peace-breakers, thieves, robbers, burglarians, and all capital or criminal offenders: and that without a warrant they may apprehend such as are guilty of profane swearing, drunkenness, or Sabbath-breaking, if taken in the act, or on present information of others, and carry them before the next justice of the peace, to be dealt with according to law (*a*).

This statute would seem by implication, to take away the authority of Constables, to make arrests without a warrant, except by putting forth pursuit, by hue-and-cry, where no Justice is at hand to do it, or for the three offences mentioned; but as their authority as conservators of the peace is more extensive at common law, the exercise of which is important to the preservation of the peace, and the apprehension of criminals, it cannot be considered as taken away by mere implication. Previously to the late revision of

(*a*) St. 132.

the statutes, it was a part of the constable's oath, copied from that used in England, that he would "preserve the public peace of the place for which he was appointed, and of this state, and to the best of his endeavours, see all watches and wards executed and duly attended." Sheriffs are constituted by statute, conservators of the peace within their counties, and are expressly authorised with force and a strong hand when necessary, to suppress all tumults, riots, routs, and unlawful assemblies, and to apprehend without warrant, those who are in the disturbance of the peace, and to carry them before any justice of the peace of the county, that they may be proceeded against according to law, and as the nature of the offence may require (*e*). Formerly, the statute giving these powers to Sheriffs, contained an express provision, giving to Constables the same authority and powers within their towns, as were conferred on Sheriffs within their counties; but this provision was omitted at the revision. In the act relating to Constables, now in force, it is provided that they shall have the same power within their own towns, to serve and execute all lawful writs, precepts and warrants, directed to them, as sheriffs have within their counties, and shall be liable in the same manner for any neglect, default or misconduct in their office. This provision, giving to Constables the same authority within their towns as Sheriffs have within their counties, extends only to the service of writs, and the execution of process; but as they possess at common law the same power as conservators of the peace within their precincts, as Sheriffs do within their's, and as the same authority was expressly given to them by statute until the revision, and is not now expressly restrained, it is hardly to be supposed that the legislature intended to take away or restrict the authority they possess at common law as conservators of the peace.

(*f*) At common law, Constables not only have the power, but it is their duty, to arrest all persons who break the peace in their presence, and to endeavour to part all persons engaged in affrays, and arrest them when necessary, for which purpose they may command the assistance of others, and all persons refusing to obey, are liable to be punished by fine and imprisonment. They may arrest all per-

(*e*) St. 15. (*f*) 4 Blac. Com. 292.

sons who contend with hot and angry words, and threaten to beat, kill, or offer bodily harm to another, and detain them until their heat be over, or carry them before a justice of the peace, that they may be proceeded against according to law; but such justice cannot fine them, or order them under bonds to keep the peace, without a complaint in writing is presented against them, and a warrant, by which they must be arrested. If an affray occur in a house, Constables may break open the doors to suppress it, and preserve the peace; and if the affrayers flee into another house, and they are followed by the Constables in fresh pursuit, they may break open the doors of the house to which they retreat, to take them (*g*).

Such persons as go armed with offensive and dangerous weapons, or accompanied with unusual attendants, to the terror of the people, may be arrested by a Constable or Sheriff, and taken before a justice of the peace. Constables, as well as justices of the peace, and Sheriffs, are authorized and required to suppress riots, and when three or more persons come together to do an unlawful act with force and violence, against the peace, or to the manifest terror of the people, it is their duty to resort to the place, or as near as they can safely come to such rioters, and with an audible voice command, or cause to be commanded, silence, while proclamation is making, and thereupon make proclamation in these words, or to the like effect: "In the name and by authority of the State of Connecticut, I charge and command all persons assembled immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, upon the pains and penalties of the law." And if, after such proclamation has been made, the persons so unlawfully and riotously assembled, shall not disperse, the Constable or other officer making such proclamation, is authorized to command assistance, and to seize and apprehend such persons so unlawfully continuing together, and forthwith carry them before a justice of peace, that they may be proceeded against according to law. And if in dispersing or apprehending such rioters, or in attempting to do the same, any of them shall be killed, maimed or hurt, by reason of their resistance, such Constable or other officer, and all persons aiding him, shall be discharg-

(*g*) 1 Root, 66.

ed and indemnified for such killing or injuring, as well against the public as against all persons whatsoever (*b*).

2. *May arrest felons without warrant.*

A Constable may arrest felons and criminals without a warrant; and also persons charged, where a felony has actually been committed, and there are probable grounds of suspicion against them, although they do not turn out to be guilty (*c*). When a felony has been committed, a Constable may arrest and imprison the felon if necessary, until he can be carried before a justice of the peace, and complaint be made against him; and after demand of entrance and refusal, he may break open doors to arrest the felon; and if in attempting to make such arrest, the Constable or any person coming to his assistance, notice of the cause of his coming having been given, is killed, it is murder; and if the felon make resistance, so that he cannot be taken, and he be killed by the Constable or other person coming to his assistance, it is justifiable homicide (*d*). A private person, likewise, who is present when any felony is committed, can not only be justified in arresting the felon, but if he escape through his negligence, he subjects himself to fine and imprisonment; and he may justify breaking open doors to arrest such felon; and if the felon cannot be otherwise taken, and he be killed, it is justifiable; but if the felon kill the person attempting to arrest him, it is murder (*e*). A private person may also make an arrest on probable suspicion, but cannot justify breaking open doors to do it; and if no felony has been committed, or the person arrested on suspicion is not guilty, he cannot be justified (*h*).

Constables are empowered and required, without warrant, to apprehend all persons who are guilty of a violation of the Sabbath, provided they are taken on sight or immediate information of others, and to carry them before a justice of the peace; and for this purpose, they may command all necessary assistance, and any person refusing to afford assistance, incurs the same penalties as for refusing to assist Sheriffs and Constables in the execution of their office. It is also their duty to apprehend without a warrant, upon personal view, all persons who sell or expose for sale any spir-

(*b*) Stat. 384. (*c*) 4 Blac. Com. 292. (*d*) 5 Co. 91, 4 Blac. Com. 292.
(*e*) 2 Hal. P. C. 77. (*h*) 4 Blac. Com. 293.

itous or other liquors, or articles of provision, in a tent, waggon, or any other way, except persons regularly licensed at their store or dwelling house, within two miles of an assembly of people convened for religious worship in the field; and to carry them before the next justice of the peace, that they may be dealt with according to law; whereupon such Justice, on the oath of the officer apprehending such offenders, shall issue a warrant, and cause them to be arrested, and proceed to a hearing and trial of such matter of complaint according to the due course of law (*g*).

3. It is the duty of Constables to assist the moderator in preserving order, on being requesting by him, in all town and society meetings. Where any person or persons disturb any electors', town or society meeting, or the meetings of any other communties in which a moderator is chosen, and presides, by making or causing any noise, tumult, or quarreling, whereby such meeting is prevented from proceeding in a peaceable and orderly manner to the choice of a moderator; or if after such choice, any person shall abuse or interrupt the moderator in the discharge of his duty; or after the moderator has commanded silence, shall speak in such meeting without liberty from the moderator, except to ask permission so to do, each person so offending incurs a forfeiture of not less than one, nor more than seven dollars; and in all such cases, it is the duty of any Constable, Sheriff, or deputy Sheriff, on being ordered or requested by the moderator or presiding officer in such meeting, and in case such offenders refuse to submit to the authority of the moderator, to take them into custody, and if necessary, to remove them out of such meeting, and to detain them until they conform to order; and if need be, until the meeting is closed. Such Constable, or other officer, has power to command all necessary assistance, as in cases of preserving the peace and suppressing riots, and any person refusing to assist when so commanded, shall be liable to the same penalties as for refusing to assist sheriffs and constables in the execution of their office; provided that no person commanded to assist shall be deprived of his right to vote in such meeting, nor such offenders, any longer than they refuse to conform to order (*i*).

(*g*) Stat. 327. (*i*) Stat. 326.

4. Of their authority as informing officers.

Constables are authorized to act as informing officers in certain cases, especially provided for by different statutes, but their seems now to be no general provision giving them this authority. Previously to the revised statutes, they were required to make diligent search after tiplers, retailers of strong drink without license, and such as frequent taverns and spend their time idly, and to warn them to forbear, aud to warn such persons as keep such houses not to suffer any such individuals to frequent them ; and were also directed to make due presentment of all breaches of law *coming to their knowledge*, to some proper authority, once in every month. Under this authority, which appears to be somewhat restricted, Constables made presentment of all crimes and offences which occurred within their towns ; but there is now no general law directing or authorising Constables to make presentment of crimes ; they cannot therefore possess the authority to act as informing officers, except in particular cases, where they are expressly empowered. And if they do not possess this authority by statute, it certainly cannot be claimed as pertaining to their office at common law, as in England, constables have no power whatsoever as prosecuting officers, nor is there any such officer known to their laws ; a presentment can only be made by a grand-jury, and the only informations known, are those filed *ex-officio* by the attorney general, in the name of the king, those in which the king is only a nominal prosecutor, being filed by the master of the crown office, at the relation or complaint of some private individual or common informer, or informations quitam in the name of the king, and a subject, similar to quitam informations here. Moreover, the act relating to grand-jurors, provides that for all crimes, except capital offences, and those punishable with imprisonment in Newgate prison for life, in which cases a bill of indictment must be found by a grand-jury, presentment may be made by grand-jurors, or information may be exhibited by the attorney for the State, in the county where the crime was committed. This provision seems negatively to take away the authority of Constables to act as informing officers, by directing that all crimes where an indictment is not required, may be prose-

cuted by presentment or complaint of a grand-juror, or information by the attorney for the State.

Constables may act as informing officers for all breaches of the Sabbath, for all offences against the act, relating to licensing and regulating taverns, and suppressing unlicensed houses, for disturbing any religious meeting, whether on the Sabbath or any other day, for selling spiritous or other liquors, within two miles of any assembly of people in the field for religious worship, and for the prosecution of common drunkards, common idlers, common prostitutes, vagabonds, and other offenders who are liable to be sentenced to the work-house and house of correction, and perhaps in some other cases, especially provided for.

CHAPTER II.

Of the powers and duties of Constables as collectors of taxes, &c.

1. The State taxes must be collected by a Constable, as the law requires that one Constable shall be appointed in each town to collect the State taxes; town, society and other taxes may be collected by any person who may be chosen a collector, but it is customary to appoint constables to collect all town taxes. The practice is, to appoint one of the constables of each town, collector of the State taxes, and one or more collector of the town taxes. It is the duty of the town clerk in each town, annually, in the month of May, to return to the treasurer of the state the name of the constable appointed to collect the state taxes; and for neglect, he forfeits four dollars. It is the duty of the treasurer to make out and send his warrants, directed to the collector of any tax granted by the general assembly, in each town, at least three months before the time of payment of such tax, commanding him to levy, collect, and pay the same into the treasury of the state by the time appointed; where no time is fixed for payment, the tax must be paid before the last day of August in each year. The collectors of town taxes must collect and pay them to the treasurer of the town by the time limited.

When a town tax is voted, it is the duty of the select-

men to make out rate-bills for the same, under their hands, specifying the proportion each individual is to pay according to the list, and to apply to a justice of the peace, whose duty it is to issue a warrant for the collection of such tax, directed to the collector appointed for that purpose. The form of a warrant for the collection of taxes, is given in the statutes, page 245, which renders it unnecessary to give one in this work. A tax-warrant gives a collector the same power to levy and collect the tax, as an execution does to an officer to levy and collect the amount of a judgment; he can, if necessary, command the assistance of others in the same manner, and any person refuging to assist him incurs the same forfeiture as for refusing to assist a sheriff or constable in the execution of his office, provided the collector shall shew and read his warrant to the persons whose assistance is commanded. A collector must also proceed in nearly the same manner in the collection of taxes, as an officer does in the collection of an execution. Before an officer can levy an execution, he must make demand of the debtor of payment of the same; and a collector, before he can levy for a tax, must appoint a time and place for receiving the tax, and give to every person against whom a tax is made, reasonable warning and opportunity to pay the same. A question may arise under this provision, as to what is a reasonable warning and opportunity, or whether a general warning of the time and place, by advertisement in the public papers, or notice posted upon the sign posts and at public houses, in the town, would be sufficient to justify a collector in making a levy. As it is provided that the collector must give to *every person*, reasonable warning and opportunity, it would seem that they must have actual notice of the tax in the hands of the collector, and reasonable opportunity to pay the same. It is evident that a general notice in either of the ways mentioned, or any other, might not convey notice to many individuals whose names were in a tax bill, who consequently would have no warning or opportunity afforded them to pay their taxes. The clause "on failure of payment," taken in connection with the preceding part of the sentence, means, failure of payment after reasonable warning and opportunity have been given. There must be some neglect or default therefore, on the part of the person against whom the tax is made, before his

property can be taken. Actual notice and demand, with a reasonable time allowed to pay the tax, it would seem would justify the collector in making a levy, without any appointment of a time and place of receiving the taxes generally, as the object of the appointment of a time and place, is to give the persons warning, and an opportunity to pay their taxes, and actual notice and demand is answering this object more effectually; besides such notice and demand, with a reasonable opportunity, is appointing a time and place to each individual. No levy or distress can be made for any state tax, until within two months of the time the tax is payable.

When it becomes lawful for the collector to levy his warrant, he must take goods or chattels if they can be found, and proceed with them in the same manner as where personal property is taken on execution. If no goods or chattels are tendered, or can be found, the collector may levy his warrant on the real estate, or the body of any person against whom a tax is made, and commit him to gaol, where he must remain until the tax and costs are paid, or he is discharged by due course of law. The person committed to gaol may give notice, or cite one or more of the selectmen of the town, and take the benefit of the oath provided for poor debtors, in which case the town becomes responsible for the tax, and the costs occasioned by the commitment, and if such town neglect or refuse to pay the same, the collector has a right of action to recover the amount of the tax and cost, of such town, provided the commitment be made within eight months after such tax becomes due and payable. But demand must be made of the town before an action can be brought. And the collector is entitled to the same fees as is allowed to sheriffs for the levy of executions. When a collector levies his warrant on real estate, he must advertise the time and place of sale, three weeks in a newspaper printed in the same county or an adjoining county, six weeks before the time of sale; and at the time and place he must sell at public auction, sufficient estate to pay the tax, costs and charges, and give to the purchaser a warrantee deed thereof, to be lodged in the office of the town clerk, where the land lies, but to remain unrecorded twelve months; during which period, the owner, a creditor of the owner, a mortgagee of such land, a purchaser, or any other

person claiming any interest therein, has a right to tender to such purchaser the amount of the purchase money, with twelve per cent interest, whereby such deed becomes void, and must be delivered up to the person tendering or paying the money. But if the purchase money and interest is not paid within the year, the deed is to be recorded, the title is confirmed and complete. Where the person against whom the tax is, possesses only the interest of a mortgagor, or an equity of redemption in land, a sale cannot be made by metes and bounds, for any tax arising upon a list made up after the execution of such mortgage, but the collector must sell such proportion of the interest of the mortgagor against whom the tax is made, as the amount of the tax and charges bears to his whole interest in the mortgage premises. But for a tax arising upon a list made before the execution of a mortgage, the land may be sold by metes and bounds, the same as in other cases, provided the person has no other estate or lands, whereby the tax may be satisfied. An estate less than a fee simple, either for life or a term of years, may be sold for taxes, whilst it belongs to the person against whom the tax is made, but any estate in land, less than a fee, is not liable to be sold for taxes, after it has been transferred, or attached; neither is the interest which a person has in the right of his wife. But the real estate of which any person is seized and possessed in his own right in fee, stands charged with his lawful taxes, and may be sold for the same within one year after the taxes become due, notwithstanding any transfer thereof, or attachment thereon, provided such tax arose upon a list made up before the transfer or attachment, or other lien upon the land took place, and provided no other real estate, or personal, of such person, can be found sufficient to satisfy such taxes and the legal costs. In such cases the land transferred or attached, is liable not only for the amount of any tax which arose upon that part of the person's list arising from the assessment of the same land, but for the whole of his taxes arising upon a list made before the transfer of the land. No property which is by law exempted from being taken on execution for debt, can be distrained by a warrant for taxes.

Collectors have the same authority in other towns, as in that for which they are chosen, to collect taxes of non-residents, or persons residing in such towns, against whom

they have taxes in their rate-bills, and may at any time collect such taxes after the expiration of the year for which they are appointed.

The civil authority and select men of each town are authorised to abate the one eighth part of all State taxes, and to apply the same for the relief of the indigent or the unfortunate in the abatement in whole or in part of their particular rates, and a certificate of such abatement being made by the civil authority and select-men, the treasurer must allow the same to the credit of the collector of such tax.—But such eighth part must actually be abated, and not in whole or in part collected and retained in the town treasury, as this would defeat the object of the law, which is to relieve the indigent and unfortunate, and if such abatement was not actually made, the certificate would be untrue. A further abatement may be made, but the town will become responsible for the amount thereof.

When the collector of any State tax shall neglect and fail to pay and settle the same with the treasurer by the time appointed, the select-men may bring a suit against him, in the name of the town, and attach his whole estate, or his person, and the whole estate of which he is possessed, whether attached or not, shall be liable to answer the judgment that may recovered against him, notwithstanding any subsequent disposition thereof by such collector, or any subsequent demand or attachment by a creditor; or the State treasurer within four months, may issue an execution against such collector. And if the collector of any town or society tax shall fail to collect and pay the same by the time limited, the select men of the town, or committee of the society, may demand the arrearages due from any such negligent collector, and on failure of payment, may apply to a justice of the peace for an execution against him. And such justice is authorised to issue an execution for the amount of such arrearage against the goods and person of such collector, to be levied in the same manner as executions issued on judgments.

Collectors of state taxes are entitled to three and a half per cent on all the monies they may collect and pay into the treasury, and seven cents per mile for travel, provided they make a full settlement with the treasurer within twendays after the time limited in their warrant for the collec-

tion of any tax ; but if a settlement is not made within the twenty days, the collector is not entitled to any compensation (*a*).

2. It is the duty of the Constables, in their respective towns, to warn all the electors thereof, to meet on the first Monday of April of each year, at the usual place of holding elections, at nine o'clock in the morning. At least five days warning previous to the meeting must be given ; which may be done by posting up notice of such meeting on the several sign-posts of the town, and at such other places as they may deem necessary (*b*).

3. The Constables of each town, together with the civil authority, select-men and grand-jurors, on the first Monday of January, nominate the taverners for the town, and at the same time choose by ballot such number of judicious freeholders as is prescribed by law, to serve as jurors in the superior and county courts the year ensuing. No person can be a juror who has not a freehold estate set in the list at nine dollars or more (*c*).

4. It is the duty of every Constable, on receiving a warrant from the clerk of the superior or county court, authorising and commanding him so to do, to summon such number of the freeholders chosen for that purpose, as is specified in such warrant, to attend and serve as jurors at any session of such court. He must proceed to the office of the town clerk, and in the presence of such clerk, or if he is absent, in that of one of the select-men, or a justice of the peace, draw out of a box containing the names of the several jurors chosen for such town, written on separate pieces of paper, the number of jurors he is directed to summon, without seeing the names he draws before he draws them, and thereupon he must summon the persons whose names are so drawn, to attend and serve as jurors If any of the persons whose names are drawn, are dead, he must draw others in their room, and summon them. He must return his warrant to the clerk of the court, with his endorsement, certifying whom he has summoned, on pain of forfeiting to the treasury of the county, a sum not exceeding five dollars, at the discretion of of the judges of the court, unless he shall make reasonable excuse to the acceptance of such court (*d*).

(*a*) Stat. 451. (*b*) Stat. 185. (*c*) Stat. 45. (*d*) Stat. 45.

Form of Return on a Warrant of the Clerk.

H county, ss. H day of A. D. then by virtue hereof I proceeded to the office of the town clerk of the town of H and in the presence of A. B. clerk of said town of H , [or, he being absent, in the presence of C. D. one of the select-men of said town, or justice of the peace] and drew out of the box containing the names of the freeholders chosen to serve as jurors for said town, the names of the following freeholders, not having seen the same before they were drawn, viz. F. F., G. H., L. M., and O. P.; whereupon I summoned the said persons, so drawn from said box, to attend on the day of the court then to be in session at H , in and for the county of H , to serve as jurors in said court.

5th. Constables are authorized to sell creatures impounded, in certain cases, when no owner appears. When creatures are impounded, the owner of which is unknown, it is the duty of the person impounding them to advertise them, by setting upon the sign-post, in the town where they are impounded, and in two adjoining towns, a description of such creatures, with their natural and artificial marks, and the place where taken; and if a newspaper is printed in the same or an adjoining town, by publishing such description in such newspaper, and if no owner shall appear within five days after such creatures have been so advertised, the pound-keeper may remove them from the pound and procure them kept elsewhere, in such safe, and convenient manner, as he may think proper, without being liable for their safe keeping; and if no owner shall appear within sixty days thereafter, the impounder shall call two fence-viewers to view the fence of the enclosure where the creatures were taken, and if they adjudge it not to be a lawful fence, then such creatures shall be released, and the person impounding them shall pay the expense; but if such fence is adjudged to be sufficient and lawful, the fence-viewers shall estimate the damage done in such enclosure by such creatures, and either constable of the town may sell so may of them as will be sufficient to pay the damages, the poundage, and the reasonable expense of supporting and advertising them. The natural and artificial marks of the creatures so sold shall be entered in the town clerk's office, with an account of the charges, and the price for

which they were sold, and the overplus, if any, after the town clerk shall be paid for the entry, shall be delivered to the town treasurer, to be kept for the owner, if he appears within one year, otherwise it shall belong to the town (*h*).

6th. In cases of sudden and untimely death, or where a person is found dead, the manner of whose death is unknown, if there be no justice of the peace in the town, any constable thereof, may, of his own authority, summon a jury of twelve judicious men, to inquire of the cause and manner of the death of such person, and present a verdict thereof to any justice of the peace of the county. Such constable may administer an oath to the jury and direct their proceeding in the same manner as a justice of the peace, when an inquest is instituted by his authority.

CHAPTER III.

Of their Power and Duty in Serving Civil Process.

The most important branch of the authority and duties of Constables remains to be considered, and consist of the execution of process in civil and criminal cases. Constables, as we have already stated, have the same authority for the service of process within their towns, as sheriffs have within their counties. We will first examine the service of civil process, commencing with original writs.

1. *Of the Service of Summons.*

This is a form of process, the most simple imaginable, and the duty of the officer is equally plain and simple. A summon may be legally served, either by reading the same to the defendant named therein, or by leaving a true copy thereof, with an indorsement or certificate to that effect thereon made and attested, with the defendant or at his usual place of abode. Where there are two or more defendants named in the writ, whether they are described as partners having a company name or not, it must be read or a copy left with each of them, where they are all

(*h*) St. 378.

in this state, and the indorsement thereon made accordingly.

All writs returnable to the supreme court of errors, the superiour court, the county courts, and the city courts, where the defendant resides out of the limits of the city, must be served at least twelve days before the setting of the court, the day of service being included, and the day of the court being excluded; and all writs returnable before justices of the peace or the city courts, where the defendant lives within the city, must be served at least six days inclusive before the setting of the court (*i*). In actions against a sheriff or constable for any default in his office, or on a receipt for an execution, the writ must be served at least fourteen days inclusive as aforesaid, before the day of the court. When any community or corporation is sued before a justice of the peace, twelve days notice must be given, the same as other writs returnable to the superior or county courts. In actions against towns, societies, or other communities, the service is to be made by leaving a true and attested copy of the writ with the clerk of the same, or with either of the select-men of the town, or either of the committee of societies; and when other corporations are sued service is to be made by leaving a like copy with the clerk, secretary, or cashier of the same; and when any community or corporation incorporated by authority of this state, transact their business in the same, and have no clerk, secretary, cashier, or other officer, residing therein, the writ is to be served by leaving a copy with the agent of such corporation, residing in the state, or if there be none, at the house or place where such corporation transact their business and exercise their corporate powers (*k*).

In actions on joint contract or securities where all the defendants are not inhabitants of the state, the service of the process on such of them as are, is sufficient to maintain the suit against all, and if any are aggrieved by the judgment, they may be relieved by a new trial.

Where the defendant on being informed of the writ accepts service, it is not necessary to read it, but the endorsement must be the same as though it was actually read

(*i*) St. 36. (*k*) St. 131.

to him. The copy left with the defendant must be correct, and if there is any essential variance from the original it will abate. It is difficult to prescribe any precise rule as to what shall be deemed a material variance ; but no verbal variance between the copy and the original, will render the service bad, and where the court, the time of the session thereof, and the cause of action can be rightly understood, from the copy, the service will be good, notwithstanding any errors therein, which do not effect the merits of the cause (*l*). If the copy was defective, yet if the writ was also read to the defendant, the service will be good, and the officer will be permitted to come into court and amend or alter his endorsement, and certify that service was made by reading.

A writ may be served on the last day of service at any time before twelve o'clock at night : no writ can be served between the setting of the sun on Saturday and twelve o'clock at night on Sunday evening. The defendant can acknowledge the service of a writ without the legal notice, before, or during the session of the court, the same being entered on the back thereof and subscribed by him ; but one defendant, where there are two or more, cannot acknowledge for his co-defendants, although they are partners and he makes use of the company name ; neither can an attorney make such acknowledgement unless specially authorized for that purpose.

Where there are two or more defendants in a writ, part belonging to one town and part in another, it may be served by any constable on such of the defendants as reside within the same, and then deliver to a constable in the other town, and served on those of the defendants residing therein. But the writ must be directed to any constable of both, not to either constable of one such town or the other ; and each officer must make an endorsement thereon of his doings, and one of them return the writ. When a writ is lawfully directed to an indifferent person he must serve it in the same manner as a proper officer, and make the like return.

2. Of the Service of Attachments.

It is the duty of an officer serving an attachment, to

(*l*) Swf. Dig. 611.

make diligent inquiry and search within his precincts, for goods and chattels of the defendant, and if any can be found, or are tendered to him by the defendant, to attach the same to the amount specified in the writ, and take the same into his possession. If with due diligence personal estate could have been found and attached, and the officer neglects to do it, but attaches the body of the defendant, and afterwards such estate is disposed of, or attached by some other creditor, and the execution issued upon the judgment recovered in such action, is returned *non est inventus*, or the body taken thereon and discharged from gaol by taking the poor debtor's oath, the officer will be liable to pay the debt and all the costs. But an officer is not bound nor can he safely take personal estate where there is not sufficient to satisfy the debt, unless authorized and directed by the creditor, and would, without such direction, become personally liable for the deficiency (*m*). But if he takes the property in pursuance of the direction of the creditor, he will be justified, whether it is sufficient or not. He cannot take personal estate for part of the debt, and then take the body of the defendant, and if he should so do, it would be false imprisonment. But where the body cannot be found, it is the duty of the officer to attach personal property, if there is not sufficient to satisfy the judgment that may be recovered; he must in such cases take all the estate he can find; if he neglects to do it, he becomes personally liable (*n*). Where there is ground for doubt as to the sufficiency of personal property, or whether it belongs to the defendant, it would be advisable for the officer to call on the creditor to turn the property out to him to be attached, so that if it proves insufficient, or not to be the property of the defendant, he would be indemnified, although the body might have been taken, and after judgment, cannot be found on the execution; for whatever the officer may do by the special direction of the creditor, he will be safe as respects any liability to him, & the creditor will also be holden to indemnify him against any claims from a third person's being the owner of any property taken by his direction. But if the plaintiff refuses to turn out the property or give any direction, it would seem that the officer

(*m*) 4th Day 458 (*n*) Swif. Dig. 590.

must decide, at his peril, whether the property is sufficient, or belongs to the defendant, and that if he mis-judges and takes insufficient estate or property not belonging to the defendant, when the body might have been taken, and cannot be found on the execution, that he will be personally liable in the one case to make up the deficiency, and in the other, for the whole debt. Where an attachment issues against two or more defendants, who are partners, for a partnership debt, not the company property only, but the separate property of each defendant is liable to be attached, to satisfy the judgment, and if there was either partnership property or individual estate, of any one of the defendants, which could have been taken, and the officer neglects to do it, he makes himself liable in case the debt is lost. But in a special partnership, formed in pursuance of the late statute, the individual property of the special partners is not liable to be taken on a partnership debt; the company property or the individual estate of the general partners of such company must be attached, if sufficient can be found. Where an attachment is issued against a person for an individual debt, who is a member of a partnership, the partnership property cannot be attached and held to be sold on the execution, as in other cases, but the officer must attach the interest of the defendant, as one of the partners, in the partnership property, subject to the debts of the partnership, and a settlement of the partnership account between the members thereof (o). It would seem that the whole visible partnership property ought to be attached, and such attachment will be a lien on the defendant's interest in the partnership on a final adjustment of the company concerns. If a second creditor attaches the partnership interest of the defendant, he will have the same lien thereon subject to the settlement of the partnership accounts, and the debt of the first attaching creditor.

The stock or shares of any person in any bank, insurance company, turnpike company, or other corporation, may be attached, by leaving a true and attested copy of the writ of attachment, with an indorsement thereon, that such shares or stock have been attached, as in other cases,

(o) 2 Con. Rep. 514.

with the defendant, or at his usual place of abode, if within this State, and a like copy with the cashier of such bank, or the secretary or clerk of such company, or corporation; and such attachment will hold not only such shares or stock, but all the interest, rents, or profits, which may have accrued thereon, or may accrue previously to the sale of the same on execution (*p*).

