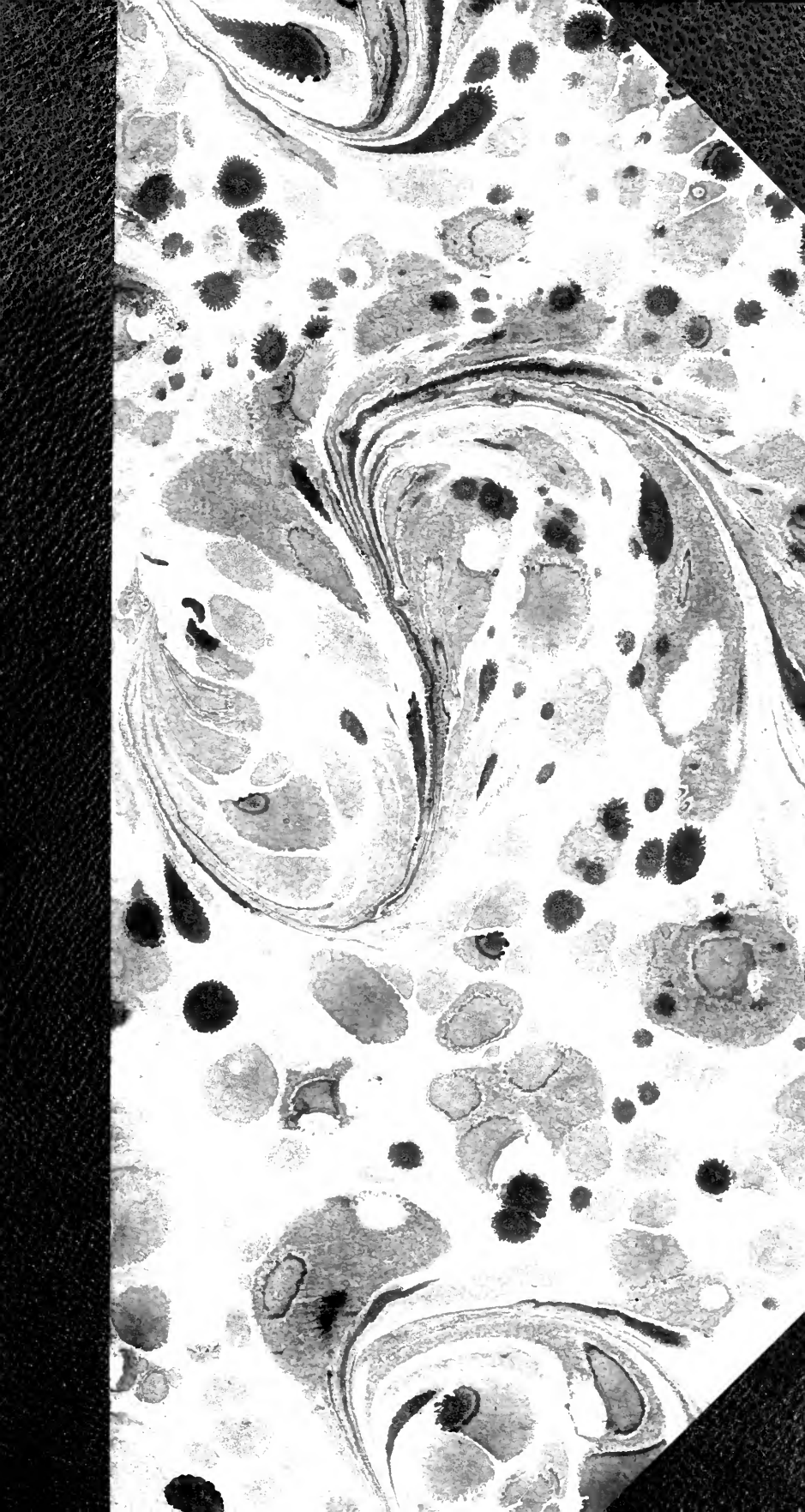

A

PRACTICAL TREATISE

ON THE

POWERS AND DUTIES

OF

JUSTICES OF THE PEACE

AND

CONSTABLES,

IN THE STATE OF ILLINOIS,

WITH THE NECESSARY FORMS OF PROCEEDING; EMBRACING ALSO, A COLLECTION OF ORIGINAL AND SELECTED FORMS, FOR POPULAR USE IN THE TRANSACTION OF BUSINESS.

BY ELIJAH M. HAINES,
COUNSELOR AT LAW.

CHICAGO:
PUBLISHED BY KEEN & LEE.
1855.

pre-fire imprint

SCOTT & FULTON,
PRINTERS, CHICAGO.

HAINES' TREATISE.

The following are among the many favorable notices of this Work, which have been given by the Press of this State:

From the Greenville Journal.

"The work has been prepared by a gentleman every way qualified for the undertaking, and by whom no pains has been spared in making it the most concise and useful work of the kind yet offered to the public in the State.