When visible personal property is attached it is the duty of the officer to take it into his possession, and to remove it out of the possession of the defendant; and if he suffer it to remain in the possession of the latter, it may be attached and held by other creditors, and the officer become personally responsible. He may, however, take a receipt for the property, and let it remain in the defendant's possession; the usual mode is for the defendant, with some other responsible person, to execute a receipt, acknowledging their having received the property of the officer, and promising to re-deliver the same to him on demand, at any time within sixty days after the judgment which may be recovered in the suit. The attachment in such case has no effect to prevent the same property's being attached by any other creditor, or being sold to a *bona fide* purchaser, unless the person who becomes receipt's-man for the defendant takes the same into his possession. If the property is not redelivered the officer must look to the receipt, upon which he can maintain a suit when he has been obliged to satisfy the judgment recovered in the action, or is liable so to do; or is accountable for the property to the debtor. The property whether in the hands of the officer or the receipt's-man, is not holden to respond the judgment, but sixty days after the same is rendered. And if the plaintiff neglects to take out execution and make demand of the property within that period, the officer and the receipt's-man, where a receipt is taken and he has delivered the property over to the debtor, will be discharged and the property realized. And if the creditor lets the sixty days expire without taking out execution or making any demand on the officer for the property, the latter being himself discharged from his accountability for the property, cannot maintain an action against the receipt's-man for not deliv-

(*p*) St. 36.

ering the property on a subsequent demand, if it has been delivered over to the debtor (*p*). If the execution issued upon the judgment recovered in the action, is otherwise satisfied, the officer may maintain an action on the receipt on the ground of his liability to the debtor (*q*); and when judgment is not rendered for the plaintiff, the officer may recover against the receipt's-man if he is accountable for the property to the debtor. In an action by an officer against a receipt's-man it is a good defence for the defendant to shew that the property did not belong to the debtor (*r*). Where property has been attached by one creditor and taken into possession by the officer, or by the receipt's-man, it may, notwithstanding, be attached by another creditor, although the possession cannot be taken from the officer first attaching it, or his receipt's-man; yet it will be liable in their hands to satisfy the judgment that may be recovered on the second suit; and after the first has been satisfied out of the estate, the residue is liable to be taken and sold on the second execution (*s*). It is however the most convenient in such cases, to deliver the subsequent attachments to the same officer. A contrary principle has been adopted in Massachusetts, it having been decided there that property which has been attached and is in the hands of an officer cannot be attached by another creditor, because the second officer cannot obtain actual possession of it.

If for want of goods of the debtor his body is attached, and afterwards, before the expiration of the time of serving the writ, goods are discovered, the creditor may direct the officer to release the body and attach the goods, and if they are not within the precincts of such officer the plaintiff may take the attachment out of his hands and deliver it to another officer to attach such estate (*t*). In such cases it would be most proper and safe for the officer to make an endorsement of his having attached the body for the want of goods, and afterwards discovering personal property, or the same being tendered to him, that he released the body and attached the estate. If after the body of the defendant has been taken, goods sufficient to satisfy

(*p*) Kir. 40. (*q*) 1 Root 381. (*r*) 3 Con. Rep. —14 M. T. R. 224.
(*s*) 2 Con. Rep. 203. (*t*) 1 Con. Rep. 255.

the debt are tendered, the officer is bound to take them and release the body. When the defendant requests the officer to attend him to the place where his personal property is, it is his duty to go, and if he refuses and takes and imprisons the body he makes himself liable. When personal property is taken, although insufficient and the plaintiff directs the officer to attach the body, he will be liable for false imprisonment (*u*).

Wherever personal property is attached, a copy of the writ with an endorsement thereon, describing the property attached, must be left with the defendant, or at his usual place of abode, if within this state. If the defendant is not an inhabitant or resident of this state, and has property within the same which is attached, a copy must be left with the agent or attorney of the defendant, if he has any in this state. The attachment of visible property within this state, where the defendant does not belong to the state, gives our courts jurisdiction, and is sufficient service.

Where no personal estate can be found, the creditor may direct the officer to attach the real estate of the defendant if he chooses; but unless so directed, it is the duty of the officer to take the body. The defendant cannot tender real estate to avoid the attachment of his body. The plaintiff has his option to attach the land or take the body of the defendant, or he may direct the officer to take part personal estate and part real, but the officer cannot be justified in doing this unless directed. Where land is taken the officer must enter on to the same, to levy his attachment, and without this the attachment would not hold. When real estate is attached, a copy of the attachment, with an attested endorsement made thereon, containing a description of the land attached, must be left with the defendant or at his usual place of abode, if he belongs to this state; but if he is not a resident of this state, a copy is to be left with his agent or attorney within this state; and in all cases a like copy must be left at the office of the town clerk of the town where the land lies, which copies must be left within seven days after the land is attached, and before the time expires for the service of the writ. Where the defendant does not belong to this state and has

(*u*) Swf. Dig. 591.

no agent or attorney within the state, a copy must be left with him who has the charge or possession of the estate attached (*w*).

Personal property is held by the attachment sixty days after final judgment is recovered in the action, to respond such judgment; and real estate attached, is held four months after final judgment shall be obtained: and unless execution is levied on the same within these periods, the property is discharged from the attachment, unless the property attached was incumbered by a prior attachment, in which case the creditor has the same period to levy his execution, after such prior incumbrance is removed If the execution is levied on goods within sixty days after the judgment, it will be sufficient, although they are not sold until after that period; but in case of real estate, the execution must be levied, the land appraised, and the whole proceedings completed and recorded, or left for record within the four months; and where there are subsequent attachments, if the execution on the prior judgment is levied within four months, but the proceedings are not completed, and recorded within that time, a title will not be obtained, and the land may be held by the subsequent attaching creditor.

When no goods or chattels can be found, and the creditor does not direct the officer to levy on real estate, he must take the body of the defendant, if he can be found within his precincts. If there are several defendants, they must all be arrested. To constitute an arrest, there must regularly be an actual touching of the body; yet if the officer informs the defendant that he has an attachment against him, and says to him "you are my prisoner," and he submits to his authority, it will be an arrest; but words alone are not sufficient to constitute an arrest, unless the person submits, and recognises the authority of the officer over him. A sheriff said to a person against whom he had a writ, meeting him on horseback, "you are my prisoner," upon which he turned back and submitted. This was held a good arrest, although he did not touch him; but if he had fled, it would have been no arrest (*x*). Where a person was in a room, and an officer having a writ against him, said to him

(*w*) Stat. 37. (*x*) Salk. 79.

"you are my prisoner," and he submitted, and the officer had him under his command and in his power, it was held a good arrest, although he did not actually touch him (*h*). It is however, the safest and most advisable, in all cases, for the officer to touch the person, as this furnishes conclusive and indisputable evidence of the arrest. If an officer, having a writ against a person, says to him, you are my prisoner, or that he arrests him, yet the person does not submit, but flees, or having a weapon in his hand, keeps the officer from touching him, and retreats into his house, this would be no arrest, and the officer could not break the house to take him. When an officer calls assistance, any person assisting him may make an arrest as well as the officer, and their touching the person to arrest him will be sufficient (*i*).

It is an ancient principle of the common law, that a man's house is his castle, and that it cannot be broken, nor be entered without leave, unless a door be open, to execute civil process, whether to arrest his body or attach property (*k*). This legal inviolability, however, is confined to the outer doors, and after an officer has legally entered a house, he may, first making demand of entrance, break open any inner door, or any trunk or chest, having demanded them to be opened, to discover goods to attach. Contrary to the decisions in England, it has been decided by the superior court in this State, that the door of the apartment of each separate occupant in the same building is the outer door as to such occupant and apartment, and cannot be broken open (*m*). This principle of sanctuary, or protection from arrest, is confined to dwelling-houses and their apartments; barns, shops, stores, manufactories, and all other buildings, unless so connected with the house as to form an apartment thereto, may be broken open to arrest the body or attach property. Neither does a dwelling-house afford this protection, except to the occupant and the members of his family. Not only a man's children and domestic servants, but regular boarders, and those who have made the house their home, are considered as members of the family, and entitled to protection. But a stranger, or a mere visitor, cannot claim protection; neither can the

(*h*) Bull, N. P. 62. (*i*) Swift's Dig. 592. (*k*) 5 Co. 92.
(*m*) Swift's Dig. 593.

goods of one person be secreted and protected in the house of another ; and after first demanding entrance, and stating the object of it, an officer can be justified in breaking down the door, if necessary, to arrest a stranger, or to attach the goods of any other person, except members of the family, secreted or remaining in the house. Where a person has been legally arrested, and escapes into his house, the officer may break open the doors to retake him. The bail, or an officer or other person having authority from him, after demand of entrance, may break open the door to take his principal.

To constitute a breaking, it is not necessary that there should be actual violence ; if the door is closed and latched, although not made fast by locks or bars, and an officer opens it without consent, the entry is unlawful, and an arrest void. If an officer rap on the door, and the owner opens it to see who is there, and he forcibly rush in, with a weapon, and make an arrest, the entry and arrest are unlawful. If an officer enters by stratagem and fraud, it will be illegal. It has been decided by the superior court, that where another person in connection with the officer, procured admission, by holding out false pretences, and disguising his object, and who, when the officer came up and rapped, opened the door, whereby he rushed in, that the entry was unlawful, and all concerned, trespassers. An officer who entered a house down the chimney, has been adjudged by the superior court to be a trespasser, and subjected to heavy damages. If an officer raps at the door, and the usual assent to enter is given by the owner, or any member of the family, this is sufficient consent for him to open the door and enter.

It has been considered that if a sheriff make an unlawful entry, or break a house, to execute a writ, he may be sued as a trespasser ; but that the service of the writ, notwithstanding, will be good (*a*). This principle would seem almost entirely to render the protection nugatory. A different doctrine has been adopted in this state ; it has been decided by the superior court, that an officer, for taking goods in pursuance of an unlawful entry, was liable in trespass for the value of the goods (*b*). A person previously ar-

(*a*) 5 Co. 93. (*b*) Swift's Dig. 593.

rested, and who hath escaped, may be retaken on Sunday, or on Saturday or Sunday night, within the period in which civil process may not be executed, and bail make, take his principal and confine him until the next day, to surrender him.

When a Constable or other officer takes the body of a defendant on an attachment, it is his duty in all cases to take sufficient bail if offered by the person arrested, and if he neglects or refuses to do it, and commits the body to gaol, it will be false imprisonment. He is not, however, obliged to take bail, unless it is sufficient, which must be one or more substantial inhabitants of this State, of sufficient ability to respond the judgment that may be recovered in the action. The bail must become bound to the officer in a sufficient sum, conditioned that the person arrested appear before the court to which the writ is returnable, and thereupon the person must be discharged from such arrest; and if he is detained in custody after bail has been given, it is false imprisonment (*c*).

It is the duty of an officer who has taken bail, to assign the bail bond to the plaintiff on his request; and no action can be maintained against him, unless he refuse to assign the bail-bond, or has taken insufficient bail (*d*).

If the person arrested neglects, refuses, or is unable to procure bail, he must be committed to gaol; for which purpose the officer must apply to any justice of the peace of the county, and obtain a mittimus, stating the cause of his commitment, by authority of which, he is to be kept in prison until five days after the final judgment is rendered, and if execution is not levied on him within that time, he is discharged. A person committed to gaol on mesne process or attachment, is entitled to the privilege of bail, at any time previous to the session of the court, and it is the duty of the sheriff, having charge of the gaol, to take a bail if offered, and sufficient, and discharge the prisoner, and if he refuses or neglects to do it, the detention is false imprisonment (*e*).

On an attachment against husband and wife, both must be arrested; but the wife may be discharged until the husband procure bail for both. A minor, also, where he is lawful-

(*c*) Statutes, 62. (*d*) ib. 63. (*e*) ib. 62.

ly sued as for torts or necessaries, is liable to arrest the same as any other person.

Senators and representatives of the general assembly, are by the constitution privileged from arrest on civil process, during the session thereof, and for four days before and after any session. At all elections of officers of the State, or members of the general assembly, the electors are privileged from arrest during their attendance upon, and going to, and returning from the same, on any civil process (*h*). No member of congress, whether belonging to this state or any other, can be arrested, except for treason, felony, or breach of the peace, whilst going to or returning from any session thereof. Jurors, parties, and witnesses, attending upon any court, are privileged from arrest during their attendance, and going thereto, and if arrested, may be discharged, by motion to such court; but the officer making such arrest, is not liable for false imprisonment; for the privilege is considered as pertaining to the court and not to the person in attendance; and the court may at their discretion punish the officer or party procuring the arrest, for a contempt (*i*). But the arrest of a member of congress, of the legislature of this state, or an elector, in the cases stated, would be false imprisonment in the officer and the party procuring the arrest.

The law has extended its protection, also, to certain articles of personal property, which are protected from being taken and sold to satisfy debts, and which cannot lawfully be attached. These consist of apparel, bedding, and household furniture, necessary for upholding life; arms, military equipments, implements of the debtor's trade; one cow, any number of sheep not exceeding ten, and two swine, being the property of one person. And any person having a wife or family, there is in addition to these articles, an exemption of any quantity of wood not exceeding two cords, any quantity of hay not exceeding two tons, any quantity of beef or pork not exceeding two hundred weight, any quantity of fish, not exceeding two hundred pounds, any quantity of potatoes or turnips, not exceeding five bushels of each, any quantity of Indian corn or rye, not exceeding ten bushels of each, or the meal or flour manufactured therefrom; any

(*h*) Stat. 29. (*i*) Swift's Dig. 497.

quantity of wool or flax, not exceeding twenty pounds of each, or the yarn or cloth made therefrom, and one stove and the pipe belonging thereto; and also the horse, saddle and bridle, of any practising physician or surgeon (*a*). One pew in any meeting-house, being the property of one person, is exempted from being taken and disposed of for debt or taxes. All the aforesaid property, exempted from being taken for debt, is likewise protectdd from distress for taxes.

The same notice must be given to the defendant on an attachment as a summons, and all writs returnable to the superior or county courts, must be returned forty-eight hours before the session of the court; and those returnable before a justice of the peace, twenty-four hours. The superior and county courts may at their discretion receive writs, although not returned until after that time, by disallowing the officer's fees in the bill of cost. Where property is attached, if the writ should not be returned in season, whereby the suit should fail, and the same property had been subsequently attached by other creditors, so that the debt should be lost, the officer would be personally liable. Where two or more attachments against the same defendant, on the same or different days, that ought to be levied first which is first received (*b*).

Where a person has been arrested on mesne process or attachment, if, whilst the officer is conducting him to prison, he is rescued or taken by force out of his custody, he is not liable, and may return the rescue on the writ; for as he is bound to arrest the person whenever he can find him, and as he cannot be supposed to apprehend resistance, or be justified in always taking the *posse comitatus*, or power of the county with him, it would be unreasonable to make him liable (*c*). But on final process or execution, a rescue is no justification to an officer, as he has an opportunity to take with him the power of the county; and on mesne process, after the prisoner is within the wall of the gaol, a rescue is no justification to the sheriff. Where goods taken on mesne process are rescued, the officer is not liable, and may make return of the rescue; but if he takes goods on an execution and returns a rescue,

(*a*) Stat. 56. (*b*) 1 Ld. Raym. 252. (*c*) Cro. Jac. 419.

he becomes liable to the amount of the goods (*d*). In case of rescue on mesne process, the plaintiff has his remedy against the rescuers only, whether the rescue is of the body or goods; but in a rescue on execution, he has a remedy against the rescuers or the officer, and the officer can also maintain an action against the rescuers.

3. *Of service of foreign attachment.*

Foreign attachment, or what is commonly called a factorising suit, is the same as any other writ of attachment, except that the defendant is described as belonging out of the State, and as being an absent or absconding debtor, and that there is a direction to the officer, to leave a copy of the writ with a certain person who is the agent, debtor, factor, trustee and attorney of the defendant, and has of the moneys and goods of the defendant in his hands. If A is an absent and absconding debtor, and B has goods of his in his possession, concealed, so that they cannot be attached, or is owing A., any creditor of A., may bring an action of foreign attachment. It is not necessary that the defendant should actually have absconded; any person who is out of the State, or a person of any other State, and who hath never resided in this State, who has property within this State secreted in the hands of another person, or if any person within this state is indebted to such debtor, a suit of foreign attachment may be brought against him, and service made by leaving a copy of the writ with such debtor of the absent debtor, or the person having his property.

It is the duty of the officer having a writ of foreign attachment, to leave a true and attested copy thereof, at least fourteen days before the session of the court to which it is returnable, with the person who is described in the writ as the absent and absconding debtor's attorney, factor, trustee, agent or debtor, or at his or their usual place of abode, agreeably to the direction of the writ; and such service is sufficient to give our courts jurisdiction. Where there are two or more persons, whether partners or not, who are described as the debtors, &c. of the defendant, a copy must be left with each.

(*d*) Cro. Eliz. 639.

4. *Of service of Petitions.*

All petitions or memorials to the general assembly, of an adversary nature, or where any other person or persons are concerned in the estate, matter or thing in controversy, must have a citation annexed to such petition, signed by any justice of the peace, with a certificate of two dollars duty paid thereon, giving notice to the adverse party to appear and be heard, if he see cause; and must be served by leaving a copy of the petition and citation with the adverse party, or at his or their usual place of abode, at least twelve days before the same is returnable. And all petitions of an adversary nature, to the general assembly, must be made returnable on Tuesday next after the opening of the session, and must be returned to the Secretary on or before the day next preceding the day of return.

All petitions to the superior, county or city courts, must be signed by the party, and a citation or summons annexed thereto, signed by a justice of the peace, with a certificate of duty the same as on other writs, notifying the defendant to appear before the court; and must be served by reading or leaving a copy of the petition and citation with the respondant, or at his usual place of abode, at least twelve days before the sitting of the court. And where the respondant or defendant lives out of the State, the court to which it is preferred, or hath cognizance thereof, or either judge of such court in vacation, have power to make such orders relative to the notice that shall be given, as they may deem reasonable; and notice having been given in pursuance of, and agreeably to the mode presented by such court or judge, and proof thereof made, shall be deemed sufficient service.

5. *Of service of Writs of Error.*

Writs of error must be signed by a judge of the court to which they are returnable, who must take good and sufficient bond with surety that the plaintiff in error shall prosecute his suit to effect, and answer all damages in case he fail to make his plea good, and certify a duty on all writs of error returnable to the superior court of one dollar, and of two dollars on those returnable to the supreme court of errors. Service is to be made by leaving a copy with the defendant in error, or at his usual place of abode, with the

usual notice ; and if the defendant be not a resident of this State, then the copy is to be left with the attorney who appeared for the defendant in error in the original action. Whenever a writ of error is brought on a petition for a high way, it may be served by reading the same, or leaving a copy thereof with any three of the first signers of the petition, or at their usual place of abode.

Whenever a writ of error, or petition for new trial, is brought in any criminal case, service must be made by leaving a copy with the attorney for the State, in the county where such writ of error or petition for a new trial may be brought, or by reading the same in the hearing of such attorney.

6. *Of the service of Writs of Replevin.*

Writs of replevin are either to replevy creatures distrained or impounded, or goods attached. A suit wherein goods attached are replevied, is either by the defendant in the original suit, or another person who claims to be the owner of the goods. In an action of replevin, where cattle are impounded, or by any other person than the defendant in the original suit, where goods are attached, it is the duty of the officer to replevy to the plaintiff, the cattle or goods described in the writ ; that is, to take them and deliver them into the possession of the plaintiff ; and for this purpose he may if necessary command the power of the county, and after having demanded entrance, break open gates or doors to take the cattle or goods described in the writ. He must also read the writ or leave a copy thereof with the defendant, and return the same as in other cases. In an action of replevin by any person whose goods have been attached in a suit against himself, the only object of the suit is to put him in possession of the goods, by substituting the bond which must be given, in lieu thereof, as security to the plaintiff in the original action ; and the writ does not contain a declaration of trespass, or charge the defendant in the action of replevin, (the plaintiff in the original action,) of having taken the goods wrongfully, as in the other two cases. The officer must replevy the goods to the plaintiff in suit of replevin, read the writ to the plaintiff in original suit, or leave with him a copy, and return the same with an endorsement of his doings thereon to the same court to

which the writ on which the estate attached and replevied, is returnable. A writ of replevin of this kind, must be made returnable to the same court as the original writ, and it is usual to deliver them to the same officer to be served, that they may be returned with the first writ; they may, however, be served by any other officer; but if the officer serving such writ, fails to return it to the court to which the writ of attachment is returnable, he is liable to pay to the plaintiff in such writ of attachment, double damages, to be recovered in an action brought against him for such neglect. It would seem from the statute, that if the writ should be made returnable to a different court from that to which the writ on which the goods were attached, is returnable, and the officer should return it according to the direction in the writ of replevin, he would be liable. It is important, therefore, that before he serves the writ, he satisfy himself that it is made returnable according to law, that is, to the same court, and if before a justice of the peace at the same time as the writ of attachment.

7. *Of the service of Writs of Habeas Corpus.*

Writs of habeas corpus may be issued by any judge of the superior court, or any judge of the county court, during the session thereof, or the chief judge, during vacation, on application being made, accompanied with an affidavit of the person in whose behalf the application is made, or of any other person, alleging that he verily believes the person on whose account the writ prayed for, is illegally confined, and deprived of his liberty. Such writ is to be directed to any proper officer, who is to serve the same, by putting into the hands of the person who has the custody of him, who is directed to be brought up, on such writ, a true and attested copy of said writ; and he must make immediate return of the same, with his doings thereon endorsed, to the judge issuing such writ, on pain of forfeiting fifty dollars to the person so held in custody. This writ, which is considered as one of the great bulwarks of English liberty, is very seldom applied for, or issued in this country, so extremely rare are encroachments upon personal liberty. Where there is no power exercised, except what is derived from the people, and where oppression is unknown, the writ of

habeas corpus possesses much less importance than in other countries, as a barrier of civil liberty.

Writs of *scire-facias*, may be either a summons or attachment, and are to be served and returned in the same manner as any other writ.

CHAPTER IV.

OF FORMS OF RETURNS ON MESNE PROCESS.

1. *Endorsement on summons served by reading.*

H county ss. H , day of A. D. ; then I read this writ, in the hearing of the within named defendant.

Test. A. B. Constable.

To travel to serve and return, 10 m. 50
Reading, - - - - 9

$ 59

Where served by copy.

H county ss. H , day of A. D. ; then I left a true and attested copy of this writ, with the within named defendant. [Or, at his usual place of abode.]

Test. A. B. Constable.

On writ against corporation.

H county ss. H , day of A. D. ; then I left a true and attested copy of this writ with C. D. town clerk, [or select-man] of the within named town of H .

Test. A. B. Constable.

Endorsement on the Copy.

This is a true copy of the original writ.

A. B. Constable.

On Subpœna.

H county ss. H day of A. D. ; Then I read this writ, in the hearing of the several persons within named.

Where service cannot be made for want of time.

This writ came so late into my hands, that I had not time to make service of the same.

Where on joint contracts part of the defendants are not residents of this State.

Then I read this writ in the hearing of the defendant, A. B., the defendants, C. D. and E. F. not being inhabitants of this State.

2. FORMS IN SERVICE OF ATTACHMENTS.

Where goods are Attached.

H county ss. H , &c. Then, by virtue hereof, and by the direction of the creditor [if the fact is so] I attached a certain bay horse, the property of the within named defendant, and on the seme day left with him (or at his usual place of abode) a true and attested copy of this writ, with my said doings thereon endorsed. [If the defendant is not a resident of this state, the endorsement will be :] and on the same day I left an attested copy of this writ with J. S. of the agent of the defendant, he not being an inhabitant or resident of this State.

Where goods are attached and rescued.

Then, by virtue hereof, I attached, as the property of the within named defendant, a certain bay horse, and took the same into my possession, and on the same day delivered to the said defendant a true and attested copy of this writ, and my said doings thereon endorsed ; and afterwards, whilst I had said horse in my custody, viz. on the day of at A. B., C. D. and E. F. and sundry other persons, to me unknown, with force and arms, and with dangerous weapons, made an assault upon me, and with like force and actual violence, did forcibly seize and rescue said horse out of my custody ; and I have not, on diligent search, been able to find or retake said horse, and whereby I cannot have the said horse, to answer the demand in this writ ; and I can find no other goods of the said defendant within my precincts, whereof to attach.

Where the goods are destroyed, and without default of the officer.

Then, by virtue hereof, I attached, as the property of the defendant, a certain bay horse, and took the same into my custody, to have the same to answer the demand in this

writ, and on the same day left a true and attested copy hereof, and of my said doings thereon endorsed, with the said defendant; and afterwards, viz. on the day of the said horse died of a disorder called the botts, and the said defendant hath no other goods or chattels within my precincts, whereof to attach.

Where bank or other stock is attached.

Then, by virtue hereof, I attached five shares of the stock of the Phœnix Bank, as the property of the defendant herein, by leaving a true and attested copy of this writ, and of my doings hereon endorsed, with G. B. cashier of said bank, and on the same day I left a true and attested copy hereof, with my said doings endorsed thereon, with the said defendant.

Endorsement on the copies.

[The copy must not only be a copy of the writ, but of the endorsement on the same, excepting that part of the endorsement stating the leaving of the copy, and including the attestation and signing.]—This is a true copy of the original writ, and my endorsement thereon.

Where partnership property is attached for the individual debt of one of the partners.

Then by virtue hereof, and by direction of the creditor [in all cases where the plaintiff gives direction, it is most safe to state it] I attached all the following property, and all the right and interest the within defendant hath therein, the same belonging to him in partnership, with A. B. and C. D., partners in company, under the name and firm of A. B. & Co. and thereupon, on the same day, left a true and attested copy of this writ, with my doings thereon endorsed, with the said defendant herein.

Where neither goods nor the body can be found.

Then, by virtue hereof, I made diligent search for goods and chattels of the defendant herein, throughout my precincts, whereof to attach, and could find none; I also made diligent search for the defendant, to attach his body, but could not find the said defendant within my precincts; whereupon I left a copy hereof at his usual place of abode.

[The copy of an attachment left at the defendant's usual place of abode, is good service as a summons, and to hold the party to trial.]

Where the body is arrested and bail taken.

Then I made diligent search throughout my precincts, for goods or estate of the within named defendant, whereof to attach, but could find none, and for want thereof I attached the body of the said defendant, read this writ in his hearing, and took sufficient bail for his appearance at court.

Bail Bond.

Know all to whom these presents may come, that we, A. B. and C. D., both of H in the county of H are jointly and severally bound and obliged to E. F. of said H Constable of said town of H in the sum of dollars, to be paid to him, the said E. F. his certain attorney, executors, administrators or assigns; to which payment well and truly to be made and done, we bind ourselves jointly and severally, and each of our heirs, executors and administrators, firmly by these presents.

Signed and sealed by us, this day of A. D. .

The condition of the above obligation is such, that whereas the above bounden A. B. is arrested at the suit of G. H. by writ duly issued, dated the day of demanding the sum of damages, returnable before the county court to be holden at H within and for the county of H on the Tuesday of A. D. ; now if the said A. B. shall appear before said court and answer to said action, then this obligation to be void, otherwise to be in force.

A. B. and seal.

Signed, sealed, and delivered, in presence of } C. D. and seal.

[Where the writ is returnable before a justice of the peace, the condition will be as follows:] The condition of the above obligation is such, that whereas the above bounden A. B. is attached at the suit of G. H. of by writ dated the day of A. D. , demanding the sum of dollars, and returnable before J. P. justice of the peace for the county of H at his dwelling-house in H in said county, on the day of A. D. at the hour of o'clock;

now if the said A. B. shall appear before said justice, J. P. at the time and place above written, and answer to said action, then the above obligation to be void, otherwise to be in force.

Assignment of Bail Bond.

I hereby, at the request of the within named plaintiff, and in pursuance of the statute in such case provided, assign to him the within bail bond.

A. B. Constable.

Where the defendant is arrested and committed to gaol.

Then, by virtue hereof, and for want of goods and chattels of the within named defendant, whereof to attach, I arrested his body, and he having neglected and refused to find sufficient bail for his appearance at court, and by virtue of a mittimus duly issued for that purpose, I committed the said defendant into the custody of the keeper of the gaol in and for said county, therein to be kept until delivered by due course of law.

Mittimus.

To A. B. keeper of the gaol in and for the county of H Greeting—Whereas O. P. of was this day arrested by A. B. constable of the town of H in the county of H by virtue of a writ of attachment duly issued by J. P. justice of the peace for said county of H in favour of C. D. against the said O. P. demanding dollars, and returnable to the county court next to be holden at H in and for the county of H on the Tuesday of A. D.; and the said O. P. having neglected and refused to procure bail for his appearance before said court, to answer to said cause: These are therefore, by authority of the State of Connecticut to command you to receive the said O. P. into your custody, and him safely keep within said gaol, until delivered by due course of law. J. M. Justice of the Peace.

Where there is an arrest and rescue.

Then, by virtue hereof, and for want of goods and chattels of the within named defendant, whereof to attach I arrested his body, and he neglecting to find bail, was proceeding with him to the gaol of said county, to commit him to prison, when, at in said county, A. B., C D. and E. F. and sundry other persons to me unknown, with force

and arms, and with offensive and dangerous weapons, made an assault upon me, and then and there, with like force and actual violence, rescued and took the said defendant out of my hands and custody, whereby I cannot have him forthcoming, to answer the demand in this writ; and after diligent search, the said defendant hath not since been found by me within my precincts.

Where from sickness the defendant cannot be removed.

Then, by virtue hereof, and for want of goods and estate of the within defendant, whereof to attach, I arrested his body, who then was, and hath since remained until the last day of the return of this writ, so sick that he could not be taken into custody without imminent danger to his life, wherefore I cannot have him to appear before said court as commanded herein.

Where the body is arrested, released, and goods attached.

Then, by virtue hereof, and for want of goods of the within defendant, there found by me, within my precincts, whereof to attach, I arrested his body, and he neglecting to find bail, I was proceeding with him to commit him into the custody of the keeper of the gaol of said county, when the said defendant tendered and offered to me to be attached on said writ, in satisfaction of the demand therein, and in discharge of his body, a certain gold watch, the property of the defendant, whereupon I released the body of the said defendant from my custody on said writ, and by virtue thereof, attached the said watch, and on the same day left with the said defendant an attested copy of this writ, and of my doings endorsed thereon.

Where real estate is attached.

H county, ss. H , day of A. D. .

Then, by virtue hereof, for want of goods and chattels, and by the direction of the plaintiff, I attached all the right, title, and interest of the within named defendant, in a certain parcel of land situated in said H and bounded and described as follows: [here bound and describe the land;] and on the day of I left with the said defendant, (or at his usual place of abode) a true and attested copy of this writ, and of my endorsement of said doings made thereon;

and on the same day I left a like copy, containing a description of said land, in the office of the town clerk of said town of H within which said land is situated.

[If the defendant is not a resident of this State, and has an agent or attorney within the State, the endorsement will be, after describing the land :]—and on the day of A. D. the said defendant, not being a resident of this State, I left a true and attested copy of this writ, and of the endorsement of my said doings made thereon, with S. T. of the agent of the defendant, and on the same day a like copy in the office of the town clerk, &c.

[If the defendant has no agent or attorney in this State, then a copy is to be left with the person who has possession or charge of the estate attached, and the endorsement will be as follows, after the description of the land attached :] and on the day of A. D. I left a true and attested copy of this writ, and of the endorsement of my said doings thereon, with R. R. of who has the charge and possession of said estate, the said defendant not being a resident in this State, nor having any known agent or attorney in the same ; and on the same day left a like copy in the office of the town clerk, &c.

Endorsement on the copies.

[The copies must contain not only a copy of the writ, but a copy of the endorsement made thereon, except that part of the endorsement which states the leaving of the copies, with the attestation or signing of the officer, and must contain the following certificate :]

The above and within is a true copy of the original writ, and of my endorsement of my doings thereon.

A. B., Constable.

3. OF RETURN ON FOREIGN ATTACHMENT.

Where the defendant is an inhabitant of this State, or has resided herein.

H county ss. H day of A. D. ; then by virtue hereof, I attached all the goods and effects of the within named defendant, in the hands of J. S. described herein, as the agent, debtor, factor, trustee and attorney of the said defendant, by leaving with him (or at his usual place of abode) a true and attested copy of this writ, more than fourteen days before the day the same is returnable ; and

on the same day I left a copy hereof, duly attested, at the last usual place of abode of the within named defendant, in this State.

Where the defendant has never resided in this State.

Then by virtue hereof I attached all the goods and effects of the within named defendant in the hands of J. S. of , described herein as the agent, debtor, factor, trustee and attorney of the said defendant, by leaving a true and attested copy of this writ at the usual place of abode of the said J. S. more than fourteen days before the day of return of the same.

4. OF RETURN ON PETITIONS.

H county ss. H day of A. D. ; I then read this petition and citation in the hearing of C. D. the within named respondant.

Where served by copy.

I then left a true and attested copy of this petition and citation, at the usual place of abode of C. D. the within named respondant.

5. OF RETURN ON WRIT OF ERROR.

H county ss. H day of A. D. ; I then made service of this writ by leaving a true and attested copy hereof with C. D. the within named defendant in error.

In a criminal case.

I then made service of this writ by leaving a true and attested copy hereof with J. S. attorney for the State, within and for the county of H .

In case of Petition for Highway.

I then made service of this writ by leaving a true and attested copy hereof with R. R. of one of the three first signers of the petition for the laying out of said highway.

6. OF RETURN ON REPLEVIN.

Where Cattle are Impounded.

Then by virtue hereof I replevied to A. B. the within named plaintiff his beasts described herein, unlawfully distrained and impounded as herein stated by C. D., and on the same day left a true and attested copy of this writ, and

of my doings endorsed thereon, at the usual place of abode of the said C. D. the within named defendant.

[On a writ to replevy goods attached in favour of any person not the defendant in the original action, and who claims to own the goods, the return will be the same, as where cattle impounded, are replevied.]

Where the beasts or goods cannot be found.

Then by virtue hereof I made diligent search within my precincts for the goods, [or beast, as the case may be,] described herein, whereof to replevy, but could not find the said goods, the same having been eloined by the within named A. B. to places to me unknown, so that I could not replevy to the plaintiff the said goods as herein commanded; and on the same day I left a copy of this writ, duly attested, at the usual place of abode of the said A. B. the within defendant.

Where goods attached are replevied by the defendant in the original suit.

Then by virtue hereof I replevied to the within named C. D. the goods described herein, attached at the suit of A. B. against the said C. D. and read this writ in the hearing of the said A. B.

7. OF ACTION ON WRIT OF HABEAS CORPUS.

Then agreeably to the direction herein, I made service of this writ by putting into the hands of the within named A. B., who hath the custody of C. D. mentioned herein, a true copy of the same duly attested.

CHAPTER V.

OF THE SERVICE OF FINAL PROCESS IN CIVIL CASES.

When final judgment is rendered in any cause, the last and most important thing remains to be done, which is to execute the judgment, or give the party who is entitled to it, the benefit and enjoyment of the same. And for this purpose, final process or a writ of execution is issued, directing the officer to levy the amount of the judgment and

pay the same to the party in whose favour it was rendered, or in an action of ejectment, to put the plaintiff into possession of the land, or to do whatever may be necessary to enforce and enter into effect the judgment. We will consider first the duty of an officer in serving or executing an ordinary writ of execution.

1. *Of the Service of Writs of Execution in Ordinary Form.* All executions issued upon any judgment of the superior or county courts, must be returnable to the next term of the court, or within sixty days from the date; and those issued by a justice of the peace, must in all cases, be made returnable in sixty days from their date: if granted for any shorter or longer time, they would be illegal and void. An execution may be directed by the superior or county courts, or the clerks of those courts, or by a justice of the peace, on any judgment recovered before him, to the sheriff of any county in the State, and the constables of any town thereof; but it cannot be altered by any other person and directed to any other officer, and where this was done, and the debtor arrested by such officer, the arrest was adjudged illegal, and the debtor discharged therefrom by writ of habeas corpus. Neither can the party or any other person, except the authority granting the same, alter the date of an execution to extend the life of it, and if this should be done the execution would be void, and the acts done in pursuance of it illegal, and the officer a trespasser.

An execution may be renewed or an alias or second execution granted by the authority from whom the same issued; but this cannot be done until the first is returned, nor until after the expiration of the sixty days.

The alias execution may be ante-dated when issued, but must not be dated back so as to bear date within the first sixty days. It is a common practice with justices of the peace to renew the first execution, by altering the date, and there can be no objection to this, when it has not been in the hands of an officer or any proceedings had therein; but if any thing has been done on the execution, or any return is made thereon, it should be kept on file as a part of the records of the cause, and a new execution granted, which should contain a copy of the endorsement

on the first. If the plaintiff or defendant be dead, or where the execution has been levied on the body of the defendant and he has been discharged from gaol by taking the poor debtor's oath, an alias execution cannot be issued ; but an action of scire facias or debt on the judgment, must be brought and a new judgment obtained. But where an execution has been endorsed satisfied, by mistake, or is apparently satisfied by a mistaken levy, as when goods are levied on and sold, that were the property of another person, or where land supposed to belong to the defendant, but which in fact belonged to another person, is set off thereon, or where land belonging to the defendant as tenant in common, or his interest in mortgaged estate is set off by metes and bounds, whereby the plaintiff gets no title, the county and superior courts grant an alias execution on motion. The motion must be in writing stating the grounds of the application. A justice of the peace under the same circumstances, may issue a second execution, but he should require a motion or statement in writing, containing the reasons and grounds of the application ; and should require proof of the truths of the facts contained in such motion, and certify thereon that the same were found to be true, and preserve the same on file ; otherwise it would appear from his records that a second execution had been issued after the judgment had been satisfied.

An execution in common cases contains a recital of the judgment, and a command to the officer to levy of the goods, chattels and lands of the debtor, and the same cause to be disposed of according to law, to satisfy the judgment, and his fees ; and for want thereof, to take the body of the debtor, and him commit to the keeper of the gaol in the same county.

It is the duty of an officer having an execution in his hands to execute, to make demand of the debtor of the sums contained in the execution ; the demand must be made within his precincts, and regularly he should repair to the debtor's usual place of abode and make the demand there ; but a demand any where within his presence is sufficient. If on demand of the sum due on the execution and of his fees, the debtor neglects or refuses to pay the same, the officer must endorse on the execution, the time and place of his making such demand, and thereupon must levy the

execution on the personal estate of the debtor, excepting such articles as are exempted by law from being taken for debt, and on those when turned out by the debtor. We noticed the articles exempted in treating of the service of attachments, page 213. A description of the property taken must be set up on the sign-post in the society where the same was seized, and accompanying the same a notice that the property will be sold at the place where posted, at public vendue, at the end of twenty days, specifying the day when the sale is to take place. And in those societies from parts of two or more towns, the constables of such towns shall have the same power and authority where the sign-post shall be without the limits of the town to which they belong, as other constables have within their respective districts. There appears to be a mistake in this paragraph in the statute; the word society is evidently used instead of that of town. If the debtor does not pay the execution and charges within the twenty days, the officer, on the day of sale, at the beat of the drum, must dispose of so much of the property posted, to the highest bidder, as is necessary to pay the execution, and the lawful fees and expenses, which have accrued, and the overplus, if any, he may return to the debtor (*a*). When he levies on goods the officer must take them into his possession, and remove them out of the possession of the debtor, or they may be attached or taken by any other creditor, in which case he will become liable for the debt. He must also produce the goods taken, at the post, for sale, when the articles can be removed; but when, from their nature or bulk, this cannot be reasonably done, they may be sold by samples or description. An execution may be levied on money and the same applied to the payment thereof: bank bills are considered as money forming the currency of the country, and may be taken and applied as such. Not only the articles of property exempt, but any personal property may be so situated that it cannot be taken and sold on execution. Goods pawned for debts, or let for hire, for a period of time, or distrained or attached by a prior attachment, and have been previously taken on execution, and in all cases, where the owner has not the right-

(*a*) St. 56.

ful possession, cannot be taken and sold on execution. If however, the creditor purchase or procure the right of the person having an interest therein, they may be taken; and where goods are pawned for debt, it would seem that if the creditor would pay or tender to the pawnee the amount of his debt, for which the goods are pawned, he might be justified in taking them.

Where goods are attached by a subsequent attachment, they are held subject to the claim of the prior attachment, and if the prior creditor does not take out execution and levy on the goods within sixty days after the final judgment, they may be taken and sold on the execution issued upon the judgment obtained in the subsequent suit. If the prior attaching creditor has the goods taken on his execution within the sixty days and sold, what there is left, after paying his debt and charges, are held for the subsequent creditor, and must be levied on by him within sixty days after the sale on the first execution. It is equally reasonable and necessary, that a creditor should have the right of levying his execution on goods which had previously been levied on, and hold the same, subject to the prior claim as it is that goods may be taken and held by subsequent attachment. It is believed there can be no objection to this, and that the levy of an execution on goods previously levied upon, which give the creditor a lien thereon subject to the rights of the prior creditor; and that the same might be posted, with a notice that such part thereof would be sold, as might remain after the first execution had been satisfied therefrom, & as might be necessary to satisfy the subsequent execution and charges. But in such a case, and in all the cases stated where a third person has a lien upon goods, and the debtor has not the legal possession of them, it is not the duty of the officer to take them unless directed by the creditor. In case the property consists of an entire and indivisible article, as a horse, a subsequent levy may be made upon it, and the same posted for sale, as in other cases, and notice thereof given to the officer who had levied the prior execution thereon, and it would seem that he would be obliged, after satisfying his execution and costs, to pay the overplus, to the officer making such subsequent levy; instead of paying the same to the debtor.

Where a subsequent attachment is levied on a horse the avails thereof, after satisfying the first judgment, must be

applied to the judgment recovered in the subsequent attaching suit, and the reason is the same where the property is taken on executions. Choses in action, notes, bonds, and accounts, cannot be levied on; but it is believed, that a negotiable note or bill of exchange, payable to bearer, or if payable to order indorsed in blank, by the payee, so as to be transferable by delivery, might be levied on and sold like other personal property (*n*).

Corn, or other crops, growing, where the debtor has no interest in the soils, is a chattel, and may be taken and sold on execution, standing in the field, or if it is in a situation to harvest, within the twenty days after the levy, it may be harvested and sold. If sold growing, the officer can give a bill of sale of it, and if the owner of the land should prevent the purchaser from harvesting it, an action of trespass will lie against him (*o*). This is according to the English decisions, and those in the State of New-York and Massachusetts; the principle has not been sanctioned by our courts, but there can be little doubt it will be recognized as law in this State. Where the debtor owns half, or a certain part of growing crops, his share or part may be levied on and sold in the field standing, or harvested, and divided, and his share only sold. The whole of a debtor's growing corn or rye cannot be sold unless he has ten bushels which has been harvested, that quantity being protected from being taken. We apprehend that growing crops cannot be taken where the debtor owns the land also; but if there is no personal estate the execution must be levied on the land, and the same appraised, including the crops, and then if the debtor should remove the crops before the creditor could obtain possession, he might after obtaining possession, maintain an action of trespass against the debtor for the damage.

Whatever belongs to the freehold and is a part of the realty, cannot be levied on, and separated from the realty and sold as personal estate. The common law principle is, that whatever goes to the heir is a part of the realty, and whatever is assets in the hands of the executor is personal estate. This rule is of little use, as it must still be determined what articles descend to the heir, and what go to

(*n*) Swf. Dig. 796. (*o*) 9 John. 108.

the executor. Manure in heaps, or where it can be separated from the soil, is personal property, and may be levied on. Cider-mills and barns erected by tenants for their own convenience, may be removed by them, and may doubtless be levied on by their creditors and sold as a personal chattel, and then removed by the creditor, during the term of the tenant (*e*) It is said that leases or terms for years, being chattels, may be levied on and sold for personal estate (*g*). It is true that a term for years is, at common law, considered a chattel; it is not however a personal chattel, but a chattel real, and is a part of the realty. If the interest a debtor has in a term for years, may be taken and sold as personal estate, the principal must extend to all leases, for however long a period, and it is evident that long terms comprise the principal value of the estate; and if they are taken and sold as personal property, it will be violating the spirit of the law, which requires that real estate shall not be sold on execution, but appraised off; and it would be an equal violation of our registering act, (which forms a great principle in the laws of this state,) requiring that all transfers of land shall be recorded in the town where the lands lie. When real estate is levied on, and set off, on execution, the proceedings must be recorded in the records of lands of the town where the estate lies, without which the title is not acquired; but if a term, which may comprise the principal interest, is sold as a personal chattel, there will be no evidence of the transfer and conveyance in the records of lands in the town, as the officer is not required to leave a copy of his execution and doings thereon, and if he should, it would be of no avail. But how can an officer convey a term for years by a bill of sale, when it is expressly provided by statute that no lease for a longer period than one year, shall be valid, unless acknowledged and recorded, the same as a deed. If the debtor cannot himself sell a term for a greater period than one year, otherwise than as real estate, can a creditor by levying on it, acquire a right that the owner did not himself possess? Is the officer to give a deed or lease executed with the requisite form and solemnities? What law is there for this? The statute has placed terms

(*e*) Swf. Dig. 796. (*g*) Swf. Dig. 769.

for more than one year on the same ground, as it respects their conveyance, as freehold estates. Of what validity then will be a deed executed by an officer, of a term of years, more than of fee simple? The conveyance executed by an officer is of no importance in any case in itself; the title of the purchaser does not rest upon that, but upon the act of sale; if that is illegal, the conveyance, let it be what it may, will not help the title. We believe it has always been the practice to levy on terms for years, as real estate, and have it set off as such, and this we think the only safe way. It has received the sanction of the superior court, who also express an opinion that a term for years can be sold as personal property (*a*).

Where property is taken, which from the nature of it will perish, before the expiration of twenty days, it is usual to make sale of the same immediately, giving such public notice thereof as can reasonably be done; and where an officer acts faithfully and reasonably, for the interest of the debtor, as well as the creditor, he will be justified.

When a debtor has fraudulently conveyed away goods, they may be levied on and sold, by virtue of an execution against such debtor. If the goods turn out not to have been conveyed fraudulently, and consequently not to be the property of the debtor, the officer will be liable to the owner: and it is believed that the purchaser would not get a legal title to them, provided the owner was under the necessity of looking to him; but as the officer is liable the owner makes his claim on him, and having obtained satisfaction from the officer or creditor, he can have no claim upon the purchaser. If however a public sale of property, taken on execution has the same character here as a sale in a market overt, in England, the title of the purchaser will be complete, and indefeasible, and so it is generally regarded, there being no occasion to look to the purchaser, as the sheriff and his deputies are always responsible, having given bonds; but constables are not always responsible and give no such security. If the creditor direct the officer to take the property, he will be liable to indemnify the officer, but if he gave no direction the officer has no claim upon him, for indemnity.

(*a*) Root 15.

Where property has been faaudulently conveyed, and in all cases where there is doubt as to its belonging to the debtor, it is most safe for the officer to obtain the direction of the creditor, and it is certainly reasonable he should give it, yet if he refuse, the officer must act at his own risk; if he take the property, and it prove to belong to another person, he will be liable to the owner for the same, and will have no claim on the creditor for indemnity; and on the other hand, if he neglects to take the property, and it afterwards appears to have been the property of the debtor, and that he might have levied on the same, and satisfied the execution, he becomes liable to the creditor (*h*). He is not obliged to levy, unless there is property sufficient to satisfy the execution; yet, here too, he must decide at his peril, unless the creditor will direct him, for if he takes the goods, and they prove insufficient, he becomes liable to the creditor for the deficiency, unless he can find other property, or takes the body within the life of the execution; and if he neglects to take the property, on the ground of there not being a sufficiency, and it afterwards can be proved that the same was sufficient, he becomes liable for the full amount of the execution. Where there is doubt as to the sufficiency of the estate, unless the creditor will turn it out or give directions to levy on it, it is the safest for the officer to levy on the property at an early period of the execution, so that, after the sale thereof, he may be able to levy on the body within the life of the execution. He must execute the writ, and make a legal return within the life of the execution, and this requires that he either take goods sufficient to satisfy the same, take and commit the body, or return that he can find neither goods or the body. If there are not goods sufficient to satisfy the execution, he is not bound to take them, but must take the body. If, however, he levy on the goods, and sell them, in part satisfaction, and then within the life of the execution, levy on more goods, enough to satisfy the execution, or take the body and make return accordingly, he will be justified. Where he takes goods partly enough to satisfy the execution, being all that can be found, in case the defendant has not been within his precincts whilst he has had the execution in his hands, so that he might have been taken, he is justi-

(*h*) Swf. Dig. 797.

fied; and where the body cannot be found, it is the duty of the officer to take goods, although insufficient, as he must do all he can to execute the writ; but where the body can be taken, he cannot safely levy on goods, unless they are sufficient. But if the debtor has personal property sufficient to satisfy the execution and charges, which might be found and taken by due diligence, and the officer neglects to do it, and levies on the body, he is liable to the debtor for false imprisonment, and to the creditor for the debt if it is lost. He cannot require the creditor or debtor to turn out goods, but it is his duty to search for them, and levy thereon.

If an officer take estate greatly more than sufficient, and sell the same, so that the debtor sustain an unnecessary sacrifice, he will be liable; yet, as respects many kinds of property, it is extremely uncertain what it will sell for at auction, if an officer act fairly and in good faith, although he take more property than was necessary, he will be justified; but if he do it with a view to oppress the debtor, he will be subjected to heavy damages. So if an officer decline to take goods apparently insufficient, and levy on the body, and it should afterwards appear that the goods were sufficient, if he acted honestly and only misjudged, courts would not be rigid towards him (*i*).

If sufficient personal property cannot be found, and the creditor does not direct the execution to be levied on real estate, it is the duty of the officer to take the body of the debtor; and if he neglect to do this, in case the body might have been taken with proper diligence, he becomes liable. Whether an officer, having in his hands an execution, actually sees the debtor or not, yet if he might have been taken by due diligence, and the officer fails to do it, and makes a return of *non est inventus*, he will be liable. As to what constitutes an arrest, and the law relating to that subject, we must refer to our remarks on the service of attachments, the same principles being applicable to arrests, whether on attachment or execution. After having arrested the body for want of goods, if personal property is found or tendered, the body may be released and the goods taken. But the officer, after having legally arrested the body, is not obliged to take goods on their being tendered by the debtor and

(*i*) Swf. Dig. 797.

discharge the body, for the debtor having refused to produce estate, whereby his body has been legally taken, it would be unreasonable that the officer should be obliged to risk the sufficiency or the title to the estate after he has once made a legal levy of the execution. But if the creditor should direct the body released and goods taken, it is believed the officer would not be justified as respects him in declining to do it. But if the debtor pay the money on the execution, or tender the same, the officer could not be justified in committing him to gaol. When the body of the debtor is taken, he must, according to the principles of the common law, be kept in the actual custody of the officer, and conveyed to gaol as soon as convenient, and in the most direct manner (*a*). If after arresting the body of the debtor, the officer permit him to go at large, out of his custody, it is a voluntary escape, and the retaking and committing him to prison, within the life of the execution, will not save him harmless, but he will be liable for the debt. In this State, however, it has been decided by the superior court, that an officer, after an arrest, might permit the debtor to go at large until the last day of the execution, and then commit him, without being liable for an escape (*e*).

As the principle of this decision has not received the sanction of the supreme court of errors, it is not advisable for an officer to permit a person arrested on execution, to go at large, even where he may feel no anxiety as to being able to retake him during the life of the execution. On mesne process, an officer may permit a prisoner to go at large, provided he has him at the return of the writ (*i*). But in case of voluntary escape, on final process, the officer is not permitted to retake the prisoner, and if he do, it is false imprisonment (*k*). If the court of errors should overrule the decision of the superior court, and recognize the common law principle, that permitting a prisoner to go at large after arrest on execution, is a *voluntary* escape, the officer would not be permitted to retake him during the life of the execution, and if he should, it would not save him from his liability to the creditor, and at the same time, he would be liable to the debtor for false imprisonment. Where an officer does not intend to commit a debtor imme-

(*a*) 1 Bos. and Pul. 27. (*e*) 2 Root, 133. (*i*) 2 T. R. 172.
(*k*) 2 T. R. 177.

diately to gaol, he ought not to arrest him, for if he does not actually arrest him, he may take him at any time during the life of the execution, which will be sufficient. The only risk, if he sees him and does not make an arrest, will be as to his being able to take him during the life of the execution; but if he is arrested, and permitted to go at large, it may be a question, whether retaking and committing him to gaol within the life of the execution, will justify the officer. It has been decided in the state of New-York, that where a debtor who had been arrested on execution was permitted to have his liberty on the promise of another person to pay the debt if he fail to deliver him by a certain day, was a voluntary escape in the officer, and the promise to deliver him, void (*o*). In case of voluntary escape, as well as of negligent escape, the creditor has a claim on the officer, and still holds his claim on the debtor; but in a voluntary escape, the officer has no claim on the debtor. It is a clear principle of the common law, that if the *plaintiff* discharge the debtor from arrest on an execution, or if the officer permit him to go at large with the *consent* of the plaintiff, the debtor not only cannot be retaken on the execution, but is entirely discharged from the judgment. And although the party is discharged on an agreement to pay the debt which is not complied with, or to surrender himself by a given day, if he did not in the mean time pay the debt, the law is the same (*p*). So where the plaintiff consents to discharge one of several defendants, this is a discharge of all, being a discharge of the judgment, and the others cannot afterwards be taken. Where the defendant agreed on being discharged out of custody by the consent of the plaintiff, that the judgment should stand revived for twelve months, it was held to be void. So a bond taken for the surrender of a prisoner on a certain day that he might be retaken, who had been discharged out of custody of execution, by the consent of the plaintiff, was held to be void. The discharge of the prisoner by the creditor, or by the officer with his consent, is considered as a discharge of the *judgment*, and the plaintiff is thereby deprived of *every remedy*, against the debtor. It is understood to have been recently decided by the court of errors in this State, that the

(*o*) 13 John. 366. (*p*) 6 T. R. 525.

discharge of the debtor by the plaintiff from arrest on execution, was a discharge or satisfaction of the judgment.

When a debtor is committed to gaol, the officer must leave with the gaoler a copy of his execution and of the endorsement of his doings thereon, which is a sufficient warrant for the gaoler. Where a debtor is committed to gaol on attachment for want of bail, the execution must be levied on him within five days after final judgment. When an officer has levied on goods during the life of an execution, he may sell them, after the sixty days have elapsed; and so if his term of office expire after the levy, either before or after the execution is run out, he may complete the sale. But he cannot make a *levy*, after either the execution or his office has expired.

Where partnership property is taken on an execution against one of the partners for his individual debt, it must be posted, and the right or interest of such partner therein sold only, and not the goods. The interest of each partner in partnership property is altogether uncertain, and depends upon the demands upon the partnership and the accounts of the partners (*a*). The creditor can only take the interest the debtor has in the partnership effects, after a settlement of the partnership accounts, and this interest being extremely uncertain, the officer would be justified in taking a large amount of property, perhaps the whole partnership effects, where there was reason to believe that such partner possessed but little if any interest in the property of the partnership. The levy on partnership property must be so uncertain, that the officer ought always, if he can, to obtain the direction of the creditor. On an execution against several, as partners, the officer may take either partnership property or the individual property of any one of the defendants, and if there were individual and company goods sufficient to satisfy the execution, and he neglects to take them, he will be liable. So on an execution against several who are not partners: the officer may take the property of either, or part of one or part of the other, and the proportion in which the debt should be paid is a matter which concerns the debtors only. Where goods are taken on attachment, they must be levied on within sixty days af-

(*a*) 2 Conn. Rep. 514.

ter final judgment, and if receipted, demand must be made of the receiptsman within that time. If the demand is made out of his precincts it is sufficient (*b*).

Where goods have been attached, they cannot be levied on by the execution, without a previous demand of payment thereof of the debtor, as in other cases. Where an execution has been levied by one officer on goods which are disposed of, and the execution partly satisfied, it may be taken out of his hand and delivered to another officer, if directed to him, to levy for the residue thereof, the same being returned with each of their doings thereon endorsed. But the first officer could not safely deliver the execution to another, without the direction of the creditor. If the execution is returned partly satisfied, a new one may be prayed out and directed to a different officer. Where an execution is issued by the State Treasurer against the inhabitants of any town for the arrears of taxes, the judges of the county court of the same county, may, at the request of the sheriff, depute some suitable indifferent person to leave the same, who shall have the same power as sheriffs, and such sheriff shall be responsible for his conduct.

When an execution is levied on the stock or shares of the debtor in any bank, insurance company, turnpike company, or of other corporation, the officer must leave a copy duly attested, with the cashier, secretary or clerk, with an endorsement that he levies upon and takes such stock or shares on such execution. It is the duty of the cashier, or secretary, or clerk of any corporation, on enquiry by an officer to inform him by a written certificate, with his official signature, of the number of shares of stock any person possesses, against whom such officer holds an execution or attachment. After such levy, the shares taken are to be posted and sold like other personal property; and thereupon the officer must give the purchaser a proper instrument in writing, conveying such shares, and leave a copy, with an endorsement of his doings thereon, with such cashier, secretary, or clerk, before he returns the execution, and make return due thereof. The purchaser obtains a title not only to the stock, but to all dividends, profits and interests which may have accrued thereon.

(*b*) 1 Con. Rep. 255.

Where no personal estate can be found, and if the creditor gives direction, it is the duty of the officer to levy the execution on the real estate of the debtor, holden in his own right. The creditor has his election to take the body, or levy on the land of the debtor; but the officer cannot safely levy on real estate without the direction of the creditor, nor can the debtor tender real estate on the execution, to avoid the imprisonment of his body. The direction of the attorney of the creditor is the same as that of the plaintiff himself. To constitute a levy, he must actually enter upon the land. The officer must cause the land levied on to be appraised by three indifferent freeholders of the town where the land lies, or if that town be a party, then of the next adjoining town, one of whom to be appointed by the creditor, the other by the debtor, and if they cannot agree in appointing a third, or if either party neglect or refuse to appoint, the officer must apply to any justice of the peace in the town, who by law may judge between the parties, who shall appoint one or more appraisers as the case may require: which appraisers being sworn according to law, must make an estimate of such real estate according to its true value, in writing, under their hands, or either two of them, and the same deliver to such officer, who must set out to the creditor by metes and bounds, so much of the land as may be sufficient at the appraisal, to pay the execution and the lawful charges, if there is sufficient; if not, so much as there may be, to be endorsed on the execution, in part or in whole satisfaction thereof. And the officer must cause such execution, with a proper endorsement of his doings thereon, to be recorded at length in the records of lands of the town where the estate lies, and must return the execution, with an endorsement of all his said doings thereon, unto the officer of the court whence it issued, there to be kept on file, which shall vest in the creditor and his heirs all the title and interest the debtor had in the land (*e*).