"It embraces references to, and copious extracts from the statute laws in force relative to the powers and duties of Justices and Constables, from the Revised Statutes of 1845 to the session laws of 1855, thereby furnishing to those officers so much of the statute laws as may be necessary to guide them in their respective duties, which they can now scarcely obtain from other sources."

From the Macoupin Spectator.

"It will supply a desideratum long felt amongst magistrates and constables, and from the very copious table of contents we perceive that it covers the whole ground, from the election of these officers to the minutest details of their duties. A reference to its pages will save those interested a great deal of perplexity and labor."

From the Tazewell Weekly Mirror.

"The forthcoming work will doubtless be one which has long been needed by Justices and Constables in this State, as they have had to depend on the Statute, which in many instances furnishes no guide whatever to the mode of procedure. This work is intended, and from the reputation of its author, we have no doubt it will supply the deficiency that has heretofore existed for want of a guide to those officers in the performance of their duties.

"The author of this work is also the author of a compilation of the laws of the State relative to Township Organization."

The following extract from the *Chicago Daily Tribune* of Sept. 18, 1855, shows the favor with which the Work has been received at home, where the author and publishers are best known:

"The book is being very creditably printed, and will compare well with the law publications of Philadelphia. The Board of Supervisors of this (Cook) county, at their last meeting, passed the following resolution in regard to this work:

"On motion of Supervisor Cool, it was

'*Resolved*, That there be a sufficient number of copies of the Practical Treatise on the Powers and Duties of Justices of the Peace and Constables, (by E. M. Haines,) purchased at the expense of the county, so that each Justice and Supervisor may have a copy.'"

PREFACE.

THE object and design of this Work, as indicated by the title, is to furnish to JUSTICES OF THE PEACE and CONSTABLES, a summary of the law in relation to their powers and duties, with all the necessary forms of proceeding. But a short space of time has been allotted for the preparation of the work, and its progress has been attended with many perplexing difficulties; the author, nevertheless, flatters himself that he is enabled to present to those officers of the law, for whose benefit it has been more immediately intended, such a work as they have long been in need of, to guide them in the discharge of those important duties which they have taken upon themselves to perform.

Much, it is true, has already been written upon the subject of the duties of Magistrates, and our libraries are favored with the excellent and popular works of Cowen, Barbour, Edwards, Pennington, Swan and others; yet the local legislation of the various States, calls, in each instance, for a work more immediately adapted to the peculiar legislation of such States. The treatise of Mr. Cotton, prepared in 1844, as also that prepared by Mr. Asbury in 1850, are now entirely out of print. These have been the only works prepared for the use of Justices of the Peace in this State. They were both equally deserving of the favor which they received;—but since the publication of those works, our statute laws have been materially changed in many respects, and a work adapted to our present statutes, seems to be earnestly demanded at the present time.

It has been the design of the author to give all such forms as both Justices and Constables would require to aid them in the discharge of their respective duties; the collection which the work embraces, includes

those both original and selected. For the selected forms, the author is indebted to Edwards' Treatise, third edition, Barbour's Criminal Law, Cotton's Treatise, Asbury's Justice, and the late excellent edition of Cowen's Treatise, by William Tracy, Esq. A collection of original and selected forms for common use in the transaction of business, has also been added, trusting that it may render the work not only more acceptable to the Justice, but that it may be found generally useful to the business man. The country Magistrate is invariably the person upon whom his neighbors rely for their conveyancing, the drafting of their contracts, and generally the preparing of all such writings as may be required in the course of their business transactions; hence the collection of Forms contained in Part Fifth will be found almost indispensable to the Justice in the discharge of his duties.

Some few typographical errors have been discovered in the work, but too late for correction; these, however, will readily be observed by the reader, and the intention will no doubt be at once understood.

The author would here take occasion to express his gratitude to his friends, and especially to the members of the Waukegan Bar, for the interest they have so warmly manifested in his success, and for their many kind offices in affording him such aid as he has, from time to time, solicited in preparing the following pages.

THE AUTHOR.

Waukegan, Ill., 1855.

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GLOSSARY.

GIVING THE DEFINITION OF TERMS AND PHRASES USED IN THIS WORK.

Ab initio. From the beginning.

Ante. Reference to a preceding page.

Assumpsit. He undertook (or promised.)

Bona fide. In good faith.

Capias. "You may take." A writ authorizing the defendant's arrest.

Capias ad satisfaciendum. That you take (defendant) to make satisfaction.

Certiorari. To be certified of; to be informed of.

Chose in action. Things personal, not in possession, for which the owner has the right of recovery by action.

Cognovit actionem. "He has acknowledged the action." After suit brought, the defendant frequently confesses the action; judgment is then entered on the record, without trial; or the defendant signs an instrument, called a *cognovit.*

Conservatores pacis. Keepers of the peace.

Consideratum est per curiam. It is considered by the court.