The appraisers must be indifferent freeholders, and of the same town where the land lies, unless such town is a party, or interested, then of an adjoining town. It has been decided by the superior court, that where the parties agree

(*e*) St. 57-8.

on freeholders belonging to another town, or any one of them, it will be bad, because the parties cannot alter the law (*g*). Any relationship between an appraiser and one of the parties, whether by blood or marriage, calculated to produce a bias, will render the proceeding illegal. The relationship to either of the parties, which disqualifies a judge from acting in civil cases, is considered as a reasonable rule in case of appraisers (*h*). A nephew, by marriage, to one of the parties has been adjudged not to be an indifferent person within the statute (*i*). If the principle applicable to judges is to apply to appraisers, no person between whom and either of the parties there is so near a relationship, as father and son, by nature, or marriage, brother and brother, uncle and nephew, or landlord and tenant, can be an indifferent freeholder within the meaning of the statute. A person who has directly or indirectly any pecuniary interest in the matter, cannot be an appraiser. The appointment of an appraiser by a justice of the peace, is a ministerial act, and not a judicial act, and if an appraiser appointed by a justice is not an indifferent freeholder, the fact may be proved to impeach the title (*a*). To be a freeholder, requires an estate in lands in fee simple or for life, either during the grantee's own life, or that of any other person. An estate under mortgage is not a legal freehold in the mortgagor. Where an execution is issued in an action of foreign attachment, without bonds being given to refund, as required by statute, and the execution is levied on lands, it has been decided that the levy is good as to other creditors of the debtor, the law requiring bonds, being considered as intended for the benefit of the debtor, not of creditors (*k*).

It has been decided that where a woman marries after judgment, and an execution in her name is levied on land, the appointment of an appraiser by her is legal (*n*). It would seem, however, that it should be done with the consent of her husband, as a woman after marriage can do no legal act, besides after marriage, the judgment was entirely subject to the control of the husband, and could be discharged by him. It would be the safest in such cases, that

(*g*) 1 Root, 196. (*h*) 1 Con. Rep. 295. (*i*) ib. (*a*) 1 Con. Rep. 295.
(*k*) 1 Root, 176. (*n*) 2 Root, 15.

the appointment should be made jointly by the husband and wife. Where husband and wife are plaintiffs or defendants, the appointment may be made by the husband only; but in other cases, where there are two or more plaintiffs or defendants, it would seem the appraiser should be appointed by them jointly, and if a part only agree to make an appointment, that it would be necessary to decline such appointment, and apply to a justice. If one of several plaintiffs or defendants be authorized to act for the rest, an appointment by him would be good. In case of partners, one plaintiff, it would seem, might act for all; and likewise one defendant of partners, where the execution was levied on land belonging to the partnership, but if levied on the land of an individual partner, the appraiser, it would appear, ought to be appointed by him, and if appointed by any other of the defendants without his concurrence, it is doubtful whether the levy would be valid.

Land which the debtor owns as tenant in common with others, cannot be set off by metes and bounds, so as to take an undivided moiety or part of a certain quantity of land; but the whole tract belonging in common must be levied on, and the whole of the debtor's share or interest therein appraised, and such part or proportion set off as the debt bears to the debtor's whole interest, where the debt is less than the debtor's share or interest in the land. If the execution and charges equal or exceed what the debtor's share in the land is appraised at, the whole must be set off, when the creditor will take the place of the debtor, and be tenant in common with the owners of the other shares of the land; but if the debt is less, he will be tenant in common with the debtor and the other tenants in common, according to the proportion he has acquired. If A and B are tenants in common, in equal shares, and an execution is levied on A's share, of the amount of one hundred dollars, and his share is appraised at two hundred dollars, one half of A's interest must be set off to the creditor, so that the creditor will possess one undivided fourth part of the land, A one undivided fourth part, and B one undivided half part; and the creditor or any one of the tenants in common, can procure a division accordingly. In the case supposed, the mode would be, to set off such proportion of A's share or interest, the whole being estimated at two hundred dollars, as the one

hundred dollars, the amount of the execution and costs, leaves two hundred dollars, which would give him one half of A's share. If instead of one undivided half of the interest of A in the whole tract, his entire interest should be set off in one half of the lot, B, the other tenant in common, would be subjected to have his share partitioned and aparted in two separate pieces, whereas he has a right to have his interest as tenant in common in the whole tract, partitioned and aparted to him in one piece (*a*).

Where the debtor is tenant in common with others, in unequal shares, owning more or less than an equal share, his interest, or share, must be appraised, and such proportion thereof set off as the debt bears to his whole interest, the same as when he is tenant in common in equal shares.

When there are two or more separate tracts of land owned by the debtor as tenant in common with others, each held by a distinct title, an execution cannot be levied on the whole, and a part or proportion of the debtor's interest in each set off, but the whole of the debtor's right must be taken in one tract, before any portion of his interest can be taken in another (*b*).

Where an execution is levied on land, encumbered with a mortgage, it cannot be set off by metes and bounds, but the whole or such proportion of the debtor's interest therein, as the execution and charges bear to his whole interest, must be set off in satisfaction of the execution. The appraisers must estimate the value of the debtor's interest or equity of redemption, which can be done by estimating the value of the land, and deducting therefrom the amount of the mortgage debt; and the officer must set off such proportion thereof as the execution and charges bears to the whole of the debtor's interest, in the same manner as where the debtor owns land as tenant in common (*c*).

Terms for years may be levied on and appraised off as real estate, the whole or a part being set off to the creditor by metes and bounds as in other cases, for the term owned by the debtor (*d*). So, also, must the interest a man has in the lands of his wife. The estate of the debtor, whether for life or years, should be set off as such, yet if set off as a fee simple, it will give the creditor all the title

(*a*) 2 Con. Rep, 243. (*b*) ib. (*c*) 2 Day, 317. (*d*) 2 Root, 16.

the debtor had therein (*h*). Where two creditors attached the same land at the same instant, and had their executions levied in due time, it was held that they took moities of the land (*e*).

When lands have been attached, the execution must be levied, the proceedings completed, returned and recorded within the four months after final judgment. If the levy is made within that time, but the proceedings not completed, the title will not be good in case there was a subsequent attachment on the land. But if the lands were encumbered by a prior attachment, the execution must be levied in four months after such encumbrance is removed. The officer ought to state in his endorsement, that he made demand of the debtor of the execution, and that he could find no personal estate whereon to levy; but it has been decided that this was not absolutely necessary, where it appeared that the debtor appointed one of the appraisers, from which it might be presumed the demand had been made or waived by the debtor, and that no personal estate was tendered, or could be found (*g*). An officer ought to serve executions in the order of time in which they are received, and if two are put into his hands on the same day, he should levy that first which he received first; but if he levy the one he received last, first, the proceedings will be legal, but he will be liable to the creditor in the first execution, in case the same is not satisfied, to the amount of the goods taken on the second execution, and which ought to have been taken on his (*a*).

If an execution is legal on the face of it, the officer is bound to execute it (*c*). An officer is bound to serve and return an execution within the sixty days, yet if he collect and pay over the money to the creditor, he is not liable if he does not return the writ. So if by the direction of the creditor, he levy on land, and return the execution before an action is brought against him, so that the title becomes complete, he is not liable, although the return was not made until after the expiration of the sixty days (*d*). But if the land should be levied or attached by any other creditor, and the title of the first creditor defeated in consequence of

(*h*) 1 Con. Rep. 470. (*e*) 13 Mass. T. R. 527. (*g*) 1 Root, 241.
(*a*) 1 Ld. Raym. 252. (*c*) Kirby, 180. (*d*) Swf. Dig. 795.

the officer's not making return in season, he would be liable to the creditor notwithstanding he had returned the execution before an action was brought against him.

An officer cannot return a rescue, or, that he cannot do execution on final process, on a writ of execution, as he is bound to take with him the power of the county if required. The officer must endorse his fees on the execution, specifying the items, and must deliver to the debtor, on demand, and without reward, a bill of his fees, under his hand, specifying the items, with the name of the creditor, the date and amount of the execution, and the court from whence it issued; and on his neglect or refusal so to do, he forfeits three-fold the amount of his fees. If he charges or receives more than lawful fees, he forfeits three-fold the amount of such excess, to be recovered by an action on the statute. No officer is entitled to any more fees for travel on an execution, than the actual travel to serve and return the same. If an officer, for the security of the payment of an execution, take more than one bond, note, receipt, or other instrument, directly to himself, or to any other person for his use, every such instrument so taken, is void. Where an officer delivers goods, taken on execution, into the hands of any person, and takes his receipt for the re-delivery of the same, and such person fails to perform, in an action brought by the officer on such receipt there can be no appeal. Where a sheriff has recovered money on an execution and neglects to pay the same on demand, he is liable to pay to the person entitled to the money, two per cent a month from the time of such demand until the same be paid.

If any person shall refuse to assist a sheriff, or other officer, when necessary, in the execution of his office, on being commanded by such officer, he forfeits a sum not exceeding thirty-four dollars to the treasury of the county.

2. *Of the Service of Executions issued in Actions of Foreign Attachment.*

The judgment rendered in an action of foreign attachment, is a judgment against the goods and effects of the defendant in the hands of his attorney, agent, factor or trustee, or the debt of his debtor; and the judgment is a lien thereon, the same being liable and holden to satisfy

such judgment, or such part thereof, as they may be sufficient to pay. Before taking out executions, except on judgments before justices of the peace, the plaintiff must execute a bond, with surety in double the amount of the judgment, to refund the same, or such part thereof, as on a petition for a new trial or writ of error, it may be decided the plaintiff ought not to recover.

The duty of the officer in serving an execution issued on a judgment rendered in an action of foreign attachment, is not different from what it is in any other case, unless the plaintiff gives directions. But if the plaintiff gives him such directions, he must make demand of the attorney, agent, factor, or trustee, with whom a copy of the attachment was left, of the goods and effects of the defendant in his hands, whose duty it is to expose the same to be taken on the execution; and where a copy of the attachment was left with a debtor of the defendant, to make demand of him of the debt or debts due from him to the defendant, and it is the duty of such trustee or agent to expose such goods, and of such debtor to pay such debt to the officer, or such part thereof, as will satisfy the execution and costs, if the said goods or debt exceed the same. The trustee or debtor, with whom the copy was left, is called the garnishee. If he expose goods or effects of the defendant, the officer must levy his execution on them and dispose of them, as in other cases; if the debtor of the defendant pay the officer the debt he owes the defendant, he must endorse the same on the execution, and make return. If the trustee or debtor of the defendant, on such demand, refuse to expose the effects of the defendant in his hands or pay the debt he owes him, the officer must make a special return of such demand and refusal of the garnishee, and must also make a return of *non est inventis* as to the defendant. This enables the plaintiff to bring a *scire facias* against the garnishee, upon which he will be subjected to pay the plaintiff's judgment himself, if the plaintiff can prove, he had effects of, or was indebted to the original defendant, or such part thereof, as is equal to the value of the property in his hands. The garnishee is entitled to his oath to discharge himself; or to testify that he had no effects of the defendant in his possession, or was not indebted to him. The demand upon the garnishee, must be made within sixty

days after judgment, and return made within that time, or the garnishee will be discharged. If the garnishee does not expose goods or effects of the defendant or pay the execution, it is the duty of the officer to take other goods of the defendant, if he can find any, or the body of the defendant, if it can be found, unless directed otherwise by the plaintiff. So if the effects exposed by the garnishee are sufficient to satisfy part of the execution only, the officer must take other goods of the defendant, or his body, if he can find either, and if not, must return the execution *non est inventus* as to the part unsatisfied. If there are several garnishees, demand must be made of each.

3. *Of Serving Executions where an Executor or Administrator is Sued, &c.*

A judgment against an administrator is only against the goods and effects of the deceased in his hands. The officer must make demand of the administrator or executor of payment of the execution, and of goods and effects of the deceased to satisfy the same; and if he neglect to pay the same or turn out goods, he must make return that he could find no goods of the deceased, and of the demand made upon the administrator, and of his refusal to pay the execution or expose goods of the deceased, whereby the same is returned unsatisfied. If goods of the deceased are turned out by the administrator, or found, they may be taken and sold as in other cases, but the administrator's own property cannot be taken.

When a judgment is rendered against a corporation, the execution is issued against the goods and estate of such corporation only, and the officer must make search for, and if he finds estate, levy upon, and dispose of the same, as in other cases. If he can find no estate he will return the execution *non est inventus* as to goods and estate of such corporation. Where the estate of a corporation is not visible or tangible, so that it can be levied on, application may be made to a court of chancery, to enforce payment of the judgment; but if there is no visible or tangible property, that can be taken, the officer will be justified in his return, that he can find no goods.

In judgment against towns and societies, the execution issues against the goods and estate of the individual mem-

bers thereof, and not against the property of such corporations. The officer may make demand of the select-men or the committee of societies, and then, or probably without such demand, may levy the execution on the property of any inhabitant of such town or society, and the person whose property is taken has his redress against such corporation.

4. In an action of ejectment or disseisin, the judgment is that the plaintiff recover the seisin and possession of the premises, and his costs, and execution is granted accordingly. It is the duty of the officer to turn the defendant out of the possession of the premises described in the writ, and put the plaintiff into actual possession of the same, and make return accordingly. He may, if necessary, break down doors, and turn the party out of possession by actual force.

Where, in disposing of goods taken on execution, the person who bids the highest is unable to pay, the officer may offer them to the next highest bidder, and if he declines to receive them, or is also unable to pay, he may put them up for sale again. It is his duty to sell for money, and if he gives a credit, he will be liable to the creditor, for the amount of the sale, although the same may never be paid. Where there are a number of articles, they should be sold separately, where they are distinct in their nature and use, and not in gross or by the lump, as that might occasion a greater sacrifice to the debtor (*a*). But when the officer acts honestly and fairly, and sells the property in the way that appears most advantageous, he will generally be justified. He is the agent of the debtor as well as the creditor, and must discharge his trust in good faith to both. If an officer take a bond of the debtor, or other security, to the amount of an execution it is a payment thereof, and such execution cannot afterwards be lawfully enforced against such debtor (*b*). It has been decided, that if an officer, holding an execution, pay the amount thereof to the creditor from his own money, that it is a satisfaction of the execution, and that such officer cannot reimburse himself by enforcing it against the defendant (*c*). It is a good return on an execution, for an officer

(*a*) 1 Bin. 61. (*b*) 7 John. 429. (*c*) ib. 429.

to state that he arrested the body of the debtor, and that he died, whereby he could not commit him to prison ; or that from sickness he could not be committed to gaol. It has been decided in the State of New-York, that an officer cannot justify an escape, by shewing that the attorney of the plaintiff permitted the debtor to go at large or be discharged ; that an attorney has no authority to discharge the debtor from arrest on execution, without payment of the debt, he being only authorized to receive payment and discharge the execution in consideration thereof (*h*). An officer cannot be permitted to falsify his return, although he may be permitted to correct a mistake or omission. If he return that he has collected on an execution, the whole or a part thereof, he will be liable to the creditor for the amount, and will not be allowed to falsify his return by proving that he did not in fact receive the money according to his endorsement. But the creditor, or other person entrusted may disprove an officer's return ; it is only *prima facie* evidence of the facts contained thereon.

An officer ought in all cases, in order to be justified, make a return which is both *sufficient* and *true*, and if it is either insufficient or false, he will be liable. He must follow the direction of the writ and execute it according to law. An officer may justify under an execution which he never returned (*i*). Recaption on fresh pursuit, or before action brought, will justify an escape on execution as well as on mesne process ; but not if the escape is voluntary on the part of the officer.

Where goods seized by an officer on execution or attachment, are unlawfully taken out of his possession, he may maintain trespass or trover for the injury.

No action can be brought against a constable, sheriff, or deputy sheriff, for any neglect or default in his office and duty, but within two years next after the right of action shall accrue. But an action of assumpsit may be maintained against such officer, for money collected on an execution, and not paid to the creditor ; or where goods are sold and there is an overplus, which is not refunded to the debtor, at any time within six years after the receipt of the money.

(*h*) 8 John 361. (*i*) ib. 52.

CHAPTER VI.

FORMS ON FINAL PROCESS, OR EXECUTIONS.

1. *Of Returns on Executions in Common Form.*

Where the execution is paid by the debtor.

H county ss. H day of A. D. ; then I received of A. B. the within debtor, the sum of dollars, in full for the damages and costs of this execution, and the sum of for my fees thereon.

[Items of fees.] C. D., constable.

Where goods are levied on and sold.

H county ss. H day of A. D. ; By virtue hereof on the day of , I made demand of the within named A. B. at his usual place of abode, [or at a place called , in said town of] of the several sums contained in this execution, and of my fees thereon, which he then and there neglected to pay ; and afterwards on the day of , at said , I levied this execution on one bay horse, and one pair of working oxen, the property of the within debtor, and took the same into my possession ; and thereupon drew an account of the particulars of said property, and posted up the same on the sign-post, in the society of in said town of , within which society said property was taken, and with the same I also set up a notice that said property would be sold at the place where posted, at the end of twenty days, at public vendue, specifying the day when the sale would take place, and the hour thereof ; and the said A. B. having failed to pay said execution and charges, on the said specified day I sold, after causing a drum to be beat at said sign post, at public vendue, said horse, the same having been conveyed to said post, to J. S. for the sum of fifty dollars, he being the highest bidder therefor ; and I also sold said oxen to O. P. for sixty dollars, he being the highest bidder therefor, making in the whole, the sum of one hundred and ten dollars, from which I deducted the expenses and my fees, amounting to ten dollars, and of the residue applied in satisfaction of this execution the sum of ninety dollars, being the amount due thereon, and the remaining ten dollars I returned to the

within debtor, and also paid to the creditor the contents of this execution received by me as aforesaid.

[Items of fees.] C. D., Constable.

[If the property is turned out by the creditor it is always safest for the officer so to state in his return; and where property is taken which is exempt by law, the same being turned out by the debtor, its being so turned out should be stated in the return.]

Where a second levy and sale of goods are made.

By virtue hereof on the day of A. D. at , I made demand of A. B. the within debtor of the debt or sum due hereon, which he neglecting to pay, I made diligent search for goods of the said debtor, and on the day of , I found and levied on a piece of flannel cloth containing twenty yards, the said debtor then having left in his possession wool and cloth made therefrom, of a quantity exceeding twenty pounds, the said piece of cloth being all the property of the said debtor I could then find, liable to be taken; and thereupon I drew an account of said property and posted the same &c. [the same as the preceding] and at the time and place specified I sold said property, at vendue, having first caused a drum to be beaten, to R. R. for fifty cents a yard, amounting to ten dollars, and applied six dollars thereof in part satisfaction of this execution, two being required to pay my fees and expenses, leaving then due on said execution the sum of ten dollars; and afterwards on the day of said execution then being in life, I levied the same on ten bushels of rye, and ten bushels of Indian corn, the property of the debtor herein, he then having in his possession more than ten bushels of each, which I did not take, and thereupon I drew an account of the property last taken, and posted up the same on the sign post &c. [the same as in the first] and on the said specified day, I sold at public vendue, at said sign post, having first caused a drum to be beaten, said rye to L. M. for seventy cents per bushel, he being the highest bidder therefor, and said corn to J. S. for fifty cents per bushel, he being the highest bidder therefor; the whole amounting to the sum of twelve dollars, of which I applied ten dollars to satisfy the sum remaining due on said execution, and my fees and charges were one

dollar and fifty cents, leaving an overplus of fifty cents, which I returned to the said creditor, and paid the contents of said execution, due the creditor herein.

Where goods in part satisfaction are taken and the body arrested and committed.

By virtue hereof &c. [state the taking and sale of the goods the same as the preceding] and I continued to make diligent search for more goods of the said debtor, whereon to levy to satisfy the residue of this execution until the day of , but I could find none within my precincts, and for want thereof, I by virtue of this writ, arrested the body of the within debtor, and him committed into the custody of the keeper of the gaol in H , in the county of H , to be kept by him within said prison, and thereupon delivered to said keeper a copy of this execution, and of my proceedings thereon endorsed, and duly attested the same.

Where the debtor is out of the precincts of the officer and insufficient property only can be found.

By virtue hereof I made search for A. B. the within debtor to make demand of the debt or sum due hereon, but could not find him in my precincts. I then made search for goods of the said debtor whereon to levy, and continued my inquiry until the day of , when I found and levied this execution on a one-horse waggon, the property of the within debtor, being all the goods or estate I could find within my precincts, and thereupon drew an account &c. [the same as in the first form] and on the specified day I sold at said sign-post, at public vendue, having first caused the drum to be beaten, said waggon to J. S. for 20 dollars, he being the highest bidder therefor, of which I applied eighteen dollars in part payment of this execution, the charges and my fees being two dollars, leaving due on said execution twenty dollars; and I continued to search for more goods of the said debtor, to satisfy the residue of said execution, until the day of , but could find none; neither could find the body of the debtor, he being out of my precincts when said execution was put into my hands, and has not come into the same, whereby he could

be taken, and on the said day of , I returned said execution, partly unsatisfied, as aforesaid.

[An officer cannot be justified in taking insufficient property, except where the body could not be taken, during the life of the execution, then it is his duty to do it.]

Where bank or other stock is taken and sold.

By virtue hereof I made demand of A. B. the within debtor, at his usual place of abode of the sum due hereon, and my fees, on the day of which he neglected to pay, and afterwards on the day of , I levied this execution on four shares of stock in the Phœnix bank, being a body corporate, the property of said debtor, by leaving with G. B. cashier of said bank, an attested copy hereof, and of the endorsement of my doings hereon, and on the same day I drew an account of said property, and posted up the same on the sign-post in the society of within which the said levy was made &c. and on the specified day I sold at public vendue, at said sign-post, having first caused a drum to be beat, two of said shares of stock, with the dividends and profits thereon accrued, to L. M. for one hundred and ten dollars each, and the other two of said shares to R. R. at the same sum, the said L. M. and R. R. being the highest bidders therefor, and said shares having been offered for sale severally, and thereupon I executed to the said L. M. and R. R. proper instruments in writing, conveying to them said bank shares; and of the sum received for said shares of stock, being four hundred and forty dollars, I deducted five dollars the amount of my fees and charges, and applied four hundred in satisfaction of said execution being the amount due thereon, & the overplus thirty-five dollars I returned to the said debtor, and I also paid the contents of said execution, received as aforesaid, to said creditor; and I also left with the cashier of said bank a true and attested copy of this execution. and of my endorsement thereon.

The endorsement on the copy.

H county ss. H day of A. D. ; then by virtue hereof I levied on four shares of stock in the Phœnix bank, belonging to the within debtor, to satisfy this execution, and my fees thereon.

A. B., Constable.

The above and within is a true copy of the original execution, and of the endorsement of my doings thereon.

Attest. A. B., Constable.

[The copy to be left with the cashier after the sale, must contain a copy of the execution and a copy of the endorsement made thereon, stating the sale of the property, and must be duly attested.]

Where corn or grain growing is levied on.

By virtue hereof on the day of at , I made demand of the within debtor of the debt or sum due hereon, and of my fees, which he then and there neglected to pay, whereupon by direction of the creditor, I levied said execution on a certain quantity of growing corn, and all the right, title and interest of the defendant had therein, standing and growing on a certain piece of land, situated in and bounded as follows : containing about ten acres of land, the same belonging to O. P., the said debtor having leased or rented the said piece of land, and owned the said grain standing thereon, [or the said debtor having cultivated said land on shares, and being entitled to the one half part of said crop] and thereupon I drew an account in writing, of the particulars of said corn, and posted up the same on the sign-post in the society of , within which the same was taken, and with such account I set up a notice that said corn would be sold at the place where posted, at the expiration of twenty days, the day of sale being specified, at public vendue as the law directs ; and on said specified day, the said debtor not having paid said execution, I sold said corn, by description, according to said notice, having first caused a drum to be beaten, as follows, viz. the part thereof growing on four acres of said land, to R. R. for twenty dollars, together with all the right and privilege of the said debtor to cultivate and grow the same on said land, he being the highest bidder therefor ; and the proportion thereof standing on six acres of said land to J. S. for thirty-six dollars, he being the highest bidder therefor, and all the right of the said debtor to grow the same on said land, [or where the debtor owned but a share of the grain :] I sold all the right and interest of the said debtor in said corn, being the one half part thereof, to R. R., for the sum of , he being the highest bid-

der therefor] and thereupon I gave said purchasers a bill of sale of said corn; and of the said money received therefor, amounting to the sum of fifty-six dollars, I deducted five dollars for the fees and charges, and the residue applied &c. (same as in other cases.)

Where the grain after the levy is harvested and sold.

[State the levy by posting &c. as in the last, then say:] and the said creditor neglecting to pay said debt, and for the more advantageous sale of said grain, I caused the same to be harvested and removed from said land; and on said specified day said execution being unsatisfied, I sold said grain at said sign-post, having caused the same to be conveyed there, at public vendue, after the beat of a drum, to R. R. for the sum of he being the highest bidder: [or in case of rye or other grain, which is too bulky and expensive to be removed to the post] I caused said rye or grain to be harvested and removed from said land for the security and better sale of the same, and on said specified day, I sold the same, at said sign-post, at public vendue, by description and sample, said grain being then in sheaf, and so bulky that it could not be removed without great and unnecessary expense, a part thereof, consisting of twenty shocks to A. B. for twelve dollars, he being the highest bidder, and the residue thereof, containing fifteen shocks, to C. D. for eight dollars, he being the highest bidder therefor &c.

Where partnership goods are taken for the separate debt of one of the partners.

[State the demand as in other cases:] and afterwards on the day of , by virtue hereof and by the direction of the creditor I levied upon all the right and interest of the within debtor in certain goods [describe them] owned by the said debtor in partnership with A. B. and C. D. under the firm of A. B. & Co. the same being partnership property of said company, and I forthwith drew an account of the particulars of said property, and posted up the same on the sign-post, in the society of , within which the same was taken, and with such account I also posted up a notice that all the right, title and interest of said debtor in said property, as one of the partners of said partnership,

would be sold at public vendue, at the end of twenty days. from the date of said notice, the day of sale being specified, and on said day I did accordingly sell at said sign-post, all the right and interest the said debtor had in said property, as one of the partners of said firm, to L. M., for dollars, he being the highest bidder therefor &c.

Where the body is taken and committed.

By virtue hereof I made demand of the within debtor of the debt due hereon, and my fees, on the day of at the dwelling-house of the said debtor, in said , who then and there neglected to pay the same, whereupon I made search for goods and estate of said debtor, and continued diligently to enquire therefor through my precincts, until the day of , but could find none, whereon to levy to satisfy said execution, [or if some estate is found, but not sufficient, but I could not find goods or estate of said debtor, sufficient to satisfy said execution, and my fees thereon] and for want thereof, on said day of , I levied said execution on the body of said debtor, and forthwith conveyed and delivered him into the custody of the keeper of the gaol of said county of H , by him to be safely kept within said prison, and left with said keeper an attested copy of this execution, and of my doings thereon endorsed.

Where the defendant is arrested and dies.

The within debtor having neglected and failed to satisfy this execution, although I demanded the same of him at his usual place of abode, on the day of , afterwards I made search for goods and estate whereof to levy, but could find none within my precincts, whereupon I levied this execution on the body of the defendant on the day of , he then being sick, whereby I could not convey him to gaol, and he continued sick until the day of , when he died of a disease called , while in my custody.

Non est inventus, or where neither goods or the body can be found.

By virtue hereof I made diligent search for goods and estate of the within debtor, whereof to levy, to satisfy this execution, but could find none within my precincts, neither

could I find the body of the said debtor, wherefore, on the day of I returned this execution wholly unsatisfied.

Where the debtor's body is arrested, released, and goods taken.

Having by virtue hereof, made demand of the within debtor, at his usual place of abode, on the day of of the sum due on this execution, and of my fees, which he neglected to pay, and being unable to find any goods whereon to levy to satisfy the same, I arrested the body of said debtor, and was proceeding with him to the gaol of said county of , when said debtor, to procure the release of his body and to satisfy said execution, turned out to me a silver watch, with a gold chain, seal and key, whereupon I released the body of said debtor from said arrest, and levied this execution on said watch, seal, and key, and forthwith drew an account of the same &c. [same as in the preceding.]

Where real estate is levied on and set off.