Coram non judice. Not before a judge; at an improper tribunal.

De bonis asportatis. Of goods carried away.

De novo. Anew; afresh.

De probioribus et potentioribus comitatus sui in custodus pacis. Concerning the more worthy and capable persons of his county (to be) keepers of the peace.

Eo nomine. Under that name.

Escrow. A deed or writing left with another, to be delivered on the performance of something specified.

Ex delicto. From (or by) an offense (or crime.)

Ex parte. On one part.

Feme covert. A married woman.

Feme sole. An unmarried woman.

Fieri facias. That you cause to be made or done; or levied. A writ of execution so called.

In numero. In number (or amount.)

Locus in quo. The place in which.

Maleficium. A wrong act.

Nolle prosequi. "To be unwilling to proceed." Used in criminal cases when further proceedings are discontinued.

Nomine penae. By way of penalty (or punishment.)

Non culpabilis. Not guilty.

Non est factum. It is not his deed.

Nul tiel record. No such record.
Post. Reference to a subsequent page.
Pro tem. For the time being.
Propter affectum. On account of partiality.
Propter defectum. On account of some defect (as age, &c.)
Propter delictum. Because of an offense (or crime.)
Prima facie. At first view or appearance.
Puis darrein continuance. Since the last continuance (or adjournment.)
Quare clausum fregit. Wherefore (or why) did he break the close?
Qui tam. Who as well.
Res gesta. The subject-matter; things done.
Respondeat ouster. That he answer over.
Scire facias. That you make known.
Subpœna duces tecum. "Bring with you under a penalty." The name of a writ by which a witness is commanded to produce something in his possession, to be given in evidence.
Supersedeas. "You may remove or set aside." A writ so called to stay proceedings.
Tort. A wrong; an injury.
Tort feasor. A wrong-doer; a trespasser.
Vi et armis. By force and arms; by unlawful means.
Voir dire. To speak truly; to tell the truth.

EXPLANATION OF ABBREVIATIONS

USED IN THIS WORK.

Bab. Set Off.	Babbington on Set Off.
Bac. Ab.	Bacon's Abridgment.
Barb. Crim. L.	Barbour's Criminal Law, New York.
Barn. & Cres.	Barnewall & Creswell's Reports, English.
Bin.	Binney's Reports, Supreme Court, Penn.
Bl. Com. or Black. Com.	Blackstone's Commentaries.
Blackf.	Blackford's Reports, Indiana.
Bouv. L. D.	Bouvier's Law Dictionary.
Breese or Breese R.	Breese's Reports, Illinois.
Bull. N. P.	Buller's Nisi Prius, English.
Burr.	Burrow's Reports, English.
Caines.	Caines' Reports, New York.
Chit. Crim. L.	Chitty's Criminal Law.
Chit. Pl.	Chitty's Pleadings.*
Co. Litt.	Coke on Littleton.
Com. Con.	Comyn on Contracts.
Const. Ill.	Constitution of Illinois.

* The work referred to is the Springfield edition, 1837.

Cot. Tr.	Cotton's Treatise.
Cowen.	Cowen's Reports, New York.
Cowen Tr. or Cowen's Tr.	Cowen's Treatise.
Cro. Jac.	Croke's Reports during James I.
Dalt. Just.	Dalton's Jnstice.
Davis' Just.	Davis' Justice.
Dougl.	Douglas' Reports, English.
Dougl. Mich. R.	Douglas' Reports, Michigan.
East.	East's Reports, English.
East's P. C.	East's Pleas of the Crown.
Edw. Tr.	Edward's Treatise, New York.
Esp.	Espinasse's Reports.
Fost.	Foster's Reports, English.
Gil. or Gilm.	Gilman's Reports, Illinois.
Gould Pl.	Gould's Pleading.
Green.	Green's Reports, New Jersey.
Grecnl.	Greenleaf's Reports, Maine.
Grecnl. Ev.	Greenleaf's Treatise on the Law of Evidence.
Haines' Town. Org.	Haines' Township Organization.
Hale's P. C.	Hale's Pleas of the Crown.
Hawk. P. C.	Hawkin's Pleas of the Crown.
Hill.	Hill's Reports, New York.
Ibid.	Ibidem, (in the same place.)
Id.	Idem, (the same.)
Ill.	Illinois Reports.
Johns.	Johnson's Reports, New York.
Johns. Cas.	Johnson's Cases, New York.
Ld. Raym.	Lord Raymond.
M. & M.	Moody & Malkin's Reports, English.
Mass.	Massachusetts Reports.
Peake's R.	Peake's Reports, English.
Penn. on Sm. Cau.	Pennington on Small Causes, New Jersey.
Phil. Ev.	Phillip's Evidence.
Rawle R.	Rawle's Reports, Penn.
Rev. Stat.	Revised Statutes.
Salk.	Salkeld's Reports, English.
Saund.	Saunders' Reports, English.
Scam.	Scammon's Reports, Illinois.
Sess. Laws.	Session Laws.
Stark or Stark Ev.	Starkie on the Law of Evidence.
Swan's Tr.	Swan's Treatise.
T. R.	Term Reports.
Taunt.	Taunton's Reports, English.
Tidd or Tidd's Pr.	Tidd's Practice.
Wend.	Wendell's Reports.
Willes or Willes' R.	Willes' Reports, English.
Wright's R.	Wright's Reports, Ohio.

POWERS AND DUTIES

OF

JUSTICES OF THE PEACE.

PART FIRST.

OF JUSTICES OF THE PEACE, THEIR ELECTION AND QUALIFICATION, AND PROCEEDINGS BEFORE THEM IN CIVIL CASES.

CHAPTER I.

OF THE OFFICE OF JUSTICE OF THE PEACE.

I. OF THE JUSTICE.

Justices of the peace are defined to be public officers invested with judicial powers for the purpose of preventing breaches of the peace and bringing to punishment those who have violated the law.[1] They are so called, says Dalton, because they be judges of record, and withal, to put them in mind (by their name) that they do justice, which is, to yield to every man his own, according to the laws, customs, and statutes, without respect of persons. The common law has ever had a special care and regard for the conservation of the peace; for peace is the very end and foundation of civil society—and, therefore, before the constitution of justices was invented in England, there were peculiar officers appointed by the common law for the maintenance of the public peace, and were called *conservatores pacis*.

(1) Bouv. L. D. 751.

They were simply conservators of the peace, which power they either claimed by prescription, or were bound to exercise it by the tenure of their lands; or, lastly, were chosen by the freeholders in full county court before the sheriff; the writ for their election directing them to be chosen "*de probioribus et potentioribus comitatus sui in custodus pacis*" (concerning the more worthy, and capable persons of his county (to be) keepers of the peace.) But when Queen Isabel, the wife of Edward II. had contrived to depose her husband by a forced resignation of the crown, and had set up his son Edward III. in his place; this being a thing then without example in England, it was feared would much alarm the people. To prevent, therefore, any risings, or other disturbances of the peace, the new King sent writs to all the sheriffs of the realm, giving a plausible account of the manner of his obtaining the crown, and withal commanding each sheriff that the peace be kept throughout his bailiwick on pain and peril of disinheritance, and loss of life and limb—and in a few weeks after the date of these writs it was ordained in parliament that for the better maintaining and keeping of the peace in every county, good men and lawful, who were no maintainers of evil, or barretors in the country, should be *assigned* to keep the peace. And in this manner, and upon this occasion was the election of the conservators of the peace taken from the people and given to the King; this assignment being construed to be by the King's permission. But still they were only called conservators, wardens or keepers of the peace, till the statute 34 Edw. III. c. 1, gave them the power of trying felonies; when they acquired the more honorable appellation of justices.[1] The statute of 36 Elizabeth, it seems, however, is the first that names them justices of the peace,[2] which was upwards of two hundred years after acquiring the appellation of justices.

The power, office and duty of a justice of the peace depends on his commission, and on the several statutes which have created objects of his jurisdiction. His commission first empowers him to conserve the peace; and thereby gives him all the power of the ancient conservators at the common law, in suppressing riots and affrays, in taking securities for the peace, and in apprehending and committing felons and other criminals. And as to the powers given to one, two or more justices by the several statutes, which from time to time have heaped upon them such an infinite variety of business, that few care to undertake, and fewer understand the office; they are such, and of so great importance to the public, that the country is greatly obliged to any wor-

(1) Bl. Com. 350. (2) Dalt. Just. 6.

thy magistrate, that, without sinister views of his own, will engage in this troublesome service, and therefore, if a well-meaning justice makes any undesigned slip in his practice, great lenity and indulgence are shown to him in the courts of law; and there are many statutes made to protect him in the upright discharge of his office. But on the other hand, any malicious or tyrannical abuse of their office is usually severely punished.[1]

If magistrates were always held liable for every trifling mistake they commit in the performance of their various official duties, few persons would be found willing to accept an office of so little profit and attended with such great risk. Courts, therefore, from necessity, are bound to view their acts with reasonable indulgence, and if they are governed by good faith, and act within their jurisdiction, they will not be held liable for errors of judgment in matters of mere form.[2]

The office of justice of the peace was introduced by our forefathers at their migration; and in all particulars then applicable, or which have since become applicable, to this jurisdiction, may be considered as possessing here the general character and functions allowed to it in England, by force of the statutes which had there created and regulated this ancient and important office.[3] In this State as well as the States of the Union generally, the statutes since enacted, have enumerated the powers and duties of justices of the peace, both in civil and criminal matters; so that now there is little, if any occasion to recur to the ancient English statutes for the powers of this office; and perhaps, the enumeration itself will preclude to a certain extent such recurrence. The office, therefore, exists in this country, principally, if not entirely according to our statutes.