By virtue hereof on the day of , I made demand of the within A. B. at his usual place of abode, of the several sums due on this execution, and of my fees thereon, which he neglected to pay, and not being able to find any personal estate of the said debtor within my precincts, and none being shewn me by him, whereon to levy, by virtue hereof and by direction of the creditor herein, (or of R. S. attorney to said creditor) I levied this execution on a certain piece of land, whereof the said debtor was seised and possessed in fee, (or of an estate for life or years) situated in said town of , and bounded and described as follows, viz. (describe the land), containing by estimation, acres, and thereupon I applied to C. D. the within named creditor, who appointed R. R., and I also applied to A. B. the within named debtor, who appointed L. L., and the said creditor and debtor agreed upon and appointed O. P., all indifferent freeholders of said town of , to appraise and value said land; [or the debtor neglecting and refusing to appoint or agree on one or more appraisers, I applied to J. P. justice of the peace for said county of residing in said town of , and by law qualified to judge between said parties, who designated L. L. and O. P., all

indifferent freeholders of said town of , appraisers, to appraise and value said land: and the said J. P. justice of the peace administered to the said R. R., L. L. and O. P. the oath by law in such case provided; and said appraisers, after viewing said land, did then and there apraise and estimate said land, at the sum of dollars, as the true and just value of the same, of which valuation they made a certificate under their hands, in writing, and on the same day I set off to said C. D. the whole of said described piece of land, in satisfaction of this execution, and of my fees and charges thereon; (or they appraised and estimated said land at thirty dollars per acre, as its true and just value: whereupon I set off to the said creditor eleven acres thereof, bounded and described as follows: (here describe the part of the land set off) in full satisfaction of this execution, & of my fees and the charges thereon; and on the day of I caused this execution to be recorded in the records of lands of the town of , within which said land lies.

Attest. M. S., Constable.

[Although not absolutely necessary, it is most safe and correct, that the Justice should make a certificate of the administration of the oath and of the appointment when made by him, on the execution; and also that the appraisers should make a certificate of their valuation therein.]

H county, ss. H , day of A. D.

Then I administered to R. R., L. L. and O. P. the above named appraisers, the oath by law provided for appraisers of land on execution; [or where the justice makes an appointment also:] Then, on application of M. S. constable, I appoint L. L. and O. P. both indifferent freeholders of said town of appraisers, to appraise and estimate, with R. R. appointed by the above named creditor, the land above described, and then and there administered to the said L. L., O. P. and R. R. the oath by law provided for appraisers of land on execution.

J. P. Justice of the Peace.

We, the subsbribers, freeholders, of the town of having been appointed and sworn as above specified, to appraise the above described piece of land, to be set off on

said execution, did appraise the same at the sum of per acre, as the true and just value thereof.

R. R.
L. L.
O. P.

Received the day of A. D. and recorded in the book of the records of lands of the town of .
Items of fees. C. C. Register.

Where lands belong to the debtor as tenant in common.

By virtue hereof, on the day of at his usual place of abode, I made demand of the within debtor of the debt due hereon, and of my fees, which he neglected to pay, and afterwards I made diligent search for goods and estate of the said debtor whereon to levy, to satisfy this execution, but could find none within my precincts; for want whereof, and by the direction of the creditor, I levied this execution, on all the right, title and interest the said debtor had in a certain piece of land situated in said town of containing by estimation acres, and bounded and described as follows: [here describe and bound the premises] the same belonging to the said debtor as tenant in common with J. S. and R. N. in equal shares, and thereupon the said creditor appointed A. B. and the said debtor appointed C. D. both indifferent freeholders, of said town of to appraise and estimate the right and interest of said debtor in said land, and the said creditor and debtor being unable to agree on, or appoint another appraiser, I applied to J. P. one of the justices of the peace of said town of qualified to judge between said parties, who appointed E. F. an indifferent freeholder, of said town of another appraiser of the right of said debtor in said land; and thereupon the said justice, J. P. administered to the said A. B., C. D. and E. F. the oath by law provided for the appraisers of land on execution, and having viewed said land, said appraisers did then and there appraise and estimate the right, share and interest of the said debtor, being the undivided third part thereof, at the sum of five hundred dollars, as the just and true value thereof, and did certify the same under their hands in writing; and this execution, costs and charges, amounting to the sum of two hundred thirty dollars and fif-

ty cents, I thereupon set off to the creditor herein, such part or proportion of the said debtor's share, right and interest, as two hundred thirty dollars fifty cents bear to five hundred dollars, the amount of his whole interest as valued by said appraisers, in full satisfaction of this execution, and of all charges and fees thereon. And on the day of I caused this execution, and the endorsement of my said doings thereon, to be recorded in the records of land of the town of within which the said land lies.

Attest. M. S. Constable.

Items of fees.

The certificate of the justice of administering the oath, will be the same as the preceding; and the certificate of the appraisers the same, except that instead of stating they appraised and estimated *the land*, at such a sum, they should state that—they appraised and valued the *right and title and interest* of said debtor in said land, being an undivided third part or share thereof, owned by said debtor in common with J. S. and R. N. as tenants in common, at the sum of five hundred dollars, as its just and true value.

Where a levy is made on mortgaged premises.

State the demand, &c. the same as the preceding:—and for want of goods, whereof to satisfy this execution, and by direction of the creditor, I levied the same on all the right, title and interest the said debtor had in and to a certain piece of land situated in said and bounded as follows: and containing by estimation acres, being a right or equity of redemption in said premises, the same having been mortgaged by said debtor to R. S. by deed, bearing date the day of for the security of the sum of three hundred dollars and the interest, amounting at the time of said levy to the sum of three hundred fifty-five dollars and fifty cents, and thereupon the said creditor appointed A. B. and the said debtor refusing to appoint or agree on one or more appraisers, I applied to J. P. justice of the peace for the county of H in said town of and qualified to judge between said parties who designated and appointed C. D. and E. F. all indifferent freeholders of said town of appraisers, to appraise and value the equity of redemption in said premises, or his right and interest therein, subject to

said mortgage, and the said justice J. P. then and there administered to the said A. B., C. D. and E. F. the oath by law provided for appraisers of land on execution, and having viewed said premises and ascertained the amount of said mortgage debt, said appraisers did appraise and estimate said equity of redemption, or the right and interest of said debtor in said premises, subject to said mortgage, at the sum of two hundred dollars, and said execution, the charges and fees thereon, amounted to the sum of one hundred twenty-five dollars and twenty-five cents, whereupon I set off to said creditor such part or proportion of the said equity of redemption, or said debtor's right and interest in said described premises, as one hundred twenty-five dollars and twenty-five cents bear to two hundred dollars, the amount of his whole interest therein, as valued by said appraisers, in full satisfaction of this execution and of all charges and costs thereon. And on the day of I caused this execution, and the endorsement of my doings thereon, to be recorded in the records of lands in the town of within which said land lies.

Certificate of Justice, same as in other cases.

Certificate of Appraisers.

We, the underwritten freeholders of the town of having been appointed and sworn as aforesaid to appraise and estimate the equity of redemption or right and interest of the above named debtor in the mortgaged premises above described, subject to said mortgage debt, amounting to three hundred fifty-five dollars fifty cents, did estimate and appraise the same at two hundred dollars, as its just and true value.

Where there has been a previous levy of an execution, the debtor's equity of redemption, or right and interest in the mortgaged premises must be appraised, not only subject to the mortgage debt, but also subject to the amount of the prior execution levied thereon, and the same stated in the officer's endorsement and the certificate of the appraisers.

2. *Of return on execution issued on foreign attachment.*

H county, ss. H , day of A. D. .

Then, by virtue hereof, and by the direction of the cred-

itor, I made demand of A. B. described in the original writ as the agent, factor, trustee, attorney and debtor of the within named debtor, and with whom a copy of said writ was left in service, of goods and effects of the debtor herein, in his hands, whereon to levy, to satisfy this execution and the fees thereon, and also of the moneys and debt or debts due from him to the within debtor, but the said A. B. neglected and refused to expose the goods or effects of said debtor in his hands, and to pay to me, to apply hereon, the moneys or debt due from him to the within debtor; and I also made diligent search for goods and estate of the within named debtor throughout my precincts, whereof to satisfy this execution, and also for his body, but could find neither, wherefore I return this same execution wholly unsatisfied.

If there are more garnishees than one, demand must be made of each, and so stated in the return; and if any goods are turned out or exposed, it is the duty of the officer to take them, although insufficient, when the debtor is not within his precincts. If goods are levied on, they will be sold the same as in other cases, and return made accordingly.

3. *Return on execution against an executor or administrator.*

By virtue hereof, I made diligent search for goods and estate of the deceased mentioned within, throughout my precincts, whereon to levy, to satisfy this execution, but could find none; I also made demand of A. B. the within named executor of the last will of said deceased, of the contents of this execution, which he neglected to pay, and also to expose goods of the deceased, in his hands, which he refused to do; wherefore I return this execution wholly unsatisfied.

On an execution against a corporation, the officer will state in his return that he levied on the goods of the within named corporation, &c. except executions against towns and societies, when he will say that he levied on the goods, naming them, of A. B. a legal inhabitant, and resident of the within named town of &c.

4. *Of return on execution in ejectment.*

By virtue hereof, I have caused A. B. within named, to

have seisin and possession of the within described premises; and have received of the within named C. D. the sum of dollars, the amount of damages and costs of this execution, and also the amount of my fees. If the damages and costs are not paid, he must collect the same as in other executions.

Another.

I hereby certify that no one on the part of the within named A. B. came to shew me the within described premises, and therefore I could not cause the said A. B. to be put into possession and seisin of the same as herein commanded.

5. *Of Supersedeas.*

I hereby certify that after this writ was delivered to me to execute, and before I had commenced the execution of the same, I was duly notified that a writ of error in due form had been issued for the reversal of the judgment on which this execution was issued, by a copy of said writ of error being left with me by C. D. deputy of the sheriff of with his proper endorsement or certificate thereon made and attested; by reason whereof I could not execute this writ as herein commanded.

CHAPTER VII.

OF RETURNS ON WARRANTS FOR THE COLLECTION OF TAXES.

When a warrant for the collection of taxes is levied on goods or the body, the return is the same as on executions, but where land is levied on, the proceedings, and consequently the return is entirely different.

Where land is levied on by a tax warrant.

By virtue of this warrant, I notified A. B. one of the inhabitants of the town of H named in the schedule or rate bill hereunto annexed, that I would receive his said tax at in said town of on the day of and gave him reasonable warning and opportunity to pay his said tax, contained in said rate bill; and said A. B. having neglected and failed to pay the same, and finding no goods or chattels

of the said A. B. within said town of on the day of I levied this warrant on two acres of land of the said A. B. situated in said and thereupon advertised and gave notice in a newspaper printed in H called the 'Times,' within the same county where said land lies, that so much thereof would be sold at the public inn of C. D. in said H at public auction, as would pay the said tax of A. B. and all costs and charges, on the day of at o'clock; and which said notice was published in said newspaper three weeks successively, at least six weeks before said time of sale; and on said day of I accordingly sold at the place aforesaid, at public auction, to R. S. one half of an acre of said land, for the sum of dollars and cents, he being the highest bidder therefor, said sum being the amount of the said A. B.'s said tax, and the costs and charges, and then and there I set out to said R. S. the land so sold by metes and bounds, which are as follows: [here bound the land sold] and thereupon I executed to the said R. S. a deed of warranty of said half acre of land, containing the boundaries thereof as aforesaid, in conformity to the statute in such case provided.

Items of fees. M. S. Constable.

Where land is levied on which has been transferred.

State the notice of time and place, &c. same as the preceding:—and being unable to find any goods, chattels, lands, or any estate whatsoever, liable to be taken of the said A. B. I levied this warrant on a certain piece of land situated in containing about four acres, and which belonged to the said A. B. when the list was made up, on which said tax arose, and said tax was payable on the day of less than one year preceding said levy; and thereupon I advertised and gave notice in a newspaper called the printed in H within the county wherein said land lies, that so much thereof would be sold, &c., the same as the preceding. A levy for a state tax cannot in any case be made more than two months previous to the time the tax is payable; and a levy cannot be made on land which has been sold, transferred or attached by a creditor, but within one year after the tax becomes payable; but land which has not been transferred, may be taken and sold at any time.

Deed of Land sold for town Taxes.

To all people to whom these presents may come, Greeting:

Know ye, that whereas, on the day of A. D. a tax of cents on the dollar, was voted and granted by the inhabitants of the town of then regularly assembled, on all the inhabitants of said town liable by law to pay taxes, on the list made up for the year and thereupon the select-men of said town made out a rate bill, containing the names of the said inhabitants, and the proportion each was to pay of said tax, which said rate-bill with a warrant thereto annexed, duly issued and signed by J. P. justice of the peace for said county, and in due form of law, was put into my hands to levy and collect, agreeably to the direction in said warrant, I having previously been appointed collector (or one of the collectors) of said tax; and A. B. one of the persons named in the rate bill or list annexed to said warrant, having failed to pay his proportion of said tax, although notified of a time and place for the payment of the same, and proper warning and opportunity given him therefor, and for want of personal estate of said A. B. whereof to levy said tax, on the day of I levied this warrant on a certain piece of land of the said A. B. situated in said town of containing about four acres, and thereupon advertised and gave notice in a newspaper printed at H called the Times, within the county where said land lies, that so much of said land would be sold at auction on the day of in said town of at the tavern of as would be sufficient to pay said tax and the costs and charges; and which notice was published in said paper three weeks successively, at least six weeks before said day of sale; and on said day of sale, by virtue of said warrant, and in pursuance of said notice, I sold at public auction, to C. D. one half acre of said land, for the sum of dollars and cents, being the amount of said A. B.'s said tax, and the costs and charges thereon, and bounded and described as follows, viz. [here bound the land.] Wherefore, by authority of said warrant, and by means of the premises, I, M. S. collector of the tax aforesaid, in consideration of said sum of received by me of said C. D. do by these presents give, grant, sell and confirm unto him, the said C. D. and his heirs and assigns forever, the above described half acre of land, with all the privileges and appurtenances thereof,

to have and to hold the said sold and granted premises, unto his and their proper use and behoof forever; and I, the said collector, do by these presents bind myself and my heirs forever, to warrant and defend the above sold and granted premises unto the said C. D. his heirs and assigns, against all claims and demands whatsoever.

In witness whereof, I have hereunto subscribed my name and office, this day of A. D.

M. S. collector of the town tax of the town of made on

Signed, sealed, and delivered in presence of } the list of the year of .

H county, ss. H , day of A. D. .

Personally appeared, M. S. collector of the above described tax, and signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed before me. J. P. Justice of the Peace.

Deed in case of sale on state Tax.

To all people, &c.

Know ye that, whereas I, M. S. constable, of the town of on or about the day of was appointed in and for said town, collector of a tax granted by the general assembly of this state, at their session in May, A. D. , on the list of , being cents on the dollar, on said list; and on or about the day of I received from I. S. treasurer of said state, a warrant, by him signed, dated the day of and in due form of law directed to me, commanding me to levy and collect said tax of cents on the dollar on said list, of all the inhabitants of said town of H amounting in the whole to the sum of dollars, and pay the same into the treasury of said state by the day of A. D. ; and A. B. one of the inhabitants of said town, having neglected and failed to pay his proportion of said tax, although he was duly notified of a time and place to pay the same, and had proper warning and opportunity so to do, and for want of personal estate of the said A. B. whereof to satisfy said tax, I levied this warrant on a certain piece of land, containing about acres, and thereupon advertised the same, &c.—(the same as the preceding).

Where the land has been transferred.

State the levy as follows : and for want of any estate, personal or real, of the said A. B. whereof to satisfy said tax, on the day of A. D. , I levied this warrant on a certain piece of land situated in and containing about acres, belonging to the said A. B. at the time said list was made up, and which said levy was made within one year after said tax became due and payable, and thereupon, &c.

General return on Tax Warrant.

By virtue of this warrant I have levied and collected of the several inhabants of the town of whose names are contained in the list hereunto annexed, the amount of the tax specified herein, and such part or proportion thereof of each, as is specified in said list.

CHAPTER VIII.

OF THE SERVICE OF CRIMINAL PROCESS.

A Constable is the proper officer to execute the warrants of justices of peace in criminal cases ; but a justice can direct a warrant issued by him, to the sheriff, or either of his deputies, of any county in the state, who can serve and return the same, or the Constables of any town in the state, or to an indifferent person by name, who may serve the same in any part of the state (*a*). But a justice can only grant a warrant for crimes committed within his county ; nor can he issue a warrant, directing the person arrested to be brought before a justice of the peace of any other county, or to bring him before the same justice, at a place out of his county ; and a Constable cannot safely execute a warrant of that description ; nor any warrant where it appears upon the face of it, the justice has no jurisdiction to order the person brought before him for trial, or enquiry, as the case may be ; as where the crime is charged as having been committed out of the county or state. A warrant directed to a particular Constable by name, may be served

(*a*) St. May ses. 1822.

in any part of the state, being the same as though directed to him as an indifferent person; but if directed generally to any Constable in the state, no one could serve it out of his precincts. If a Constable refusess to execute a lawful warrant directed to him, it is a criminal offence. A general warrant to apprehend all persons suspected of having committed a particular crime is void; and a warrant commanding the officer to search all suspected houses or places for stolen goods, is also illegal, and any act done under either, would subject an officer to be sued as a trespasser. Warrants are either issued upon complaint of an informing officer, to arrest a person charged with a crime, search warrants to search for stolen goods and arrest the person charged, or warrants to carry into effect a sentence, or for commitment after judgment.

1. An arrest on a warrant is made in the same manner as on civil process, an actual touching of the person being necessary to constitute an arrest, unless he submits to the authority of the officer without. There is one important distinction, however, between criminal and civil process as to arrests, as an officer cannot break open doors to take a person on civil process; but when a warrant is granted on a complaint for a crime, the officer has power to break open doors if necessary, to arrest the criminal, after having signified the cause of his coming and requested admittance. If that is refused, he is justified, and it is his duty to break open doors to make an arrest. An officer is not bound to show the person his warrant, although he demand a sight of it; but he ought to inform him that he arrests him by virtue of a warrant, and acquaint him with the substance of it (*d*). Where an arrest is made without a warrant, which is unlawful, a warrant being granted afterwards will not make it lawful. Strictly, an officer cannot permit a person arrested on a warrant to go at large on his promise to return, and by the common law he could not be arrested again by authority of the same warrant, as it is considered a voluntary escape; but it has been decided in this state, that where a person is arrested on an execution, and permitted to go at large by the officer, this is not a voluntary escape, and that he may be retaken and committed during the life

(*d*) 6 Co. 54.

of the execution, which will justify the officer. The principle of this decision has not been sanctioned by the court of errors, but if it is considered as settled law, in this State, it would seem by parity of reason, that the permitting a person arrested on criminal process to go at large, on his promise to return, would not be a voluntary escape, and that the officer might be justified in retaking him. If a person arrested on criminal process, and permitted to be at large, voluntarily return, according to the common law the officer may detain him on the same warrant and bring him before the court, agreeably to the command in the writ. A Constable may command all necessary assistance to execute a warrant; if he is assaulted, he need not retreat as a private person should do; and if in striving together he kill the assailant, it is no felony, but if the Constable be killed, it is murder (*e*). And those who come to the assistance of a Constable, who is assaulted or resisted in the execution of his office, whether commanded or not, are entitled to the same protection of the law as such officer.

2. Search warrants must contain a description of the goods alleged to have been stolen, and of the place to be searched. The constable must search the place or places described, and seize the goods, if they can be found, and also arrest the person charged with having stolen and secreted the goods, and have the same and the person, forthwith before the justice named in the warrant. After stating the object of his coming and requesting entrance at the building where he is commanded to make search, the officer may break open doors if he is refused admittance; and after entering he may break the locks of chests or trunks, to examine them, if they are refused to be opened on request; but if he commit any unnecessary violence, or any act of indecency towards any person belonging to the house, he will not be justified. The officer is to take the complainant with him to point out the place and goods, and assist in making search. Where it does not appear from the warrant and the complaint that the goods had been stolen, and the complainant suspected they were concealed at a particular place and stolen by a particular person, it will be void, and the officer executing it

(*e*) 10 Co. 68.

will be guilty of a trespass (*d*). If it states that the complainant suspects a particular person of having stolen the goods, and sundry other persons, or that he suspects that they are concealed at a certain place in a particular town, or some other house in the same town, and commands the officer to search the place described, and all other suspected places, and to arrest the persons suspected; the proceeding is *coram non judice*, and not only the officer who executes the warrant, but the justice who issued it is liable in trespass to the party injured (*e*).

3. Warrants issued after judgment, are either for the commitment of the prisoner in consequence of his non-compliance with the judgment, or inability to procure bail in case of binding over, or to carry the sentence into effect. A warrant of commitment, commonly called a mittimus, is either directed to an officer commanding him to convey and deliver the person named, to the keeper of the gaol, and leave with such keeper a copy thereof, and also commanding such keeper to receive and detain such prisoner within the prison; or it is directed to the keeper commanding him to receive into his custody and safely to keep the prisoner until discharged by due course of law. In the latter case the officer delivers the prisoner to the keeper, and also the mittimus; but in the former case, he must leave a copy of the warrant or mittimus with the keeper and of the endorsement on the original, which strictly should be returned to the justice like other writs; but this is not usually done.

Warrants to enforce the sentence of a justice are either to distrain or levy a fine and costs, to inflict a corporeal punishment, or to commit the prisoner to gaol, where that is a part of the sentence, as it now may be in a few cases. A warrant of distress commands the officer to distrain and levy of the goods, chattels and lands of the prisoner, to satisfy the fine and costs mentioned therein, and for want thereof to take his body and commit the same to prison. If he can find goods he must take them and dispose of them in the same manner as on execution, and service is to be made in the same way. A warrant for the infliction of cor-

(*d*) 1 Conn. Rep. 40. (*e*) id.

poreal punishment should be executed forthwith. All warrants for carrying into effect a sentence of a court should be duly returned, with a regular endorsement of the doings of the officer thereon, that it may appear from the records and files of the court that the sentence had been performed, and also for the safety of the officer. When however, there is a legal judgment and a proper warrant issued, in pursuance thereof, an officer would probably be justified in any act done in obedience to the direction of such warrant, although no return had been made; but it is most safe and proper that a regular return and endorsement should be made, as on other process. A mittimus must contain a recital shewing the cause of the commitment, and warrants to enforce the sentence of a court, must recite the judgment on which they are founded.

CHAPTER IX.

OF RETURNS ON CRIMINAL PROCESS.

On complaint and warrant.

H county ss. H day of A. D. ; then by virtue hereof I arrested the body of the within named A. B. read this process in his hearing, (or acquainted him with the substance of this process) and him have here in court.

M. S. Constable.

Where the delinquent cannot be found.

By virtue hereof I made diligent search for the within named A. B., but he has not been found within my precincts.

On search warrant.

Then by virtue hereof, accompanied by the within named complainant I repaired in the day time to the house described in this warrant, and therein made search for the within described goods, I found the same concealed in said building and seized the said goods, and thereupon I arrested the said A. B., acquainted him with the substance of this process, and have him, and also said goods, here in court.

Although the goods are not discovered the officer must arrest the person charged, if he can be found; and if the goods are seized and the person accused cannot be found, or escapes out of the officer's precincts, so that he cannot be arrested, the officer must return the process and the goods to the justice, to whom the same was made returnable, and make his endorsement accordingly.

Where the goods cannot be found, &c.

Then by virtue hereof, accompanied by the within named complainant, in the day time, I made diligent search in the building mentioned herein, for the goods described in this warrant, but could not find said goods; and by virtue hereof, I arrested the body of the within named C. D., acquainted him with the substance of this process, and kim have here in court.

On a mittimus.

Then by virtue hereof I conveyed the within named A. B. to the gaol in , in said county, and delivered him into the custody of the keeper of said gaol, and left with said keeper a true and attested copy of this mittimus, and of my endorsement thereon.

On warrant of distress.

By virtue hereof I distrained and seized a silver watch, the property of the within named A. B., and disposed of the same at public auction, at the sign-post in , on the day of , according to law, legal notice of said sale having been previously given, by posting up the same on said sign-post, and for which property I received the sum of dollars, and the within fine and costs, including my fees and charges, amount to the sum of , leaving an overplus of , which I returned to the said A. B., and I paid the said fine and costs to the within justice J. P. to be disposed of according to law.

Another.

Then by virtue hereof and for want of goods and estate of the within named A. B. whereof to make distress, I took his body and him conveyed to the gaol in , in and

for said county, and him delivered into the custody of the keeper of said gaol, within said prison, to be kept until delivered by due course of law, and left with said keeper a copy of this warrant and of my endorsement hereon.

On a warrant for inflicting corporeal punishment, &c.

Then by virtue hereof I conveyed the within named A. B. to a suitable place in said , (or to the public sign-post) and then and there inflicted upon his naked body ten stripes, and thereupon for want of goods and estate of the said A. B., whereof to distrain for the within fine and costs, (or within costs where there is no fine) I conveyed the said A. B. to the gaol in in and for said county, and delivered him into the custody of the keeper of said gaol within said prison, and left with said keeper a copy of this warrant, and of my endorsement thereon.

EX-OFFICIO RETURNS.

For breach of Sabbath.

H county ss. H day of A. D. ; I A. B. constable of said town of , appear before J. P. justice of the peace for the county of , and inform and return on my oath of office, that on the day of , being sabbath or Lord's day, E. F. and G. H. both of said , and sundry other persons to me unknown, in profanation of the Lord's day were engaged in divers amusements, in said town of , and then and there in my presence and view, the said E. F. and G. H. with the said persons to me unknown, were playing ball, contrary to the form of the statute in such case provided and of evil example ; whereupon by authority of said statute I arrested the said E. F. and G. H. and them detained until said sabbath had expired, and them now have before your worship to be dealt with according to law.

For drunkenness.

County &c. I A B. constable of the town of appeared before C. D. justice of the peace, of , for the county of , and present and inform that E. F. of said town of , was this day found by me at said in a state of drunkenness and intoxication, whereby he was bereft of his

understanding which was apparent in his speech and behaviour; and which is contrary to the statute in such case provided and of evil example; whereupon by virtue of said statute I arrested the said A. B. and him now have before said justice C. D. to be dealt with as to law and justice shall be found appertaining.

For profane swearing.

County of &c. I A. B. constable of said town of come before C. D. one of the justices assigned to keep the peace in said county of and present and inform that on this day at one E. F. of in my presence and hearing, did wickedly and profanely swear by the name of God, and did utter and repeat the following profane oath and words: (recite the words) contrary to the statute in such case provided, and of evil example; whereupon by virtue of said statute I then and there arrested the said A. B. and him now have before your worship that he may be dealt with agreeably to law.

For a riot.

County of &c. I A. B. constable of the town of come before J. P. justice of the peace for said county of and inform and return that on the day of at in said county, C. D., E. F. and G. H. and sundry other persons to me unknown, riotously and unlawfully assembled themselves together, with the intention against the peace and to the manifest terror of sundry good citizens of this state, and with force and arms to pull down and demolish, a certain building, then and there standing, the property of O. P. of said ; and being informed of said riotous and unlawful assembly, I repaired to the place, and then and there, in the presence and hearing of said C. D. E. F. and G. H., and other rioters, commanded silence, and then made proclamation in these words: "In the name and by the authority of the State of Connecticut, I charge and command all persons assembled immediately to disperse themselves and peaceably to depart to their habitations on their lawful business, on the pains and penalties of the law;" and the said C. D., E. F. and G. H., and others, not regarding said proclamation, did not disperse themselves,

but continued so riotously and unlawfully together after such proclamation had been made, contrary to the form of the statute in such case provided and against the peace: whereupon by authority of the statute entitled, "An act for the suppression of riots," I commanded assistance and arrested the said C. D., E. F. and G. H., and them held and now have before said justice J. P. that they may be dealt with agreeably to law.

PART III.

THE POWERS AND DUTIES OF SELECT-MEN, TOGETHER WITH FORMS, &c.

CHAPTER I.

Of the powers and duties of Select-Men.

As all the duties of Select-men are pointed out by statute, and are in general very plain, and as there have been few decisions of our courts in any way affecting them; and as they afford little occasion for legal forms, it was not our intention originally to have devoted but a small proportion of this work to a consideration thereof; and the two first parts of it having been extended to greater length than was expected, we shall be obliged to confine ourselves to a concise examination of some of the most important duties of Select-men.

Each town in the State is required at their annual town meeting each year, to appoint a convenient number, not exceeding seven Select-men, to take charge of the prudential concerns of such town. Annual town meetings are to be holden in the months of October, November, or December, and it is the duty of the Select-men to cause such meetings to be warned by a notification in writing, signed by them or a majority of them, specifying the objects of such meeting, which must be posted upon the several sign-posts of the town. The statute provides that this shall be sufficient warning, but it is not the only mode of warning; and if a town meeting is warned by the constables, as the inhabitants would have actual notice, the warning would be legal; and a vote of the town designating a time when their town meetings shall be held would probably be sufficient warning. At any annual town meeting the inhabitants may determine on any other place or places, at which warnings shall be posted up, in addition to the public sign-posts.

Any town meeting may adjourn from time to time, as may be necessary. Special town meetings may be called whenever the Select-men deem it necessary, or on the application of twenty inhabitants qualified to vote in town meetings. The voters in town meetings are the electors or freemen, and persons of twenty-one years of age, possessing a freehold not subject to a mortgage, rated in the common list at nine dollars, or personal estate rated in the list at one hundred and thirty-four dollars, exclusive of their polls, and who have statedly resided in the town one year. If any person not qualified, votes or intermeddles in any town meeting, he incurs a forfeiture of seventeen dollars to the treasury of the county. No town officer can be chosen at a special meeting except in case of vacancy by death, removal, or refusal to accept of some person appointed at an annual meeting.

The office of Select-men is peculiar to New England, and is probably as ancient as the first settlement of the country. They were originally called Townsmen, or the Town's-men, as appears from ancient records; and their duties were formerly much more extensive than at present, as in addition to taking care of the general concerns of the town, they exercised a minute inspection and superintendance of the morals, manners, and private affairs of the inhabitants thereof. No specific qualifications are required for the appointment, and any inhabitant or resident, may be a Select man. They take no oath of office, neither is there any oath required or administered to voters in town meetings.

1. The general powers and duties of Select-men relate to the management and superintendance of the ordinary interests and affairs of the town. It is provided by statute that they shall superintend the concerns of the town, and adjust and settle all accounts against the same, and draw orders on the treasurer thereof for payment, and that they shall keep a true and regular account of all the expenditures of the town, and exhibit the same at the annual meeting next following their appointment (*a*). Their general authority however, as Select-men, does not enable them to act as agents of the town, either to commence or defend in a suit in behalf of the town, or to employ an

(*a*) St. 458.

attorney, but for this purpose the town must appoint an agent to appear for it, or to engage counsel (*b*).

It is their duty immediately after the annual town meeting to cause all persons who have been appointed to town offices to be summoned to appear before some justice of the peace of the town, and take the oaths prescribed by law for their respective offices. This is necessary that it may be known whether the persons chosen accept or not, so that if they refuse, others may be appointed to supply the vacancies.

2. They superintend the collection of taxes, and in certain cases may assess the inhabitants. When any tax is voted or granted by the town, it is the duty of the Select-men to make out a rate bill, containing the proportion which each inhabitant of the town and non-residents having taxable property in the town, is to pay according to his list. All town taxes are to be granted upon the last assessment list, which has been completed according to law. If any town refuses or neglects to grant a tax sufficient to defray the necessary expenditure of such town, after being informed by the Select-men of the necessity and want of such supply, the Select-men are empowered to assess the inhabitants, and make out rate bills on their lists in the same manner as where a tax is granted by the town. But they cannot assess the inhabitants in any other way, or on any other principle, than according to the general assessment list. Whether the tax is granted by the town, or an assessment made by the Select-men, their rate bills must be signed by them, or a majority of them ; and in either case, they must apply to a justice of the peace of the county and obtain a warrant annexed to such rate bills, and deliver the same into the hands of the collectors to collect such tax and pay the same into the town treasury by the time appointed. All taxes whether imposed by the town or Select-men, must be granted upon all the inhabitants of the town according to their assessment lists, and afterwards the Select-men and civil authority may abate the proportion of such tax belonging to the indigent and unfortunate ; they are also authorized to abate the particular rates of poor and unfortunate individuals in case of state taxes, but if such abate-

(*b*) St. 132.

ments exceed one eighth of the proportion of such tax, belonging to the town, the excess must be made up by the town.

If any collector of a town or state tax die, or refuse to receive his rate bill, or shall before he has completed the collection of any tax, deliver up his rate bill, into the hands of the Select-men, they are empowered to depute some proper person to collect the whole, or what remains uncollected of such tax, and such collector shall have the same powers as other collectors, and be responsible for what there was due on said tax when such rate bill was delivered to him. In such case the Select-men ought to ascertain the amount due and uncollected on said tax bill when such person is deputed, otherwise they will not know how much he is to account for; they must also obtain a new warrant, or procure the justice who issued the first to alter the direction, and direct it to the person deputed by the Select-men. The Select-men are to see that all town and state taxes are collected and paid into the treasury according to law. If the collector of any town tax shall neglect or fail to collect and pay the same by the time limited, it is the duty of the Select-men to demand the arrearages of such collector, and on failure of payment, they must apply to a justice of the peace for an execution against him for the amount of such arrearage, and such justice is empowered to grant the same. If the collector of any state tax shall fail to collect and settle with the state treasurer for the same by the time appointed, the Select-men are authorized to commence a suit against such collector in the name of the town to recover what remains unpaid of such tax; and the whole estate of such collector at the time of the commencement of such suit is holden for the same.

Form of Execution against a Collector.

To the sheriff &c. Whereas on the day of the town of in lawful town meeting assembled, granted a tax of cents on the dollar on the list of the year on all the inhabitants of said town, payable on the day of A. D. ; and whereas A. B. was at said meeting appointed a collector (or one of the collectors) of said tax; and the Select-men having made out a rate bill, or bills under their hands, specifying the proportion each in-

habitant of said town was to pay of said tax, and obtained a warrant in due form of law directed to said A. B. annexed to said rate bill (or one of said rate bills where there is more than one collector) him commanding to levy and collect of the several persons named in said rate bill, their proportion of said tax, as specified in such rate bill, and pay the same to the treasurer of said town, on or before the said day of A. D. ; and the said collector having neglected and failed to collect and pay over said tax, (or such part thereof as was contained in said rate bill) by the day the same was payable, the Select-men of said town on the day of made demand of said negligent collector for the arrearages of said tax amounting to the sum of dollars and cents, which he neglected and refused to pay, whereupon the said Select-men made application to J. P. justice of the peace for the county of for an execution against said collector for said arrearage of said tax: Wherefore, by virtue of the statute in such case provided, and by the authority of the State of Connecticut, you are hereby commanded, that of the goods, chattels or lands of the said A. B within your precincts, you cause to be levied, and the same being disposed of or appraised, as the law directs, paid and satisfied unto the treasurer of said town of , the aforesaid sum of dollars and cents. with seventeen cents more for this writ, and also for your fees. And for want of such goods &c. (the same as in other executions.)

3. The Select-men are overseers of the poor, and it is their duty to provide necessary food, clothing, firewood, and other articles necessary to their subsistence, for all paupers belonging to the town, and to draw orders on the treasurer therefor; and to exhibit to the town an account of such expenditure when required (*c*). This is the most important branch of the duties of Select-men, and should be discharged with a proper regard to economy or the interests of the town, and the claims of humanity in behalf of the indigent, the distressed, and the wretched; of whom, if many are the victims of intemperance, idleness, and vice, some at least are the subjects of misfortune, sickness and adversity. The paupers of a town are subject to the

(*c*) St. 370.

orders and authority of the Select-men, who may remove them to such places in or out of the town, and provide for them as they please, subject to the direction of the town. The paupers are entirely dependent on the Select-men, for no person is entitled to pay, for any supply furnished to a pauper contrary to the express direction of the Select-men; nor in any case for any thing furnished to a pauper before notice is given to one or more of the Select-men, where such pauper resides, of his condition; but after such notice, if the Select-men neglect to take care and provide for such pauper, such person may furnish him with necessaries, which must be paid for by the town where such pauper resides, unless the Select-men gave such person express orders not to furnish such necessaries.

The Select-men are not only to oversee and provide for the paupers of the town, but likewise for paupers, or persons residing within the town who are so poor as to be unable to support themselves, although not inhabitants of such town. If the Select-men of any town have knowledge of any person residing in such town not being an inhabitant thereof, who is unable to support himself, and is in want of supplies for his subsistence, and shall neglect to furnish the same, for every such offence, each Select-man forfeits the sum of seven dollars to the person who may prosecute for the same. It is singular that there should be a forfeiture for not providing for paupers not belonging to the town and none for neglecting to provide for those that do belong to the town, although if they decline furnishing supplies and forbid others doing it, a pauper must starve, unless subsisted by charity.

Where a pauper belonging to one town, is in another town and becomes chargeable, the Select-men of the latter town must give notice to the town to which such pauper belongs, of his condition, within five days after they ascertain the town to which he belongs, if such town is within twenty miles, and in other cases in fifteen days; and where the Select-men have knowledge of the town to which such pauper belongs, and shall neglect to give notice within the periods aforesaid, such town shall not be liable for any expense for the time of such neglect; and such town shall not be liable to pay at a greater rate than one dollar per week for the support of a pauper in lieu of all expenses.

Notice may be given by putting a letter, signed by one or more of the Select-men of the town where the pauper is, into the mail, directed to the Select-men of the town where such pauper belongs, if there is a post-office in such town, otherwise directed to be left at the post-office nearest to such town ; such notice shall be considered as having been given at the time the letter would be received by the ordinary course of the mail (*d*). Actual notice in writing, conveyed in any other way, is sufficient. The notice must state the name of the pauper, and that he is chargeable : if he has a family it is not necessary to state the names of the members of his family, but generally that the pauper and his family are chargeable for their support. The expenses incurred by one town for the support of a pauper belonging to another, where the aforesaid provisions of the law have been complied with, may be recovered by a proper action at common law.

When any person having a legal settlement in any town in this state shall remove out of the same and gain a settlement in any other state, and shall afterwards return to this state, and become chargeable for his support, the town where he had his last settlement in this state shall be liable to support him.

The principal difficulty concerning paupers, has arisen from questions as to their right of inhabitancy or settlement ; but the laws relating to this subject now, are more intelligible and simple than they were formerly ; yet there can be no general principles but which in their application may in some instances occasion doubts and difficulties. The law relative to the acquiring of a right of inhabitancy, or a legal settlement, in any town in this state, makes a distinction between foreigners, persons who are inhabitants of any other state, and such as have a settlement in a different town in this state. Foreigners, or persons who are not inhabitants of this, or any of the other states, cannot acquire a settlement in any town in this state, unless admitted by a vote of the inhabitants of such town, or by consent of the Select-men and civil authority of such town, or by being appointed to, and the execution of, some public office. It would seem that the appointment to an office would not be suffi-

(*d*) St. 370.

cient; but that the person must execute the duties of the office to which he may be appointed; yet whether the appointment is made by the town, the general assembly, or the people, does not appear to be material. A person who is an inhabitant of any of the United States, except this, may gain a settlement by any of the requisites, whereby a foreigner may acquire a settlement, and also by the possession in his own right in fee, of real estate situated in this state, of the value of three hundred and thirty-four dollars, free from encumbrance, and by one year's residence in the town next preceding the time, he may claim to be admitted an inhabitant. If his title to real estate is by deed, it must have been recorded in the proper office, at full length, at least one year before he can be admitted. A person being an inhabitant of any town in this state, may gain a settlement in any other town, by any of the requisites whereby a foreigner may acquire a settlement; and likewise by possessing for the term of one year, real estate in his own right in fee, situated in the town where he may claim to have a settlement, of the value of one hundred dollars, free from encumbrance; or by a residence in a town for six years, he supporting himself and family, if any he has, during that period, and also paying all taxes for which he is legally liable, and which may be demanded of him by the collectors thereof. The settlement of a married woman is the same as that of her husband, and the settlement of minor children follows that of their father. Neither a married woman nor minor children can acquire a settlement in their own right by residence, as they are not persons *sui juris*, and possessing the legal capacity of doing the acts required to be done; but a *feme covert* may obtain a settlement by the residence of her husband, and minor children by the residence of their father, although they do not reside themselves in the same town. A person who resides in a town a part of six years, whilst a minor, and the residue after he is of full age, does not gain a settlement (*a*). A ward residing with his guardian does not gain a settlement in the right of his guardian by such residence (*b*.) It has been decided by the superior court, that an idiot, although of age, did not acquire a settlement in her own right, but in the right of her mother

(*a*) 4 Day, 189. (*b*) 1 Root, 131.

by residence (*c*). By authority of this decision, and from the express terms of the statute, there can be no doubt that minor children, having no father living, may gain a settlement in right of their mother by residence with her in a town six years; and a bastard child may gain a settlement in right of its mother by her residence.

All persons born in this state, whose parents have a settlement in any town in the state, become inhabitants of the state; the settlement of an illegitimate child follows that of its mother, if she has a settlement in any town in this state, if not, its settlement is to be in the town of its birth (*d*).

A married woman cannot gain a settlement by residence in her own right, but where the marriage is void she may gain a settlement. Where a woman having a settlement in a town in this state married an inhabitant of another state, and they removed into another town, and cohabited together as husband and wife, the marriage being void, she gained a settlement in her own right by such residence (*e*) A lunatic, needing support, may be removed to the town where she has a settlement, notwithstanding she has a reversionary interest in fee in the town where she resides (*f*). Where the parents of a pauper who was a minor, were divorced by an act of the legislature, and the mother appointed guardian to such minor, it was held that such pauper's settlement acquired in her father's right was not affected thereby (*g*). Where "all the inhabitants" living within certain limits, were incorporated into a distinct town, it was held that an infant pauper, residing within those limits, having a settlement elsewhere in right of her father, was not included (*h*). The settlement of a child of a female slave, born after the first of March, 1784, is in the place of its birth, as it could derive no right of settlement from its mother, owing to her being a slave, nor is her settlement changed by her mother's gaining a new settlement in another town, as a slave cannot communicate the right of settlement to her children (*i*). It has been decided that a person having a settlement in one town in this state, acquired a settlement in another, by purchasing therein an estate in fee, of greater value than one hundred dollars, notwith-

(*c*) 1 Root, 196. (*d*) 2 Con. Rep. 18. (*e*) 1 Day, 212. (*f*) ib. (*g*) 2 Con. Rep. 20. (*h*) ib. (*i*) ib. 355.

standing the execution at the same time of a mortgage deed to the grantor, to secure the principal part of the purchase money (*f*); but this decision has been overruled by the legislature, as it is now expressly provided by the statute, that the estate must be free from encumbrance, to enable a person to acquire a residence thereby.

Persons born in this state, of parents who are foreigners, it would seem acquire a settlement in the town where they are born, but that those born in this state of parents having a settlement in any other state, would not acquire a settlement in the town where they are born, but that their settlement would follow that of their parents. But no person born in this state, can become chargeable to the state, and if a person born in this state, of parents who are inhabitants of another state, becomes chargeable to any town in this state, such town cannot be reimbursed from the treasury of the state, nor can they have a claim upon the town where such pauper was born; but he may be removed to the state where his parents belonged at the time of his birth, he having acquired a settlement there in their right.

A woman having a settlement in any town in this state, who marries, and her husband having a settlement in a different town, she loses her settlement and acquires one in his right; if her husband has no settlement in this state, but is an an inhabitant of any of the other states, she loses her setttement in this state during the marriage, and acquires a settlement in the right of her husband in the state where he belongs, and may be conveyed there with him; and if her husband be a foreigner, she loses her settlement, without acquiring any in the right of her husband. But in either case, it would seem that on the death of her husband, if she return to, or has not left, this state, her former settlement will revive, and she will become chargeable to the town where she belonged at the time of her marriage; as it is provided that in all cases where a person once had a settlement in any town in this state, and shall have removed into another state, and have gained a settlement therein, and shall return to this state and become chargeable, he must be supported by the town to which he formerly belonged (*e*). And the reason is the same, where a woman hav-

(*f*) 2 Con. Rep. 600. (*e*) Stat. 371.

ing a settlement in any town in this state, loses the same and gains a settlement in another state by marriage, without having removed out of this state, that on the death of her husband her settlement should revive.

In order to acquire a settlement by residence, a person must reside six years in succession, and support himself and family, pay all taxes which may lawfully accure against him and be demanded of him. A temporary absence, or an absence on business for a length of time, if his family is in the town, and he intends to return there, will not prevent his acquiring a settlement. So if a person without a family is absent from a town at different periods for several months at a time, on business, without intending to remove from such town, and still considering the same as the place of his residence, his absence will not prevent his acquiring a settlement.

Mariners, who make their home in a sea port town, and sail from, and return to the same, are considered as residing in such town, so as to acquire a settlement.

There are a class of paupers who have not acquired a settlement in any town in the state, and who, nevertheless, are not chargeable to the state; the town where such paupers may become chargeable, although they have no settlement in the same, have no claim for the supplies furnished, as the state is not liable to reimburse the moneys expended, nor is any other town, as such paupers have no settlement in any town in the state. It is provided by statute that no person born in this state or in an adjoining state, and that no person who at any time previously had a settlement in any town in this state, shall be chargeable to the state, and that no town shall be reimbursed from the state treasury any expenses incurred for such paupers (*a*). Persons born in this state, of parents who are inhabitants of another state, acquire no settlement in the town where they were born, but they have a settlement in right of their parents, in the state where they belong; yet if they become chargeable to any town, such town cannot be reimbursed by the state. And a person born in this state, of parents who are foreigners, cannot be chargeable to the state, whether they acquire a settlement in the town where they

(*a*) St. 371.

were born or not. A person born in any adjoining state, and who becomes chargeable to any town in this state, such town cannot be reimbursed from the state treasury, and will have no claim for the support of such person, unless he has by residence acquired a settlement in some other town in this state. The expression "adjoining state," must not be construed to mean any of the other states, but a state actually adjoining this, as the reason of the law is, that it is the duty of the town where such persons may reside, and who may be likely to become chargeable, to cause them to be removed to the state where they belong, but this reason does not apply to distant states, as the same facility of removing persons to them does not exist. Persons who have once had a settlement in any town in this state, and have lost the same, without acquiring a settlement in any other town, if they become chargeable, the expense must be borne by the town where the same is incurred, and such town cannot be reimbursed from the state treasury. If a woman, having a settlement in this state, marries a foreigner, or an inhabitant of another state, whereby she loses her settlement, if they become chargeable, he will belong to the state poor, but she will not, and her support must be borne by the town where they reside, and which may furnish the same. It is also provided that if any person not an inhabitant of this state, shall reside six years inclusive in any town in the state, without becoming chargeable to the *state*, any expense which may be incurred by such town for the support of such person, he still residing therein, must be borne by such town (*c*). But if such person, during said term of six years, has received aid from the *town*, he will not have acquired a settlement therein, yet if he continues to reside there, the town will be liable for his support ; but if he should remove from such town and become chargeable to another town, the latter town would have no claim upon the first, and such town might be reimbursed their expenses from the state.

The difference between a person's having a *settlement* in a town, and the town being liable for his support whilst he may reside therein without his having acqcired a settlement, is this : that where a pauper has a settlement in a town,

(*c*) Stat. 372.

that town is charged with his maintenance, whether he reside within the town or not, and may be sued for expenses incurred by any other town for the support of such person; but in the latter case, the town is only liable for his support whilst residing in the same, or in other words, is only deprived of its claim upon the state, to have its expenses refunded; but if such person removes out of such town, it is not liable for any expense incurred by any other town for the support of such pauper. Where a person born in an adjoining state, or in this state, of parents who are inhabitants of another state, or where a married woman, or other person who has once had a settlement in some town in this state, and has lost the same, without acquiring a settlement in any other town in the state, if they become chargeable to any town, where they may reside, such town will be liable for their support, although they have acquired no settlement therein, during their residence in the same. But such persons, and all other persons not inhabitants of any town in this state, may be removed either into the state where they belong, or if they have resided in any other town in this state they may be removed to the town where they last resided and made it their home in this state. And such persons may be removed either to another town in which they have resided in this state, or into any other state, at any time within six years after their coming into any town in this state, whether they have become chargeable to such town or not. But if a person who has a settlement in any town in this state, removes into any other town, he cannot be removed from such town, to the town where he belongs, unless he becomes chargeable within six years next after his coming into the town; neither is he liable to be warned to depart such town.

Where a person is chargeable in any town in this state, who has a settlement in any other town in the same, he may be removed on application of the Select-men of the town where he is chargeable, to the civil authority, or any two of them, of such town, who are authorised to grant a warrant directed to any constable of the town, commanding them to transport such pauper to the town where he belongs. A person who is an inhabitant of any other state, may be removed out of this state, by a warrant issued by the civil authority, or a majority of them, of the town

where he resides, on application of the Seclect-men of such town. The civil authority are not in either case to grant a warrant as a matter of course, on application of the Select-men; but they are to exercise their discretion and judgment on the subject, and may refuse it if they think proper. A form of warrant in these two cases has been given at page 32.

Form of Warrant for removing a person who is an inhabitant of another State to a town in this State, where he has previously resided.

To A. B. of in the county of Constable of said town. Greeting.

Whereas C. D., E. F. and G. H. Select-men of the said town of this day made application to the undersigned justices of the peace, being a majority of the civil authority of said town, stating that O. P. is now residing in said town with his family, and has resided in said town since the day of and that the said O. P. is an inhabitant of the state of and not an inhabitant of any town in this state, and that heretofore and immediately preceding his coming into said town of he resided and made his home in the town of in this state: Wherefore, by authority of the state of Connecticut, and by virtue of the statute in such case provided, you are commanded to take the said O. P. and his family, consisting of his wife and children, and forthwith (or as soon as they can conveniently be removed) convey and transport them into said town of in the county of in this state, where they last resided, previously to their removing into the said town of . Hereof you are not to fail, but due service and return make.

Dated, &c. Signed by a majority of the justices of the peace of the town.

A person not an inhabitant of this state, residing in any town therein, is liable to be warned to depart the same.—This may be done by the Select-men, on their own authority, or by a warrant granted by a justice of the peace. The warning, if by the Select-men, may be in writing or verbal.

Warrant.

To either Constable, &c.

Whereas A. B. now residing in the town of in the

county of is not an inhabitant of this state, and the said A. B. has become chargeable, or is likely to become chargeable, to said town of . Wherefore, you are hereby commanded forthwith to give notice, and warn the said A. B. to depart forthwith from, and leave said town of with his family, on penalty of the law in such case provided. Hereof, &c.

A person who has been warned out of a town, forfeits one dollar and sixty-seven cents for every week he continues in such town after such warning; and if convicted and fined, and he has no estate to satisfy the same, he is liable to be whipped ten stripes on the naked body, unless he depart from the town within ten days after sentence, and reside no more therein, without leave of the Select-men. But apprentices, and servants bought for a time, are not liable to be warned to depart from a town, or to be fined or whipped for refusing so to do. And if any person, not an inhabitant of this state, is conveyed out of the same as aforesaid, and returns into the town from where he was sent, to abide therein, he may be warned to depart, and if he fails so to do, he may be whipped on the naked body not exceeding ten stripes, and again sent away, and so dealt with as often as he may return to said town.

There is a severity and harshness in the statute relative to inhabitants of other states, who come to reside in this state, which is little consistent with feelings of humanity, or with that spirit of comity, which ought to characterize the conduct and the laws of different states, with relation to each other. And it is the more extraordinary that these provisions should be general, and not restricted or qualified, so as to be applicable only to persons who have become chargeable, or who are liable to become chargeable to the town where they may reside. As the law now is, any inhabitant of another state, however wealthy or respectable, who removes into any town in this state, unless he acquires a settlement therein, is exposed to be warned to depart from such town, and liable to a fine of one dollar and sixty-seven cents a week, if he continues to remain therein after such warning; and moreover, is also liable even without any warning or notice, to be forcibly seized by a constable and conveyed out of the state. It is no ex-

tenuation of the barbarity of this statute, to say that it is never applied, except to persons who have or are likely to become chargeable; but this is rather an evidence of the injustice and inexpediency of the law. It is, however, some excuse, that most of the other states have similar statutes.

If any individual hire any person who is not an inhabitant of this state, who comes to reside in any town therein, or let any house or land to such person, such individual, unless he gives security to the acceptance of the Select-men and civil authority of such town, to save the same harmless, from all expense that may be occasioned thereby, forfeits to the treasury of such town, one dollar and sixty-seven cents per week, for every week he may hire or harbour such person, or let an estate as aforesaid. A separate action cannot be brought on this statute for the each week's forfeiture, but an action must be brought for the whole sum which has become forfeited and accrued when the same is instituted. A bond or note in common form, may be taken as security, with a condition annexed, that the obligor will indemnify such town from all expense on account of such person or his family. Any individual who may bring any person who is poor and indigent into any town in this state of which such person is not an inhabitant, and leave them therein, incurs a forfeiture for every person so brought and left, of sixty-seven dollars, to the use of such town.

No person who is unable to support himself and family, can become chargeable to the public, that has relations standing in the degree or line of father or mother, grandfather and grand mother, children and grand children, who are of sufficient ability to provide for and support such poor relations. If they neglect or refuse to provide such support, application may be made to the county court of the county where such indigent person resides, by the Select-men of the town, wherein he is resident, or by one or more of such relations, where a part of those standing in the same relation, refuse to contribute towards the support of such indigent relation. Where a person dies, leaving a widow, and no children, his estate, both real and personal, is liable for the support of such widow during her widowhood, in case she become impotent and unable to support herself, and there is no person liable by law to support her,

of sufficient ability (*i*). Where there are children or parents who are of sufficient ability, grand children or grand parents cannot be called upon. Where there are several children or grand children, who are able, they must contribute in equal, or in such proportions as may be reasonable, with reference to their relative ability and circumstances, and if any of them refuse, one or more of the others may make application to the county court, which may order them to pay towards the support of such indigent relation, such sum as they think reasonable, and may issue execution quarterly therefor. Sons and grand sons, in law or by marriage, are not liable from their own estates to support their wives' parents, or grand parents.

Form of application or petition to the county court by Select-men.

To the honourable County Court, &c.

The application or memorial of A. B., C. D. and E. F., Select-men of the town of in the county of respectfully sheweth, that L. M. is an inhabitant of said town of and that by reason of sickness, he has become poor and impotent, and wholly unable to provide for himself and family; and they would further inform your honours, that O. M. of the town of and P. M. of the town of both in said county, are grand children of the said L. M. and of sufficient ability to support and maintain the said L. M. their grand father, but that the said O. M. and P. M. and each of them, wholly neglect and refuse to provide for the support and maintainance of the said L. M. although informed of his indigence and want of support, and requested by us to furnish the same, whereby the said L. M. has become chargeable, (or is likely to become chargeable) to the said town of And your memorialists pray your honors to inquire into the facts herein stated, and if found true, to order and decree that O. M. and P. M. pay and contribute such sum for the support of the said L. M., as your honours may deem reasonable, or that in some other way your honours would grant relief. Signed by the Select-men.

Application by a Relation.

The memorial of A. B. of respectfully shewing that

(*i*) St. 278.

L. B. of by age and infirmities has become poor, and unable to support himself, and that C. B. and E. B. both of said town of and the memorialist are children of the said A. B. and all the children the said A. B. hath now living, and that the said C. B. and E. B. are each of them of sufficient ability to support the said A. B. as well as the memorialist; but that they have neglected and refused, and do still neglect and refuse to pay or contribute towards the support of the said L. B., although informed of his destitute condition, and often requested so to do, whereby the memorialist has had to bear the whole burden and expense of supporting his said father: Wherefore he prays your honours to inquire into the facts herein stated, and if found true, order and decree that the said C. B. and E. B. pay and contribute such sum for the support of their said father, L. B., as your honours may deem reasonable.

Citation.

To either Constable of, &c.

By authority of the state of Connecticut, you are hereby commanded to summons C. B. and E. B. of the town of in the county of to appear, if they see cause, before the county court, to be holden at, &c. then and there to shew reasons, if any they have, why they shall not contribute and pay a reasonable sum towards the support of A. B. their said father, agreeably to the prayer of the foregoing memorial: Hereof you are not to fail. State duty of thirty-four cents is paid hereon. J. P. Justice of the Peace.

The several towns in the state are authorized to establish work-houses and houses of correction; to erect and provide suitable buildings, with cells or apartments for confining offenders sentenced thereto; to furnish the materials for those who are ordered to labour, to direct the kind of labour, and to make all necessary regulations, not inconsistent with the laws of the state.

The Select-men of the town are constituted overseers of the work-house established therein; and it is their duty to appoint a master or keeper of the same, to superintend such house, as to the management, labour and food of the prisoners, to see that the laws are duly executed, that the prisoners are suitably provided for, and not exposed to

abuse or oppression, and at least once in three months to visit such workhouse. If the master is guilty of any misconduct, they may remove him and appoint another in his place (*a*).

The towns are also authorized to establish asylums or poor-houses, for the admission and accommodation of the poor of such town, and to establish by-laws relative to the persons to be admitted into such houses, and for ordering and governing the same; but such by-laws must not be contrary to the laws of the state, and they may be repealed by the superior court, if by said court they are deemed unreasonable or unjust. The Select-men are not empowered to establish or superintend poor-houses, but the town must appoint agents for the express purpose; but the Select-men may be appointed agents. Two or more towns may unite in establishing poor-houses (*b*). Houses of correction and poor-houses may be connected together in one establishment, and this will generally be done when either are erected. The importance of such establishments, for the comfort and better regulation of the poor, for economy, and for the punishment and correction of the idle, the profligate, the vicious, and the intemperate, is beginning to be duly appreciated. Confinement and labour are the only means that afford any hope of correcting such offenders.

CHAPTER II.

1. The Select-men, or the major part of them, of any town, are authorized to lay out public highways, or private ways, within the limits of such town. They must give notice to all the owners of land through which the road is proposed to be layed out, to be present, if they see cause, at the laying out of such road. A notice in writing must be left at the usual place of abode of each of the owners of the land through which the road is to pass. The Select-men and the persons interested, may agree on the damage done by laying out said way; and in case they cannot, the Select-men must apply to any justice of the county, in case of a

(*a*) St. 480. (*b*) St. 371.

private way, and to any justice of any other town in the county, in case of a public highway, and such justice may appoint three judicious and disinterested freeholders, who being sworn for that purpose, must estimate and assess to each person injured, the damage sustained by him by the laying out of such way. Where the Select-men lay out a public highway, the expense must be borne by the town; but in case of a private way, it must be paid by the persons applying for such way, if the same is for their use only. A survey in writing must be made, or caused to be made, by the Select-men, and signed by them, containing a particular description of such way, which must be submitted to a lawful town meeting, and if accepted by such town, it must be recorded in the records of lands of the same, and the damages being paid according to the agreement or estimate as aforesaid, to the persons injured, or the amount thereof deposited in the treasury of the town for their use, such way becomes legally layed out and established, if a public highway, and may immediately be opened. But in case of a private way layed out as aforesaid, if any person through whose land the same passes, declares himself aggrieved, the way cannot be opened or occupied until the expiration of twelve months after the way was layed out, that such person may have opportunity to apply to the county court for relief, and also time to secure his enclosure (*a*).