II. OF THE ELECTION OF JUSTICES.

By Art. V. § 27 of the constitution of this State it is declared that "There shall be elected in each county in this State, in such districts as the General Assembly may direct, by the qualified electors thereof, a competent number of justices of the peace, who shall hold their offices for the term of four years, and until their successors shall have been elected and qualified, and who shall perform such duties, receive such compensation, and exercise such jurisdiction as may be prescribed by law."

(1) 1 Bl. Com. 354. (2) Breese R. 145. (3) 1 Mass. R. 489.

1. *In Counties not adopting Township Organization.*

By section 16 of the act entitled "An act establishing county courts and providing for the election of justices of the peace and constables, and for other purposes," Approved Feb. 12th, 1849, and in force April 13th, 1849, it is enacted that "On Tuesday after the first Monday in November in the year eighteen hundred and forty-nine, and on the Tuesday after the first Monday in November quadrennially, forever thereafter, there shall be elected in each of the several counties of this State now organized, or that may hereafter from time to time be organized, and in the districts now established in pursuance of the laws of this State, or that may hereafter be established and by the qualified electors thereof, the number of justices of the peace and constables to which such counties are now entitled by law, or to which they may hereafter from time time be entitled; and said justices of the peace and constables so elected shall exercise the same powers and jurisdiction, and perform the duties, and be under the liabilities, in all respects whatever, of the justices of the peace and constables now in office, and be entitled to the same fees and emoluments, or such as may be provided by law."

By Chap. LIX. of the Revised Statutes title, "JUSTICES OF THE PEACE AND CONSTABLES," pp. 313, 314 which is understood as being referred to by the foregoing section; it is provided as follows:

"SEC. 2. Two justices of the peace and two constables shall be elected in each election precinct in each county, except that precinct in which the county seat is located, in which there shall be three justices of the peace and three constables elected."

"SEC. 5. The County Commissioners' Court[1] of any county may, when they deem it necessary, cause an election to be held in the precinct in which the county seat is located, for the election of one additional justice of the peace and two constables, who shall hold their offices until the next quadrennial election of justices of the peace and constables, and until others are elected and qualified. At such quadrennial election, the whole number of justices of the peace and constables to which each precinct is herein entitled, shall be elected."

By the foregoing sections, it will be seen that each precinct, or election district, in counties not adopting Township organization, is entitled to two justices and two constables, except that in which the county seat is located, which may have four justices and five constables.

(1) Now County Court.

Vacancy.—Whenever any vacancy happens in the office of the justice of the peace, it is made the duty of the clerk of the County Court to issue his orders to the Judges of Election in the precinct in which the vacancy shall happen, requiring them on a certain day therein named, not less than twenty days from the issuing of such order, to hold an election, to fill such vacancy, which order is to be immediately delivered by said clerk to the sheriff of the county, and by him, within five days thereafter, delivered to the Judges of election to whom directed, when the Judges of election, shall, in pursuance of said order, hold said election.[1]

2. *In Counties adopting Township Organization.*

By the act to provide for Township organization, approved February 17th, 1851, Art. 3, Sec. 2, it is provided that two justices of the peace and two constables shall be elected in each town on the first Tuesday in April, at the time of choosing town officers, once in four years, only, except to fill vacancies. By an act amendatory to the foregoing act, approved February 27th, 1854, Sec. 15, it is enacted "That in all towns having a population of more than two thousand inhabitants, it shall be lawful for the qualified voters thereof to elect one justice of the peace and one constable for each and every thousand of its inhabitants, until the population shall reach five thousand, after which, the number of justices of the peace and constables shall not be increased. Said justices of the peace and constables shall be elected in the same manner, and shall hold their offices for the same term of time as other justices of the peace and constables. Said justices of the peace shall be commissioned by the Governor, and shall have the same jurisdiction, power and authority, and be subject to the same liabilities, and shall execute bond and be sworn in the same manner as other justices of the peace."

It seems to be rather an unwise provision in having the term of office of justices and constables all expire at the same time, for as it now is, it not unfrequently happens that confusion arises, in determining who shall hold over, or who is the successor of a former incumbent. For instance, in a town or precinct having two justices of the peace, when their term of office expires, two different persons are elected to succeed them, one of which fails to qualify; the question arises, which of the former justices holds over. Under this state of things, probably neither can claim the right of holding over. If, however, a town should

(1) See act establishing County Courts, &c., 1849, sections 6 and 19.

neglect to choose the number of justices or constables, that it would be entitled to, but should elect a less number than allowed by law, it has been decided that this would oust all those of the preceding term; neither of the former incumbents could hold over on the pretense that no person is chosen in his place, notwithstanding there may have been a full number for the preceding term.[1]

III. OF QUALIFICATIONS.

By the Revised Statutes chap. LIX. sec. 9, it is enacted, "That justices of the peace and constables shall, before entering upon the duties of their respective offices, be sworn, faithfully to perform the duties of their respective offices according to law, and to the best of their understanding."

"SEC. 10. Every justice of the peace, before entering upon the duties of his office, shall execute and deliver to the clerk of the county commissioners' court[2] of his county, and within twenty days after his said election, a bond to be approved by said clerk, with one or more good and sufficient securities, in the sum of not less than five hundred nor more than one thousand dollars: conditioned that he will justly and fairly account for and pay over all moneys that may come to his hands under any judgment or other wise, by virtue of his said office: and that he will well and truly perform all and every act and duty enjoined on him by the laws of this State, to the best of his skill and abilities. Said bond shall be made payable to the county commissioners of the county in which such justice of the peace shall be elected, and their successors in office, for the use of the people of the State of Illinois, and shall be held for the security and benefit of all suitors and others, who may be injured or aggrieved by the official acts or misconduct of such justice of the peace."

There may be some doubt as to whom the bond of a justice of the peace should be made payable, under our later statutes. In counties adopting township organization, it should, doubtless, be made payable to the Board of Supervisors, and in counties not adopting town organization, it is, perhaps, proper that it should be made payable to the County Court of the proper County.

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(1) 17 Wend. 81. (2) Clerk of the County Court.

Form of Oath of Office of Justice of the Peace.

STATE OF ILLINOIS, } ss.
Lake COUNTY, }

I, ————, being elected a Justice of the Peace, in and for the County of *Lake*, in the State of Illinois, do solemnly swear, (*or affirm,*) that I will support the Constitution of the United States, and of the State of Illinois, and that I will faithfully perform the duties of my said office according to law, to the best of my understanding.

I do solemnly swear, (*or affirm, as the case may be,*) that I have not fought a duel, the probable issue of which might have been the death of either party, nor been a second to either party, nor in any manner aided or assisted in such duel, nor been knowingly the bearer of such challenge or acceptance, since the adoption of the constitution, and that I will not be so engaged or concerned, directly or indirectly, in or about any such duel, during my continuance in office. So help me God.

A. B.

Subscribed and Sworn to, before me,
this —— day of —— A. D. 18—.
J. C. BIDDLECOME,
Clerk of Co. Court of *Lake* County.

It is made the duty of the clerk of the county court to endorse the certificate of this oath upon the commission of the justice, upon receiving or delivering out the same.

Form of Official Bond of Justice of the Peace.

KNOW ALL MEN BY THESE PRESENTS, That we, ——— as principal, and ——— and ——— as sureties, are held and firmly bound unto the Board of Supervisors, (*or ——— as the case may be,*) of the County of ———, and their successors in office, for the use of the people of the State of Illinois, in the sum of ——— dollars, (*not less than five hundred nor more than one thousand dollars,*) to be paid to the said Board of Supervisors, (*or ——— as the case may be,*) and their successors in office, for the use aforesaid; for the payment of which, well and truly to be made, we bind ourselves, our executors and administrators, and each of them firmly by these presents. Sealed with our seals, and dated this ——— day of ——— A. D. 18—.

WHEREAS, at an election lately held in the town of ——— (*or precinct of* ———) in the county aforesaid, the above bounden ——— was duly elected a Justice of the Peace, in and for said county.

Now, therefore, the condition of this obligation is such, that if the above bounden ——— shall justly and fairly account for and pay over all moneys that may come to his hands, under any judgment or otherwise, by virtue of his said office ; and shall well and truly perform all and every act and duty enjoined on him by the laws of the State of Illinois, to the best of his skill and abilities, then the above obligation to be void, otherwise to remain in full force and effect.

(*Seal.*)
(*Seal.*)
(*Seal.*)

Great care should be exercised by justices elect in steps for qualification, in pursuing the law strictly, that questions in the future, may be avoided, and particularly, in relation to the bond ; in the case of *The People* v. *Percells*,[1] where a justice elect, had within twenty days after his election, filed his official bond in compliance with the statute in such cases made and provided, except that the condition thereof, omitted to recite the following requirement: "and that he will well and truly perform all and every act and duty enjoined on him by the laws of this State, to the best of his skill and abilities;" and after the expiration of twenty days, as aforesaid, he filed a new bond with other securities, containing the provisions omitted in the first; it was held that the first bond was insufficient, that the second was not filed within the time required by the statute, and that therefore, the office became vacant.