In case of a public or private way layed out by Select-men, any person aggrieved either by laying out the way, or the assessment of the damages, may within eight months, apply to the county court for relief. The Select-men for the time being of such town, must be cited to appear and shew reason, if any they have, why the relief should not be granted. The county court, if they are of opinion that the way is not of common convenience and necessity, may set aside the same and revoke the doings of the Select-men, or if they consider the damages assessed too low, they may, on application therefor, order out a jury to re-assess the same (*d*).

The Select-men may, with the approbation of the town, discontinue any public or private way, which may have been layed out by them or their predecessors, and any per-

(*a*) St. 268. (*d*) St. 271.

son so aggrieved by their doings, may make application to the county court for relief, in the same manner and within the same time, as where application is made by persons aggrieved by the doings of Select-men in laying out ways; and the Select-men must also be cited in the same manner (*e*).

Form of Notice.

To A. B. of . You are hereby notified to appear at in said town, on the day of at o'clock, then and there to be present and to shew cause, if any they have, why a public highway (or private way) shall not be layed out by the subscribers, Select-men of said town of , within said town, as follows, viz. commencing &c. (describe the proposed way.)

C. D. }
E. F. } Select-men.

Form of the survey and laying out of a high way.

Be it remembered that on the day of A. D. the subscribers, Select-men of the town of in the county of , having given notice, in writing, by leaving the same at their places of abode, to A. B., C. D. and E. F., all of said town of , and G. H. of the town of , in the county of , owners of land over which the highway hereinafter described is layed out, to be present at the laying out of the said way, and shew reasons, if any they have, against the laying out of the said highway, and the said A. B., C. D. and E. F. having been present and their objections fully heard, and on personal view, we have laid out and established, and do hereby lay out and establish a public highway, (or private way, as the case may be,) within said town of , as follows, that is to say, (here describe the highway from actual survey, giving the boundaries, lines and courses.) And the subscribers and the said A. B. and C. D. owners of land, over which said highway is laid, agreed and estimated the damage done to the land of the said A. B. by the laying out of said highway at dollars, and that done to the land of the said C. D. at dollars; and being unable to agree with said E. F. and G. H. as to the damage done to their land, by laying out of said way, the subscribers applied to J. P. justice of the peace for said county, and qualified to act in said matter,

(*e*) St. 272.

who thereupon appointed L. M., O. P., and R. R., all judicious and disinterested freeholders of the town of , in said county [they must not belong to the same town in case of a public highway] to estimate and assess the damages sustained by the said E. F. and G. H. by the laying out of said highway, and said freeholders being duly sworn, by said justice, and having notified the said E. F. and G. H. to be present, and having personally viewed said land and said way, as laid over the same, did estimate and assess the damage of the said E. F. at dollars, and the damage of the said G. H. at dollars; and all of which said damages have been paid by us, from the treasury of said town of .

[Signed by the Select-men.]

Certificate of the Justice which should accompany the Survey.

H county ss. day of A. D. : then on application of the aforesaid , Select-men of the town of I appointed L. M., O. P. and R. R., all judicious and disinterested freeholders of the town of in said county, to estimate and assess the damage done to the lands of E. F. and G. H. by laying out the above described highway; and at the same time they were duly sworn by me to make a just and impartial estimate of such damages.

J. P. justice of the peace.

Certificate of the Freeholders.

The subscribers, freeholders of the town of in the county of hereby certify, that having been appointed, and duly sworn to estimate the damages sustained by the abovenamed E. F. and G. H. by the laying out of the above described highway, they being owners of land over which the same is laid, and having viewed said highway and said land, and they in pursuance of notice, being present, did estimate and assess the damage of the said E. F. at dollars, and the damage of the said G. H. at dollars, arising from the laying out of said highway as aforesaid.

[Signed.]

Receipt of Damages.

The subscribers, owners of land over which the foregoing highway is laid out, hereby acknowledge to have received of the Select-men of said town of the damages agreed upon, or assessed to them respectively, as aforesaid.

Certificate of Town Clerk.

I hereby certify, that at a legal town meeting, holden on the day of said town of accepted and approved of the laying out of the foregoing highway, by the Select-men of said town; and on the day of the aforesaid survey and description of said highway, under the hands of said Select-men, was by me recorded in the records of lands of said town.

The Select-men are authorized to remove encroachments made on public highways. If any person include any part of a highway in his field or inclosure, or erect his fence on the same, whereby the highway is made narrower, the Select-men, or a committee of the town appointed for that purpose, may notify and warn such person to remove his fence within one month; and if he does not remove the same within that time, the Select-men, or such committee, are authorized to remove the same, and have a right by any proper action to recover the expense thereof, of the person making such encroachment. And if after such removal, such person shall again erect his fence, so as to inclose the same, or a less part of the highway, he incurs a penalty of seven dollars for every such offence, as often as repeated, one half to the Select-men who gave the warning and removed the fence, and who may prosecute such offender, and the other half to the treasury of the county wherein the offence is committed (*e*). But where the Select-men brought an action on this statute to recover the expenses of giving notice and removing encroachments upon a highway, it was decided that they did not act as the agents of the town and that the town was not interested in the event of the suit (*f*.)

2. The Select-men are authorized to appoint overseers. They are required from time to time to inspect the management and conduct of all persons residing within their respective towns, and if they find any person by idleness, gaming, intemperance, debauchery, mismanagement, or bad husbandry, who is likely to spend and waste his estate, and become chargeable to the town, they may appoint some proper person to be his overseer to advise, direct and or-

(*e*) St. 362 (*f*) 2 Conn. Rep. 292.

der him in his business. Such appointment must be in writing, subscribed by the Select-men, specifying the cause thereof, and must be for a definite period of time not exceeding three years. A copy of such appointment must be logded with the town clerk of the town ; and a like copy or other notice of such appointment must be set up on the sign-post in the town ; and if there are several societies it should be on the sign-post where such person resides, although perhaps this is not indispensable to the validity of the appointment. Such Select-men, or their successors, may remove such overseer for neglect of duty or mismanagement in his trust, and appoint another in his place (*g*). Where no time is limited in the appointment of an overseer, the appointment is void (*h*). If the appointment is for more than three years, it is also void. In case of a void appointment of an overseer to a person within the jurisdiction of the Select-men, owing to its not being in conformity to the statute, the Select-men are not liable, although such appointment was made without probable cause and from malice, except special damages arise from such appointment, which must be alleged and proved, as the appointment imposes no restraint, and the law will not imply any damage (*i*). The Select-men cannot appoint an overseer except to persons residing in the town, and if they appoint one over a person who is an inhabitant of the town, or has a settlement there, but does not reside within the town, the appointment is void and the Select-men are liable to the party, where actual damage arises from such appointment, the same being specifically alleged and proved. But where the Select-men make an appointment of an overseer to a person within their jurisdiction, without probable cause, the appointment is valid ; but the Select-men are liable to the party without alleging or proving special damage, as the law implies damage, the person being deprived of the power of making contracts and transacting business. But the law will not presume that the Select-men have acted wrongfully, or that they have appointed an overseer to a person who was not a proper subject of such appointment, and the proof lies on the plaintiff, where he claims that the Select-men have made an appoint-

(*g*) Stat. 276. (*h*) 1 Con. Rep. 79. (*i*) id. 313.

ment from malice, and without probable cause, and the failure of the defendants to prove any facts to shew that they acted fairly, or that the appointment was made according to the Statute, will not warrant an inference of malice against them (*i*).

If the person over whom the Select-men have appointed an overseer reforms, they may revoke the appointment; but if such measures do not produce a reformation, or if such person refuses to submit to the authority of his overseer, the Select-men may apply to two or more justices of the peace of the town, who may issue a warrant, and cause such person to be brought before them, or may notify him to appear at a proper time and place; or if he absconds, a notice may be left at his usual place of abode. And thereupon such justices may proceed to make inquiry, and if they find that such person is by intemperance, or any of the kinds of misconduct which authorize the appointment of an overseer, wasting his property, and likely to be reduced to want, or that he refuses to submit to the authority of his overseer, they may direct and authorize the overseer, or appoint any other person to take such person and his estate under his care.

The duties and authority of an overseer, thus appointed, are substantially the same as those of a conservator appointed by the county court; he has the sole charge and control of such person and his estate. He must make an inventory of the estate of such person, and lodge a copy of the same with the town clerk, and must annually, and oftener if required, render his account to the Select-men, of the discharge of his trust. He may be removed by the Select-men, with the advice and consent of two justices of the town, for misconduct in his office, and another person appointed in his place; and in case of death or resignation, another person may in like manner be appointed. When a vacancy occurs by death or resignation, the disability of the person continues for nine days, to give the Select-men an opportunity to supply such vacancy, by the appointment of another overseer. Such overseer may apply to the county court and obtain an order to sell the real estate of such person, if that is necessary, to pay his

(*i*) 1 Conn. Rep. 313.

debts. Whenever such person reforms, the justices of the peace making such appointment, may revoke the same, and order his estate to be restored to him. If any person is aggrieved by the doings of the Select-men, or justices of the peace, he may appeal to the county court, which is authorized to grant relief (*k*).

Form of appointment of Overseer.

The subscribers, Select-men of the town of having inspected and examined the conduct and management of his business of A. B. an inhabitant of said town, and residing therein, and finding, that by intemperance and gaming, (or idleness, mismanagement and bad husbandry,) he is spending his estate, and likely to be reduced to want, and himself and family become chargeable to said town, we do hereby, this day of , constitute and appoint C. D. of said town, overseer to said A. B. to advise, direct and order him in the management of his business.

[Signed by a majority of the Select-men.]

Citation by two Justices of the Peace.

To any constable of the town of &c.

Whereas C., D. and G., Select-men of said town have applied to us, representing that A. B. a resident of said town of , being in practices of intemperance and idleness, whereby he was wasting his estate, and liable to become chargeable to said town of , on the day of they appointed L. M. overseer to the said A. B. to advise and direct him in his business, and the said L. M. thereupon took upon him said trust; and further representing that the measure and proceedings aforesaid have not produced a reformation in the said A. B. [or; but that the said A. B. hath refused and still refuses to submit to the authority of his said overseer]. Wherefore you are hereby commanded to summon the said A. B. to appear before us at , on the day of , then and there to shew cause, if any he has, why we shall not authorize and direct said overseer, or appoint some other suitable person, to take his family and estate under his care, agreeably to the statute in such case provided. Hereof &c.

[Signed by the two Justices.]

(*k*) St. 277.

Appointment by the Justices.

Be it remembered that on this day of A. D. A. B. a resident of the town of , appeared before us in pursuance of a citation issued by us on the application of C, D and G, Select-men of said town of representing that the said A. B. being in habits of gaming and intemperance, whereby he was wasting his estate, they on the day of appointed L. M. overseer to the said A. B. to advise and direct him in his business, and that said L. M. thereupon took upon him the discharge of said trust; and further representing that said measures did not produce a reformation in the said A. B. (or that the said A. B. refused to submit to the authority of his said overseer); and having inquired into the facts, we do find that the said representations of said Select-men are true, and that the appointment of said overseer has not produced a reformation in the said A. B. (or that he refuses to submit to the authority of said overseer) and that he is likely to waste his estate by gaming and intemperance, and to become chargeable to said town: Whereupon, in virtue of the statute in such cases provided, we do hereby authorize and direct the said L. M. to take the family of the said A. B. and his estate under his care and charge, agreeably to the provisions of the statute, in such case made and provided.

3. It is provided by statute, that parents and those who have the charge of children, shall bring them up to some honest calling and employment; and that they shall cause them to be instructed and taught to read, write, and cypher, as far as the first four rules of arithmetic; and it is made the duty of the Select-men to inspect the conduct of heads of families, and if they find they neglect the education of their children, to admonish them to attend to their duty, and if they continue to be negligent, whereby their children grow rude, stubborn and unruly, the Select-men, with the advice of a justice of the peace of the town, may take such children from their parents, or those who have the charge of them, and bind them out to some proper master, males until twenty-one, and females until eighteen years of age, that they may be properly educated and brought up in some lawful calling and employment (*l*).

(*l*) St. 107.

The right of the Select-men to interfere, does not depend upon the parents, or those who have the charge of children, being chargeable, or likely to become chargeable to the town, but wholly on the fact of their neglecting the education and employment of their children, and suffering them to grow up in idleness and ignorance. If the Select-men interfere without probable cause and from malice, they would be liable, the same as in case of the appointment of overseers; or if they were to bind out children without previously admonishing their parents, or those who have the care of them; they must also provide in binding them out, that they be properly educated and brought up to some proper calling and employment, as it is on the ground of a neglect of this, that the Select-men are justified in interposing their authority.

It is further provided, that when those persons who have had relief or supplies from any town, suffer their children to mispend their time, and live in idleness, and neglect to bring them up to some honest calling; and when the head of any family does not provide for his children, whereby they are exposed to want, and where there are any poor children in any town that are exposed to want, and live in idleness, having no person to take care of them, the Select-men of the town are authorized, and it is their duty, with the assent of a justice of the peace of the town, to bind out such poor children to be *apprentices* to some proper master, to be instructed in some suitable trade, calling, or profession, males until the age of twenty-one, and females until the age of eighteen, or to the time of their marriage within that age (*n*). The principle of this statute is entirely different from the other, here the Select-men interpose their authority and superintendence solely on the ground of the parents being in indigence, and of their having actually received assistance from the town, or of their not providing competently for their children, and their suffering them to grow up in idleness without being employed in any honest business, whereby they may earn their living, and be qualified for useful citizens. The object of the statute relating to children, is to guard against the children of the poor, and those who are insensible of the advantages

(*d*) St. 318.

of education, being suffered to grow up in ignorance; and the object of the act relating to masters and servants is to prevent the children of indigent and negligent persons being brought up in idleness, without acquiring either habits of industry, or a knowledge of any employment whereby they may procure a livelihood, and become useful members of society. From the importance of the education and employment of youth, they are very properly considered by our laws, as objects of public as well as private concern, and as proper subjects to which the aid and vigilance of legislation should be extended, where from indigence or ignorance those whose duty it is, neglect these important objects, upon which the well being of individuals, and the morals and prosperity of communities, essentially depend.

From the terms of the statute it would seem that the Select-men would not be authorized to bind out children, except as apprentices to some trade or profession; but practically at least, a more extended construction has been given to this provision, and the Select-men bind out children to any useful employment or business. They could not be justified in binding them out merely to be *servants*, where they are not to be employed in any useful business or occupation. If the Select-men bind out the children of those who have not received assistance from the town, and do not suffer their children to live in idleness, and neglect to employ them in some honest calling, or children which are not exposed to want, they will be liable to the party injured, if they have acted from malice and without probable cause. Neither can the Select-men bind out children, unless they belong to the town, and are within their jurisdiction; but where they can lawfully interfere, a binding out by them, is valid and effectual, although against the consent of the child and its parents.

Form of Indenture where the head of a family neglects the Education of his or her children.

This indenture, made this day of between A, B and C, Select-men of the town of , with the advice and assent of J. P. one of the justices of the peace of said town on the one part, and L. M. of , on the other part, witnesseth, that, whereas S. R., the mother of a minor child named R. R. both inhabitants and residents of said

town of , the said S. R. the mother of said child, and having the charge of the same, he having no father living, has neglected the care and education of said child, and although often admonished by said Select-men, she continued to neglect the education of said child, whereby he grew rude, stubborn and unruly, said Select-men have deemed it proper to remove said child from the care of S. R. his said mother, and to bind out the same, and with the advice and consent of J. P. justice of the peace in said town of for the county of , do hereby bind the said R. R. unto the said L. M. to live with him, and by him to be educated, and brought up and instructed in some honest and lawful employment, from the date hereof until the said R. R. arrives at the age of years, which, as said Select-men are informed, will happen on the day of A. D. And said Select-men, by virtue of the statute in such case provided, do hereby give to the said L. M. all necessary authority over the said R. R. and the full right of his time and services during said period And in consideration thereof, the said L. M. on his part, does hereby covenant and agree to, and with said town, to take the care and charge of said R. R. to cause him to be taught and instructed to read, write, and cypher as far as the four first rules of arithmetic, and to cause him to attend school months in each year of said term, to bring him up and instruct him in the employment and business of , and to provide for him suitable food and apparrel, washing and lodging, medical assistance in case of sickness, and all necessaries proper and suitable in sickness, or in health, for said R. R. during said term; and at the expiration thereof, give him clothing.

In witness whereof we have hereunto interchangeably set our hands and seals.

A, B, C. } Select-men.

L. M.

County ss. H day of A. D.

I certify that I advised and do hereby advise and assent to the binding out of the above named R. R. to the said L. M. agreeably to the foregoing inderture.

J. P. justice of the peace.

In case of binding out of a female it must be until she arrives to a certain age (not exceeding eighteen) or until her marriage within the age of eighteen.

Indenture by Select-men where a child is in want, or his parents receive relief from the town &c.

This Indenture, made this day of , between A, B and C, Selectmen of the town of , with the assent of J. P. justice of the peace for the county of , residing within said town, of the one part, and L. M. of of the other part, witnesseth, that J. S. an inhabitant of said town, and having received supplies from the same, and permitting R. S. a minor child of his to live in idleness, and neglecting to bring him up to any honest employment, said Select-men have deemed it their duty, and do hereby bind out the said R. S. [or, that J. S. an inhabitant of said town, not providing competently for his family, whereby they are exposed to want, said Select-men have deemed it proper, and do hereby, with the consent of J. P. justice of the peace of the county of , and residing in said town of , bind out R. S.] a minor child of said J. S. residing in said town, unto said L. M. to live with and serve him the said L. M. as an apprentice, from the date hereof, until he attains to the age of twenty-one years, which, as said Select-men are informed, will be on the day of A. D. if he lives to that age. And the said Select-men do by these presents, and by virtue of the statute in such case provided, give to the said L. M. all the right to the time and services, and the same power and authority over the said R. S. during said term, as a master lawfully has to and over an apprentice in other cases. And the said L. M. on his part, in consideration of the premises, does agree and covenant with said town of and the said R. S. to teach and instruct him the said R. S. in reading, writing and arithmetic, to permit him to attend school months in each of the four first years of his said term, to provide for and furnish him with suitable food, clothing, washing and lodging, to furnish him medicine and medical assistance in sickness, and all the necessaries proper and suitable for the said R. S. in sickness and health, and to teach and instruct, or cause him to be taught and instructed in the trade and occupation of , according

to the most approved method and practice ; and during said term to teach the said R. S. said trade and make him skilled therein, so far as his abilities and ingenuity will admit ; to oversee and guard his morals, and train him to habits of obedience, subordination, industry and economy ; and at the expiration of said term of apprenticeship, to give him clothing.

In testimony whereof, said parties have &c.

We have examined the leading and most important duties of Select-men ; but there are various other specific acts and duties, which, by different statutes they are required to perform, either of their own authority, or in connexion with one or more justice of the peace, or the civil authority of the town, many of which we have briefly noticed, in treating of the powers and duties of justices of the peace ; and others are so clearly pointed out by statute, that there would be little use in considering them ; besides, the prescribed limits of this work oblige us to close this part of it, which has already been extended to greater length than was expected at the time we entered upon it.

FORMS, OF COMMON USE AND GENERAL CONVENIENCE.

1. *A Negotiable Note.*

Sixty days from the date I promise to pay to A. B. or order, fifty dollars, for value received.

H , January 30th, 1823. C. D.

$50.

——— *payable at Bank.*

Ninety-five days from the date I promise to pay A. B. or order, at the Phœnix Bank, one hundred dollars, for value received. H , 30th day of Jan. 1823.

$100. C. D.

2. *An Order.*

Sir—

Please to pay to A. B. or order. dollars, and charge the same to me, it being for value received. Dated, &c.

To E. F. A. B.

3. *Inland Bill of Exchange.*

$100. Hartford, 30th January, 1823.

At days after date, [or at sight, or on demand, or days after sight] pay to A. B. or order, one hundred dollars, for value received.

To E. F. merchant at New-Haven. C. D.

Endorsement.

Pay the contents of the within to L. M. or order.

A. B.

Protest.

Know all men, that I, S. B. on this day of 1823, at the usual place of abode of Mr. J. C. have demanded payment of the bill (of which the above is a copy,) which the said J. C. did not pay, wherefore I the said S. B. do hereby protest the said bill; dated at H this day of 1823.

Foreign Bill.

No.— New-York, 30th Jan. 1823.

Exchange for £5000 sterling.

At two usances [or at days after sight, or at days af-

ter date,] pay this my first bill of exchange (second and third of the same tenor and date not paid) to Mr. or order, [or bearer] five thousand pounds sterling, value received of him, and place the same to account, as per advice from

To Mr. at London. James Oatland.

4. *A single Bill for the payment of Money.*

Know all men by these presents, that I, A. B. of do owe and am indebted unto J. A. of the sum of twenty-five dollars. Which said sum I promise to pay unto the said J. A. his executors, administrators or assigns, on or before the day of next ensuing the date hereof. Witness my hand and seal this day of A. D. 1823.

A penal bill for the payment of Money.

Know all men by these presents, that I, A. B. of do owe unto J. I. of one hundred dollars, to be paid unto the said J. I. his executors, administrators or assigns, on or before the day of next ensuing the date hereof; for which payment well and truly to be made, I bind myself, my heirs, executors and administrators, to the said J. I. his executors, administrators or assigns, in the penal sum of two hundred dollars, firmly by these presents. In witness whereof I have hereunto set my hand and seal, this

Signed, sealed and deliv- }
ered in the presence of }

5. FORM OF DEEDS.

Deed by Executor or Administrator of Land sold by order of the Court of Probate.

Know all men by these presents, that I, A. B. of in the county of executor of the last will and testament of C. D. late of deceased, (or, administrator of the estate of C. D. late of deceased, intestate,) by virtue of an order of court of probate, for the district of me directing to sell, at public or private sale, so much of the real estate of the said C. D. deceased, as shall be sufficient to raise the sum of dollars and cents, (being the amount of debts and demands against the said estate, exceeding the personal estate,) with incidental charges; and in consideration of the sum of dollars and cents, received to my full satisfaction of E. F. of in said county, do grant, bar-

gain, sell, and confirm, unto the said E. F. all the right, title, interest, claim, and demand, which the said C. D. had at the time of his decease, in and to [here describe the estate sold, as well buildings, as land]. To have and to hold the said granted and bargained premises, with the appurtenances thereof, unto him the said E. F. his heirs and assigns, to his and their own proper use and benefit, forever. And I, the said A. B. as executor, (or administrator,) aforesaid, do hereby covenant with him the said E. F. his heirs and assigns, that I have full power and authority, as executor, (or administrator,) aforesaid, to grant and convey the described premises, in manner and form aforesaid, and for myself, my heirs, executors, and administrrtors, do further covenant to warrant and defend the same to him the said E. F. his heirs and assigns, against the claims of any person or persons whomsoever, claiming by, from, or under me, as executor, (or administrator) aforesaid. In witness whereof, I have hereunto set my hand and seal, this day of A. D. .

A. B. Administrator of the estate of C. D. deceased.

Signed, sealed, and delivered, in presence of }

H county, ss. H , day of A. D. .

Personally appeared A. B. signer and sealer of the above instrument, and acknowledged the same to be his free act and deed before me. J. P. Justice of the Peace.

Deed by guardian of minor's land, sold by order of the Court of Probate.

Know all men by these presents, that I, A. B. of in the county of guardian to C. D. a minor, under the age of twenty-one years, by virtue of license and authority to me granted by the court of probate, for the district of (I having given bond with surety to him as the law directs,) to sell the real estate of said E. F. situated in and consisting of [here describe the estate sold,] and for the consideration of dollars received to my full satisfaction of L. B. of do grant, bargain, sell, and confirm unto the said L. B. the above described estate of the said C. D. a minor, as aforesaid. To have and to hold the said granted

and bargained premises, with the appurtenances thereof, to the said L. B. his heirs and assigns, and to his and their only use and behoof, forever. And I the said A. B. as guardian aforesaid, do covenant with the said L. B. his heirs and assigns, that I have full power and authority in said capacity, to grant and convey the described premises, in manner and form aforesaid. And I for myself, my heirs, executors, and administrators, do further covenant to warrant the same to him the said L. B. his heirs and assigns, against the claims of any person or persons whatsoever, claiming by, from, or under me, as guardian aforesaid. In witness whereof, I have hereunto set my hand and seal, this day of A. D. .

A. B., Guardian to C. D. a minor.

Signed, sealed and delivered in presence of

H county, ss. H , day of A. D. .

Personally appeared A. B. signer and sealer of the above instrument, and acknowledged the same to be his free act and deed, before me. J. P. Justice of the Peace.

Mortgage Deed.

Know all men by these presents, that I, A. B. of in the county of for the consideration of received to my full satisfaction of C. D. of do give, grant, bargain, sell, and confirm, unto the said C. D. [here describe the estate mortgaged,] to have and to hold the premises aforesaid, with all their appurtenances, unto him the said C. D. his heirs and assigns, to his, and their own proper use and benefit, for ever. And I, the said A. B. do, for myself, my heirs, executors, and administrators, covenant with the said C. D. his heirs and assigns, that until the ensealing of these presents, I am well seized of the premises as a good indefeasable estate, in fee simple, and have good right to bargain and sell the same, in manner and form as is above written; and that the same is free of all encumbrances whatsoever, and do hereby bind myself and my heirs, for ever, to warrant and defend the same premises to him the said C. D., his heirs and assigns, against all lawful claims and demands whatsoever; provided always, and upon condition, that if the said A. B. his heirs or assigns, do well and truly pay,

or cause to be paid to the said C. D. his executors, administrators, or assigns, the amount which shall be due on a certain note of hand, for the sum of bearing date on the day of A. D. signed by the said A. B. and payable on demand [or any other time,] with interest, to the said C. D. according to the tenor thereof, then the above deed is to be null and void, otherwise to be and remain in full force and virtue, in the law. In witness whereof, I have hereunto set my hand and seal, this day of A. D.

Signed, sealed and delivered in presence of } A. B. (SEAL.)

H county, ss. H , day of A. D.

Personally appeared A. B. signer and sealer of the above instrument, and acknowledged the same to be his free act and deed before me. J. P. Justice of the Peace.

A mortgage deed may be executed in common form, and an endorsement entered on the back, subscribed by the grantee. A deed of land belonging to a married woman, must be executed in the names, and signed and acknowledged by both of them, the same as any other joint deed by two persons.

A Deed executed by Attorney.

Know all men, that I, A. B. of by J. S. of my attorney, he being fully authorized to act in this behalf, by a power dated the day of and a copy of which is hereunto annexed, for the consideration, &c. [The rest of the deed is in common form, except the signing and acknowledgment. The attorney must sign the name of his principal, as follows :] A. B. (SEAL.)

By his attorney, J. S.

Acknowledgment.

H county, ss. H , day of A. D.

Personally appeared, by his said attorney, J. S., A. B. signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed before me.

J. P. Justice of the Peace.

Or the deed may be in common form, except the signing and acknowledgment; but it may be executed in the name

of the principal, and not in that of the attorney. It is safest to annex a copy of the power of attorney, and have it recorded with the deed, but this is not necessary to the validity of the title.

Power of Attorney to sell Land.

Know all men by these presents, that I, C. D. of have made, constituted and appointed, and by these presents do make, constitute and appoint A. B. of my lawful and proper attorney, and do hereby fully authorize and empower the said A. B. in my name and behalf, to bargain, grant, sell and convey a certain piece or parcel of land, of which I am well seized and possessed in fee, situated in and bounded and described as follows, viz. [here bound the land] —[*or*, to bargain, grant, sell and convey all the lands I own and possess, lying and being in the county of whether in severally or as joint tenant, or tenant in common with others;] and in my name and behalf, to execute and deliver a proper deed or deeds, with the usual covenants of warranty and seisin; and all and singular the acts and doings of the said A. B. authorized herein, are hereby ratified and confirmed, and the same are to be as binding and effectual in law as if done by me in my own proper person, the said A. B. being accountable to me for his doings, authorized in the premises. In witness whereof, &c.

Signed, sealed and delivered, in presence of } C. D. (Seal.)
E. F.
G. H.

The power of attorney must be attested by two witnesses and acknowledged.

H county, ss. H , day of A. D.

Personally appeared C. D. signer and sealer of the within power of attorney, and acknowledged the same to be his free act and deed for the uses and purposes therein expressed before me.

J. P. Justice of the Peace.

6. *Form of Lease of Land for one year.*

This indenture, made this day of by and between A. B. of on one part, and C. D. of on the other part, witnesseth, that the said A. B. for the consideration hereaf-

ter mentioned, hath demised, granted, and to farm let, and doth hereby demise, grant, and to farm let, unto the said C. D. his heirs, executors, administrators and assigns, [here describe the premises,] with all the privileges and appurtenances thereunto belonging. To have and to hold the said demised premises with their appurtenances for and during the term of one year from the day of fully to be complete and ended. And the said C. D. for himself, his heirs, executors and administrators, doth covenant and agree to pay, Also, &c. [here insert the particular agreement on the part of the lessee] And the parties aforesaid for themselves respectively, each with the other, and their respective heirs, executors and administrators, do further covenant and agree as follows, viz. that the said A. B. shall quietly permit, &c. And the said C D. shall at the end of said term relinquish, &c. [as their agreement may be.] In witness, &c.