Justices of the peace, when qualified according to law, have jurisdiction throughout their county.[2]

Justices of the peace who have given bond and received commissions according to law, are authorized and empowered, and it is made their duty to receive money on all notes and demands which may be placed in their hands for suit or collection, and upon all judgments rendered by them prior to the issuing execution thereon.[3]

IV. OF RESIGNATIONS.

Resignations of the office of justice of the peace must be made to the clerk of the county court of the proper county, who is required to

(1) 3 Gilm. 59.
(2) Rev. Stat. 314, sec. 7.
(3) Rev. Stat. 316, sec. 19.

immediately enter the date of every such resignation in a book provided for that purpose, which book, or a certified copy of entries therein, will be received as evidence in all courts within the State.[1] When any justice of the peace resigns his office, or removes from the county, or from the township or precinct in which he was elected, it is his duty to deliver over his docket and papers relating to the business transacted before him, to the nearest justice of the peace in his county, and to return to the office of the clerk of the county court all copies of the statutes which he may have received from that office; and in case of the death of any justice of the peace, it is the duty of the person having possession of such docket, papers and statutes, to deliver them over as aforesaid.[2]

A person who has been elected a justice of the peace for a precinct, if he is subsequently elected to the same office for a township, and accepts the latter, it is an implied resignation of the first office which becomes vacated.[3]

(1) Rev. Stat. 315, sec. 15. (2) Rev. Stat. 331, sec. 112. (3) 15 Ill. 375.

CHAPTER II.

OF THE JURISDICTION OF JUSTICES OF THE PEACE IN CIVIL CASES.

I. OF WHAT THE JUSTICE HAS JURISDICTION TO HEAR AND DETERMINE.

A justice's court is one of limited jurisdiction. The Statute is the charter of its authority; and whenever it assumes jurisdiction in a case not conferred by the statute, its acts are null and void.[1] The jurisdiction of the justice is conferred by statute, and in its exercise he must proceed in strict conformity with the manner prescribed.[2]

By Revised Statutes, chap. LIX., title, "JUSTICES OF THE PEACE AND CONSTABLES," sec. 17, it is enacted that, "Justices of the peace shall have jurisdiction in their respective counties, to hear and determine all complaints, suits and prosecutions of the following description:

"1st. In actions of debt on bonds, contracts, agreements, promissory notes, or other instruments in writing, in which the amount claimed to be due, does not exceed one hundred dollars.

"2d. In actions of assumpsit upon any contract or promise, verbal or written, express or implied, for a valuable consideration in which the amount claimed to be due does not exceed one hundred dollars.

"3d. In suits brought for goods, wares or merchandise, sold and delivered; for work and labor done, or services rendered; for money had and received; for money lent; for money received by the defendant, for the use of the plaintiff; or for money paid by the plaintiff, for the defendant at his request; in which the amount claimed to be due does not exceed one hundred dollars.

(1) 1 Scam. 237. (2) 2 Scam. 469.

"4th. In suits for money claimed to be due upon unsettled accounts, in which the balance claimed to be due does not exceed one hundred dollars.

"5th. In suits for money claimed to be due upon settled accounts between individuals, in which the balance ascertained to be unpaid shall not exceed one hundred dollars.

"6th. In all suits upon contracts or promises for rent, and in cases of distress for rent, upon landlords' warrants, in which the amount claimed to be due does not exceed one hundred dollars.

"7th. In actions of debt for trespass, by cutting timber in which the amount claimed does not exceed one hundred dollars.

"8th. In actions for money claimed to be due for specific articles of property whether claimed to be due by bond, note, or other instrument in writing, or upon a promise express or implied, in which the value of the property claimed does not exceed one hundred dollars.

"9th. For all debts or demands claimed to be due not exceeding one hundred dollars, in which the action of debt or assumpsit will lie.

"10th. In all actions in which an executor or administrator is plaintiff, or for property purchased at an executor's or administrator's sale, where the amount claimed does not exceed one hundred dollars.

"11th. In all actions in which an executor or administrator is defendant, where the amount claimed does not exceed twenty dollars.

"12th. In all actions of trespass on personal property, and of trover and conversion, in which the damage claimed does not exceed one hundred dollars.

"13th. [This paragraph of the section gives jurisdiction in cases of assault and battery and affrays, which will be treated upon in another part of this work.]

"14th. In all actions against sheriffs, coroners and constables for malfeasance, misfeasance or nonfeasance in office, wherein the amount claimed does not exceed one hundred dollars.

"The provisions of this section shall apply as well to proceedings commenced by attachment, as to other cases."

"SEC. 18. In all suits provided for in the preceding section, the jurisdiction of the justice shall be deemed to extend to cases in which the original claim, debt, demand or damages may have originally exceeded the sums of one hundred dollars, and twenty dollars respectively, but which shall have been reduced by fair credits below those sums."