Lease of a House for more than one year.

Know all men by these presents, that I, A. B. of H. in H. county, for and in consideration of the sum of one hundred dollars, received to my full satisfaction of C. D. of said H. this day of A. D. 1823, have demised, and to farm let, and do by these presents demise, and to farm let, unto the said C. D. his heirs, executors, administrators and assigns, one certain piece of land, lying and being situated in said H. bounded northerly on a highway, easterly, southerly and westerly on lands of E. F. with a dwelling-house thereon, standing for the term of two years from this date, to have and to hold to him the said C. D. his heirs, executors, administrators and assigns, for said term, excepting the front chamber in said house—for him the said C. D. to use and occupy, as to him shall seem meet and proper; and the said A. B. doth further covenant with the said C. D. that he hath good right to let and demise the said letten and demised premises in manner aforesaid, and that he the said A. B. during said time will suffer the said C. D. quietly to have and to hold, use and occupy and enjoy said demised premises, and that said C. shall have, hold, use, occupy, possess and enjoy the same, free and clear of all encumbrances, claims, rights and titles whatsoever, in

witness whereof, I, the said A. B have hereunto set my hand and seal, this day of 1823. A. B.

Signed, sealed, and delivered in presence of }
E. F.
G. H.

H county, ss. H 30th day of January, A. D. 1823.

Personally appeared A. B. signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed before me. J. P. Justice of the Peace.

7. *Indenture of Apprenticeship.*

This indenture, made this day of A. D. between A. B. of father of C. B., a minor, under the age of twenty-one years, of the one part, and E. F. of of the other part, witnesseth, that the said A. B. hath placed and bound his said son C. B. an apprentice to the said E. F. to be instructed in the art, mystery, trade, and occupation of which the said E. F. now uses, and to live with, and serve him as an apprentice, from the date hereof, until he, the said C. B. shall arrive at and be of the age of twenty-one years, which will happen on the day of A. D. if the said C. B. so long lives; all which time the said C. B. as an apprentice, shall faithfully serve, and be just and true unto him, the said E. F. as his master, and his secrets keep, and his lawful commands everywhere willingly obey: he shall do no injury to his said master, in his person, family, property, or otherwise; nor suffer it to be done by others: he shall not embezzle, nor waste the goods of his said master, nor lend them, without his consent: he shall not play at cards, or other unlawful games, nor frequent taverns, or tipling houses, or shops, except about his master's business, there to be done: he shall not contract marriage, nor at any time, by day or night, absent himself from, or leave his said master's service, without his consent; but in all things, as a good and faithful apprentice, shall and will behave, and demean himself to his said master, faithfully during the time aforesaid. And the said E. F. on his part, for the consideration of the premises, doth covenant, and agree, to, and with the said father and son, each by himself, respectively and jointly, to teach and instruct the said C. B. as his apprentice, or otherwise cause

him to be well and sufficiently instructed and taught, in the art, mystery, trade, and occupation of after the best way and manner that he can; and to teach and instruct him the said apprentice, or cause him to be taught and instructed, to read and to write, and to cypher, as far as the four first rules of arithmetic, to guard his morals, and to train him to habits of faithfulness, industry and economy. And that the said master will provide for, and allow to his said apprentice, meat, drink, washing, lodging, and apparel, for summer and winter, on common and on holy days, and all other necessaries, in sickness and in health, proper and convenient for such an apprentice, during the time of his apprenticeship; and at the expiration thereof, shall and will give to said apprentice [here insert such other things, as is agreed upon between the parties.] In witness whereof, the said parties have hereunto interchangeably set their hands and seals, the day of A. D.

Signed, sealed, and delivered, in presence of } A. B. (Seal.) E. F. (Seal.)

An indenture by guardian may be the same as the preceding, substituting "guardian" for father, and "ward" for son; but unless the minor has property to indemnify the guardian, it will not be safe for him to enter into any covenants, in which case he may merely bind his ward, and give his master the benefit of his services, and the usual right and authority over him. The form of indenture will be essentially the same as to the contract or binding, as that by select men, for which see page 307.

8. *A Bond without condition, from two persons to one.*

Know all men by these presents, that we, A. B. of in the county of and C. D. of in said county, are held and firmly bound unto G. H. of in said county, in the sum of five hundred dollars, to be paid to the said G. H. or his certain attorney, executors, administrators or assigns; to which payment well and truly to be made, we bind ovrselves and each of us, our and each of our heirs, executors and administrators, firmly by these presents, signed with our hands and sealed with our seals. Dated at this 30th day of January, A. D. 1823.

In drawing bonds, you must observe this rule: If there

be more obligors than one, instead of saying I bind myself, my heirs, executors and administrators; write it thus—we bind ourselves and each of us, our and each of our heirs, executors and administrators.

If more obligees than one, instead of, to be paid to the said G. H. or his certain attorney, executors or administrators, say, to be paid to the said G. H. I. K. (naming all the obligees) or either of them, or their or either of their certain attorneys, executors, or administrators.

Penal Bond: or Bond with a Condition.

Know all men by these presents, that I, John Doe of Hartford, in the county of Hartford, am held and firmly bound to Richard Roe of said Hartford, in the penal sum of sixty dollars, to be paid to the said Richard, his certain attorney, executors, administrators or assigns; to which payment well and truly to be made and done, I bind myself, my heirs, executors and administrators firmly by these presents, signed with my hand and sealed with my seal, dated at Hartford, this 30th day of January, A. D. 1823.

The condition of this obligation is such that if the above bounden John Doe, his heirs, executors or administrators, shall well and truly pay, or cause to be paid, unto the above named Richard Roe, his executors, administrators or assigns, the full sum of thirty dollars, with the lawful interest for the same, on the 15th day of June next ensuing the date hereof; then this obligation to be void, and of none effect, or else to be and remain in full force and virtue.

Signed, sealed and delivered in the presence of }

Conditions of every description may be annexed to bonds, according to the object of them, and the contract of the parties.

Condition of a Bond of Indemnity, where one person is bound for another.

The condition of this bond is such, that whereas the above named A. B. at the request and for the only proper debt and duty of the above bound C. D. with him the said C. D. is, in and by one bond and obligation, bearing equal date with the obligation above written, held and firmly bound unto E.

F. of, &c. in the penal sum of five hundred dollars, current money of the United States, conditioned, for the payment of two hundred and fifty dollars, with legal interest on the same, on, &c. next ensuing the day of the date of the said recited obligation, as in and by the said obligation and condition thereof, may more fully and at large appear. If, therefore, the said C. D. his heirs, executors, or administrators, do, and shall well and truly pay, or cause to be paid, unto the said E. F. his executors, administrators, or assigns, the said sum of two hundred and fifty dollars, with legal interest on said day, &c. next ensuing the date of said recited obligation, according to the true intent and meaning, and in full discharge and satisfaction of the said recited obligation; then, &c. or else, &c.

Condition to pay an Annuity during life.

The condition of this obligation is such, that if the above bound A. B. his heirs, executors, administrators, or assigns, do, and shall yearly, and every year, during the natural life of the said C. D. well and truly pay, or cause to be paid, unto the above named C. D. his, &c. one annuity, or yearly sum of, &c. at, or upon the first days of June, September, December, and March, in each year, by even and equal parts and portions; the first payment thereof to begin and be made on the first day of, &c. next ensuing, then this obligation to be void. But if default shall be made, of, or in the payment of the said annuity, or yearly sum of, &c. on any of the said first days, on which the same ought to be paid, then, &c.

Condition to save a town harmless against a Bastard Child.

The bond should be given to the town, and not to the select-men, by the father of the child, with surety.

The condition of the above obligation is such, that whereas, A. B. an inhabitant of said town of is with child, begotten on her body by C. D. and which when born will be a bastard, and is likely to become chargeable to said town: Therefore if the above bounden C. D. the father of said child, or the above bounden E. F. his surety, their, or either, or any of their heirs, executors or administrators, do and shall, from time to time, and at all times hereafter, fully and clearly acquit and discharge, or well and sufficient-

ly save and keep harmless and indemnified the said town of, &c. as also all the inhabitants of the said town of, &c. which now are, or hereafter shall be for the time being; and every of them, of, and from all manner of expenses, damages, costs and charges whatsoever, which shall or may at any time hereafter, arise, happen, for, or by reason or means of the said A. B.'s being pregnant with child as aforesaid; or for, or by reason of the birth, maintenance, education, and bringing up of such child or children of which she the said A. B. is now pregnant, and shall be delivered of; and of, and from all other actions, suits, troubles, charges, damages, and demands, whatsoever, touching and concerning the same; then, &c.

9. OF ARBITRATION.

A submission may be in writing, or by parol agreement, or by rule of court. The parties may bind themselves by bond, or by arbitration notes, or may rely upon their remedy on the award. Where the submission is by parol, the award may be by parol.

A general submission in writing.

Whereas various differences, disputes and controversies have and do exist between A. B. and C. D. and divers suits have been commenced and are now pending between said parties. Wherefore, for the amicable determination of the same, we, the said A. B. and C. D. do hereby agree to submit and refer all controversies, suits, quarrels, and matters of dispute, now existing between us, to the arbitrament, determination and award, J. S. and L. M. to be heard by them, on the day of A. D. the said arbitrators being authorized to adjourn such hearing to any time afterwards, as they may deem necessary and reasonable. And the said parties do hereby mutually agree and promise, and bind themselves to perform and execute such award as said arbitrators may make and publish in and upon the premises, and that the same shall be final and conclusive on the parties, as to all suits, controversies, and matters of dispute now existing between said parties as aforesaid. In witness whereof, &c.

A. B.
C. D.

To be duplicates, and one delivered to each party.

A submission to arbitration to be made a rule of Court.

Be it remembered, that A. B. and D. C. of, &c. being desirous to end and determine divers controversies, suits, and quarrels, that have lately arisen between them, did on, &c. agree to submit and refer all the said controversies, suits, and quarrels, to the award of E. F. and G. H. of, &c. to be made in writing under their hands and seals, &c. And the said parties did mutually promise, and oblige themselves, that they would perform and execute such award as the said arbitrators should make in the premises. Now the said parties do further agree that the said submission shall be made a rule in the court, &c. and that they will be finally concluded by the arbitration which shall be made in the premises by the said arbitrators, pursuant to such submission. In witness, &c.

Arbitration Bond.

Know all men by these presents, that I, A. B. of am holden and firmly obliged to C. D. of in the sum of one hundred dollars, &c. to be paid to the said C. D. his attorney, executors or administrators, which payment, well and faithfully to be made and done, I bind myself, my heirs, executors and administrators, firmly by these presents; sealed with my seal, and dated this day of A. D. 1823.

The condition of this obligation is such, that if the above bounden A. B. his heirs, executors and administrators for his and their parts and behalf, do in all things well and truly stand to, obey, abide by, perform, fulfil and keep the award, order, arbitrament, final end and determination of G. and F. arbitrators, indifferently named, elected and chosen as well on the part and behalf of the above bounden A. B. as of the above named C. D. to arbitrate, award, order, judge and determine of and concerning all, and all manner of action and actions, cause and causes of actions, suits, bills, bonds, specialties, judgments, executions, quarrels, controversies, trespasses, damages and demands whatsoever, at any time heretofore had, made, moved, brought, commenced, sued, prosecuted, done, suffered, committed or depending, by, or between the said parties so as the said award, be made and given up in writing under the hands and seals of said arbitrators, ready to be delivered to the said parties on or before the day of A. D. 1823, then this obligation to be void, &c.

Where the parties choose an umpire to decide, in case the

arbitrators cannot agree, the following paragraph is to be added :

But if the said arbitrators do not make such their award of and concerning the premises by the time aforesaid, and if in that case, the said A. B his heirs, executors and administrators, for his and their part and behalf shall in all things well and truly stand to, obey, abide by, perform, fulfil and keep the award, order, arbitrament, umpirage, final determination of C. R. umpire indifferently chosen between the said parties, of and concerning the premises so as the said umpire do make his award, or umpirage of and concerning the premises, and deliver the same in writing, under his hand and seal to the said parties on or before the day of A. D. 1823. Then this obligation to be void, otherwise to remain in full force and virtue. A. B.

Signed, sealed and delivered }
in the presence of }

An Award in Writing.

To all people to whom these presents shall come, we A. B. of C. D. of and E. F. of send greeting.—Whereas G. H. of and I. K. of did enter into mutual bonds or obligations to each other, bearing date respectively on or about the 20th day of February last past, in the penal sum of five hundred dollars respectively, conditioned for their respective submitting to the award of us the said A. B. C. D. and E. F. or any two of us, of and concerning all actions, suits, quarrels, controversies, damages & demands between them, so as such award were made by us or any two of us, in writing under our hands and seals, on or before the 20th day of March instant, as by the said respective bonds and conditions, relation unto them respectively being had may more fully appear : Now know ye, that we the said A. B. C. D., E. F. having examined the accounts and heard the testimony of both the said parties in difference, and duly weighed and considered the same, do make, and publish this our award and final determination, between the said parties ; and do hereby adjudge, award and order, that the said G. H. do and shall pay or cause to be paid to the said I. K. his executors or administrators, the sum of one hundred dollars, on or before the 10th day of April next, at the dwelling-house of I. K. in and upon payment thereof

the said J. H. and I. K. shall duly execute and deliver to each other mutual general releases of all actions, suits, accounts, damages, and demands whatsoever, from the beginning of the world to the day of the date of the said recited obligations. In witness whereof, we have hereunto set our hands and seals, the 10th day of Feb. A. D. 1823.

Signed, sealed, published and delivered by the said arbitrators, as their final award and arbitrament, in presence of }

But the most common and simple mode is to make a parol submission and execute arbitration notes, which are in common form, each party, with or without surety, executing a note; which are delivered to the arbitrators, who will deliver up to the party in whose favour they decide his note to be cancelled, and also deliver to him the note of the other party, endorsed down to such sum as they award against him.

Endorsement on an arbitration note.

This note having been executed and delivered to us by the within named A. B. to enforce the award we might make and publish in and upon certain matters of dispute and controversy, existing between him, and the within named C. D. by said parties submitted to our arbitrament and determination; and having this day of , fully heard said parties in all the matters submitted as aforesaid, we have, and do hereby award that the said A. B. pay the said C. D. the sum of , and the costs of this arbitration, amounting to dollars, making in the whole the sum of dollars, and do hereby endorse said note down to said sum of dollars.

E. F.
G. H.

10. *A bill of sale.*

Know all men by these presents, that I, A. B. of , for the consideration of one hundred dollars, received to my full satisfaction, of C. D. of , have bargained and sold, and do by these presents bargain and sell unto the said C. D. the several articles of furniture or household goods, contained in the schedule hereunto annexed. And I do, for myself and executors, agree to warrant and defend to the said C. D., his executors, administrators and assigns, all and singular the same goods, in consideration aforesaid,

by these presents; of which said goods I have given the said C. D. possession before the execution hereof, [or which said goods are now at in the possession of L. M.] In witness whereof &c.

Where the conveyance is as security only, add the following provision: Provided however, and it is hereby agreed, that whereas, the said A. B. is indebted to the said C. D. in the following sums, viz. one note dated &c. of $50 one dated &c. of $20, both on interest, and payable to the said C. D; and also on book $30. Now, if the said A. B. shall pay or cause to be paid said several sums, on or before the day of A. D. then this bill of sale, conveyance and agreement to be void, otherwise to be effectual in law.

11. *An assignment of goods to trustees for the benefit of creditors.*

Know all men by these presents, that, Whereas I, A. B. of , being indebted to the several persons named in the schedule hereunto annexed, in the sums affixed to their names respectively or thereabouts, and being, from various misfortunes and losses in business, wholly unable to meet said contracts, and pay said debts according to the terms thereof, do by these presents, assign, transfer and convey all and singular, the goods and articles of personal property specified and contained in the annexed list or schedule unto C. D., E. F. and G. H. all of , as trustees for and in behalf of the said A. B. on one part, and the said creditors hereinafter named in the schedule annexed, on the other part, to be by them taken into possession, and the same to sell and dispose of, in the manner they may deem most for the interest of said parties, and receive the avails thereof, & the same to apply in payment of the claims of said creditors, named in said schedule, & if the avails of said property shall not be sufficient for the payment of the whole of said claims, the same are to be paid and satisfied in just and equal proportions, according to the amount of said property and their respective debts; (or, and the said avails to apply in the payment of the debts of the creditors named in said schedule as follows, viz. the debts of L, M, and O, which are for endorsing for me at the Bank, and

are deemed honorary debts, are in the first place to be paid in full, and if there is not a sufficiency, then in equal proportions, according to the amount of said property, and their respective debts ; and the residue of the avails of said property is to be applied in satisfaction of the debts of the other creditors named in said schedule, and if it is not sufficient to pay the same in full, then their said debts are to be paid in equal proportions, according to their respective claims as aforesaid ; and if any thing remains it is to be applied by said trustees among all the creditors of said A. B. not named in said schedule, in proportion to their respective claims. And it is provided, that if either of said trustees shall refuse to accept said trust, or shall die before completing the execution of the same, the other two, or in case of the refusal or death of two, the other one shall have and possess the same power and authority to perform and execute said trust, as is herein given to the whole of said trustees.

In witness whereof &c. Dated &c. A. B.

A schedule of the property, and of the creditors, specifying the amount of their respective debts, must be annexed.

12. *A common letter of licence.*

To all people to whom these presents shall come, we whose names are underwritten, creditors of J. W. late of H send greeting. Whereas the said J. W. is indebted to us his said creditors, severally, in divers sums of money, and hath not wherewithal to satisfy us at present, and we and every one of us minding to grant unto him favour and time for the payment of the same. Know ye, that we the said creditors, and every one of us being fully satisfied of the good will and desire which the said J. W. hath to see the several debts and sums of money satisfied and paid, have given and granted, and every one of us for himself and for his own proper debt and duty, part and portion only, doth by these presents give and grant unto the said J. W. sure, full and free liberty, licence and safe conduct, as much as in us severally is, that the said J. W. with all his goods and chattels, debts, duties and other things whatsoever, freely, peaceably and quietly, at his own free choice, election and pleasure, shall and may, go, come. abide, pass and repass at all and every time and times from the day of

the date hereof unto the full end and term of four years now next ensuing, and fully to be completed and ended: And we the said creditors and every one of us severally for himself, his executors, administrators, partners and assigns, do, and doth by these presents severally covenant, promise, grant and agree to and with the said J. W. that neither we the said creditors nor any of us, nor any other person or persons for us, or any of us, or by our authority, assent, consent, or procurement, the said J. W. or any of his goods, chattels, debts, duties and other things whatsoever, shall or will sue, arrest, prosecute, molest, attach, trouble or encumber during the time aforesaid, but suffer him and them, so that he and they freely, peaceably and quietly at his own free choice, election and pleasure shall and may, go, come, abide, pass and repass, at all and every time and times, from the day of the date hereof, unto the full end and term of four years, nor compel him the said J. W. during the term aforsaid, to find or provide any surety or security, for the satisfaction or payment of the said several debts, or any of them, or any part or parcel thereof, other than all and every one of us now severally have and hath for the same. And further, we and all and every of us creditors aforesaid, are agreed and contented, and do hereby severally for ourselves, and our several executors, administrators, partners and assigns, covenant and agree to and with the said J. W. that if it shall happen at any time or times hereafter, during the term aferesaid, that he the said J. W. is or shall be by his body, goods or chattels by us or any of us, or by our or any of our authority, assent, consent or procurement, contrary to the true meaning hereof, arrested, prosecuted, molested, attached or otherwise charged, troubled or encumbered, that then he the said J. W. his heirs, executors or administrators, is or shall be, and is and are for ever more by these presents be clearly acquitted, exonerated, and discharged, of and from him and them of us, by whom the said J. W. shall, contrary and against the tenor, form and true effect of these presents, be arrested, molested, prosecuted or otherwise charged, troubled or encumbered, of and from all, and all manner of actions, suits, claims, debts, judgments, statutes and demands whatsover.

In witness whereof we the said creditors of the said

J. W. have hereunto set our hands and seals the day of A. D.

Signed, sealed and delivered in the presence of

13. *General letter of credit.*

Hartford, Jan. 30, 1823.

Sir—

The bearer Mr. T. H. being on his travels, may have occasion for money; please to furnish him as his occasions require, taking his receipts, and your draughts for the value shall receive due honour from

Sir, your humble servant,

C. D.

To Mr. J. S. merchant, London.

14. *A general letter of attorney.*

Know all men by these presents, that I, A. B. of H have made, ordained, constituted and appointed, and by these presents do make, ordain, constitute and appoint C. D. of W , my true and lawful attorney, for me and in my name and for my use, to ask, demand, sue for, recover and receive of and from all person and persons whatsoever, all sum and sums of money, debts, dues, claims and demands whatsoever, now due, owing or accruing to me, and to give good and sufficient discharges for the same, and to adjust, settle or compound all debts or demands due to me, and to accept such security or satisfaction for the same, as he shall think fit. And I do hereby give and grant to my said attorney my full and whole power in and concerning the premises, and will ratify and confirm whatsoever he shall lawfully act or do therein. In witness whereof I have hereunto set my hand and seal the day of A. D.

Signed, sealed, and delivered in the presence of

Another with the power of substitution.

I A. B. of P in the county of B and commonwealth of Massachusetts, do hereby constitute and appoint R. S. Esq. of B in the county of S , my attorney, in all cases moved or to be moved, for me or against me, in this, or any other of the United States of America, in my

name to appear, plead and pursue to final judgment and execution, with the right and power of substitution: witness my hand and seal this day of A. D.

A. B. (seal)

B. S. } Witnesses.
D. R. }

Boston, Jan. 30, 1823.

Suffolk county ss.

A. B. acknowledged this instrument to be his free act and deed. J. P. justice of the peace.

I R. S. within named, do hereby substitute and appoint S. S. Esq. of H in the county of H in the state of Connecticut, attorney to the within named A. B. by virtue of, and according to the power to me within given, as witness my hand and seal this day of A. D.

R. S.

Signed, sealed, and delivered } in the presence of }

15. *A letter of attorney irrevocable to receive money due on a bond.*

Know all men, &c. that I, A. B. of, &c. have made, ordained, and in my stead and place, put, and constituted C. D. of &c. my true and lawful attorney, irrevocable, for me and in my name, but to the use of him the said C. D. to demand, recover, and receive, of E. F. and G. H. of &c. the sum of one hundred dollars, due unto me, in and by one bond or obligation, bearing date, &c. Giving and by these presents granting, unto my said attorney, my full power and authority, in my name, to do all and every act and acts, thing and things, device and devices, in the law, whatsoever, for the recovery of said debt, as fully to all intents as I myself might or could do, and upon receipt thereof, acquittances, or other discharges, for me and in my name, to make, seal, and execute, hereby ratifying and allowing all and whatsoever my said attorney shall lawfully do, or cause to be done, in and about the premises, by virtue of these presents. In witness, &c.

16. *A will of real and personal estate.*

In the name of God, amen. I P. B. of H , in the county of M , being of sound and disposing mind and

memory, do make and ordain this my last will and testament, in manner and form following: that is to say, *imprimis*, I will that all my debts and funeral charges be paid and discharged by my executrix, hereinafter named: *Item*, I give and demise unto my son A, his heirs, and assigns forever, the house and land situated and lying in the town of W . *Item*, I do give and demise unto S. B. my brother's son, all that cottage or tenement situated in the town of W in the county of H , now in the occupation of J. L. to to the said S. B. his heirs and assigns forever. *Item*, I do give unto my loving wife B. S. all the rest of my goods and chattels, and personal estates whatsoever. Also I do give and demise unto B. my said wife, her heirs and assigns forever, all my land and tenements lying in the town of W in the county of H , and now in several occupations of D. J. and B. P. or their under tenants, and also the messuage or tenement situated in the town of W and now in my occupation, together with the orchard and all other appurtenances thereunto belonging. Lastly, I do make and constitute B. my wife, executrix of this my last will and testament. In witness whereof I have set my hand and seal this day of in the year of our Lord 1823. P. B.

Signed, sealed, and published (and pronounced) by the said P. B. as his last will and testament, who in his presence, and the presence of each other, have hereunto subscribed our names.

R. P.
M. O. } Witnesses.
A. R.

Form of certificate when proved before a Justice.

H county, ss. H day of A. D.

Personally appeared before me R. P. and made solemn oath, that he attested the within will of P. B. and subscribed the same in the presence of the testator, and in the presence of the other two subscribing witnesses to said will, and that they also subscribed and attested said will in the presence of the deponent and in the presence of said testator, and that said testator at the time of the execution of said will, was of sound mind and memory, and signed

and published said will in the presence of said deponent and the other subscribing witnesses thereto.

J. P. justice of the peace.

A will of personal estate only.

I, A. B. of &c. do make and ordain this my last will and testament, in manner and form following, viz. I give and bequeath to my dear brother the sum of thirty dollars to buy him mourning. I give and bequeath to my son J. A. the sum of six hundred dollars. I give and bequeath to my daughter E. A. the sum of three hundred dollars, and to my daughter A. A. the like sum of three hundred dollars. All the rest and residue of my estate, goods and chattels, I give and bequeath to my dear beloved wife E. R. whom I nominate, constitute and appoint sole executrix of this my last will and testament, hereby revoking all other and former wills by me at any time heretofore made. In witness whereof I have hereunto set my hand and seal the day of in the year of our Lord

Signed and published } in the presence of }

The law does not require that a will of personal property only should be witnessed, but it is prudent that it should be; but no devise of real estate is valid unless attested by three witnesses, all signing in the presence of the testator. The executor must procure the will to be proved and recorded in the probate office within thirty days after the death of the testator, and he incurs a forfeiture of seventeen dollars for every month's neglect. No non cupitive or unwritten will now is valid, but all wills whether of personal or real estate must be in writing, and subscribed by the testator, and the only difference between a will of personal and real estate is, that the former is not required to be attested by subscribing witnesses.

OMISSION.

The following having been omitted in its place, is inserted here.

Process and Sentence to the Workhouse.

To A. B. Esq. of justice of the peace for the county of , comes C. D. of said , one of the Select-men (or a grand juror, or any house holder), and complains and informs, that G. H. of said town is, and for a long time hath been, a common drunkard, (or is a common idler and mis-spends his time, and does not provide for the support of himself and family,) he the said G. H. having a family consisting of who are exposed to want from the idleness and neglect of the said G. H.; and the said C. D. prays that process may issue against the said G. H. that he may by examined and dealt with according to the statute in such case provided.

Warrant same as in other criminal cases.

Record.

Be it remembered that at a court holden this day of A. D. ; at in the county of , G. H. of , was brought before me by virtue of a warrant issued on the complaint of C. D. of Select-man of said charging the said G. H. with being a common drunkard, (or a common idler, who mis-spends his time, and does not provide for the support of himself and family); and the said G. H. being required to answer to said complaint, says he is not guilty; and having inquired into the facts, I do find, that the said G. H. is a common drunkard, as charged in said complaint, whereupon it is considered that he be punished by confinement in the workhouse and house of correction, in said town of , for the period of thirty days, (the time cannot exceed forty days,) and to be kept at hard labour therein. J. P. justice of the peace.

Warrant of commitment.

To any constable of the town of in the county of , Greeting:

Whereas G. H. of was brought before me on the day of on the complaint of C. D., Selectman of said town of charged with being a common drunkard;

and having inquired into the facts set forth in the complaint, I found that they were true, and that said G. H. was a common drunkard, as charged therein; whereupon it was considered that he be punished by confinement in the workhouse and house of correction, in and for said town of for the term of thirty days from said day of to be kept at hard labour therein. Wherefore, by authority of the State of Connecticut, and by virtue of the statute in such case provided, you are hereby commanded to take and convey the said G. H. to said workhouse and house of correction, in said , and him deliver to the master or keeper of the same, who is hereby required to receive the said G. H. and him keep within said workhouse, at hard labour, for and during the term of thirty days from the aforesaid day of A. D. , and then to discharge the said G. H.; and you are to leave with said master or keeper this warrant, which shall be his authority for receiving and detaining said G. H. as required herein. Hereof you are not to fail, but make due service of this warrant.

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ERRATA.

Page 73, after the sentence ending "now in force," in the 7th line, insert the following: *And on the day of at the defendant was notified of the premises, and demand of him made of the amount of said execution, and the costs and charges thereon, which the defendant neglected and refused to pay.* The same is to be added to the other forms of declarations by the holder of a note not negotiable, against the endorser.

Page 176, last line, for 'produce,' read *procure*.
192, line 13 from top, for 'requesting,' read *requested*.
212, line 3 from top, for 'make,' read *may*.
do. line 7 from bottom, for 'a bail,' read *bail*.
223, line 4 from top, for 'enter,' read *carry*.
do. line 5 from bottom, for 'presents,' read *precincts*.
240, line 20 from top, for 'leave,' read *levy*.
241, line 8 from bottom, for 'unto the officer of the court,' read, *into the office of the court*.
244, line 2 from top, for 'leaves two hundred dollars,' read, *bears to two hundred dollars*.
246, line 5 from top, for 'on,' read *or*.
250, line 21 from top, for 'entrusted,' read *interested*.
253, line 3 from top, for 'due,' read *to*.