By a late act, entitled "An act to extend the jurisdiction of justices of the peace," Approved Feb. 15, 1855, it is enacted, "That the ju-

risdiction of justices of the peace be and the same is hereby extended so as to include all actions for trespass upon real estate where the sum claimed does not exceed one hundred dollars."[1]

As we have already seen,[2] the courts from necessity will view the acts of justices of the peace with great indulgence; and where a justice has jurisdiction, but proceeds erroneously, he is not a trespasser; but where he has not jurisdiction, it is otherwise, and he will be held a trespasser.[3]

A suit before a person assuming to act as a justice of the peace, will not be dismissed on motion for the reason that he is not a legal justice of the peace. It is sufficient that he assumes to act in such capacity; his right to act cannot be collaterally examined.[4]

In suits where the original claim, debt or demand exceeds one hundred dollars, and is to be reduced by credits, the credit must be *bona fide* and not given merely to gain jurisdiction.[5] The court will presume such credit to be fair, until the contrary is shown.[6]

Where a suit was commenced before a justice of the peace upon a note for one hundred dollars, payable in twenty days, judgment was rendered for the plaintiff for that amount, and the defendant appealed to the Circuit Court, and there moved to dismiss the cause for want of jurisdiction in the justice. *Held*, that the justice had jurisdiction, as the face of the note did not exceed one hundred dollars, and the plaintiff did not claim interest.[7]

If a controversy exists as to the amount of a set-off, a party is not bound to give credit before the commencement of a suit for the exact amount to which the trial may show the party entitled.[8] Where actions are brought before a justice of the peace on two notes, returnable at the same time, which if consolidated would exceed one hundred dollars, a judgment on the first, is not a bar to a recovery on the second. Each note constitutes a separate demand.[9]

The question of jurisdiction with a justice of the peace, does not depend upon the amount of the claim filed; but the real amount due, ascertained from the evidence, furnishes the test.[10]

A justice of the peace has jurisdiction of a set-off exceeding one hundred dollars where the balance claimed by the defendant does not exceed that sum, and it appears that if the balance exceeds one hundred dollars, the justice must do one of two things; either allow and set off so much

(1) See Sess. Laws, 1855, p. 139. (2) *Ante*, p. 19. (3) Breese 145. (4) 2 Gil. 129. (5) 1 Scam. 168. (6) Id. 575. (7) 2 Gil. 389. (8) 11 Ill. 564. (9) Ibid. (10) 14 Ill. 393.

of the defendant's claim as will satisfy the plaintiff's claim and give judgment for the defendant, for costs, or dismiss the suit altogether.[1]

A justice of the peace has jurisdiction in an action of trespass for injury to growing corn, if the damages claimed do not exceed one hundred dollars;[2] and has jurisdiction in an action against a constable, for taking property not subject to levy; and against a constable and his sureties for the recovery of single damages for his malfeasance in taking such property.[3] Single damages, likewise, can only be recovered before a justice of the peace in an action against the constable for taking property exempt from levy; but a suit should not be dismissed because the plaintiff has claimed for treble damages, by way of penalty, given by the statute, but the cause should be entertained and judgment given according to the evidence.[4]

In order to render the judicial proceedings or judgment of any inferior court valid, it is necessary that the court should have jurisdiction of the subject matter, and of the person.[5]

II. OF JURISDICTION, OF THE SUBJECT MATTER.

It is a clear and salutary principle, that inferior jurisdictions not proceeding according to the course of the common law, are confined strictly to the authority given them. They can take nothing by implication, but must show the power expressly given them in every instance. The sound rule of construction in respect to the courts of justices of the peace, is, to be liberal in reviewing their proceedings as far as respects regularity and form, and strict in holding them to the exact limits of jurisdiction prescribed by the statutes.[6] Where the justice has a general jurisdiction of the subject matter, and has obtained jurisdiction of the persons, whatever errors he may commit in the subsequent proceedings in the suit, will not render them void, but voidable only.

If a court has no jurisdiction of the subject matter of the suit, consent of the parties cannot confer it,[7] although it may take away error. The law is well settled that in order to justify a court not of record in taking cognizance of a cause, it must have jurisdiction of the subject matter as well as of the person of the defendant.[8]

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(1) 3 Scam. 298. (2) 14 Ill. 257. (3) 15 Ill. 39. (4) Ibid. (5) 5 Wend. 170.
(6) 1 Johns. cas. 20; 3 Scam. 194. (7) Breese 32; 12 Ill. 122. (8) 1 Scam. 558.

III. OF JURISDICTION OF THE PERSON.

The individual proceeded against, must in general, be notified in some legal form, in order to give the court or justice jurisdiction over him, for it is an indispensable requisite that before the rights of a party can be determined, either civilly or criminally, he shall have notice of the proceedings to be had, that he may have an opportunity of defending himself.[1]

It is essential to the exercise of all jurisdictions rendering judgments or decrees, affecting the person or property of the individual, where the proceeding is by summons directed to the defendant, that they should have indisputable evidence before them that the party to be affected by their judgment or decree is regularly before them, or, in other words, has been regularly summoned otherwise their proceedings are *coram non judice*, consequently, irregular and void. This appearance must be either actual or constructive.

The plaintiff in a case where the defendant does not appear, proceeds at his peril; he is bound to see that all the antecedent proceedings are regular, and if they are not, he necessarily consents to meet the consequences of such irregularities.[2] If the defendant appears, however, and proceeds in the cause without objection to the process or service thereof, this will cure not only all defects and informalities therein, but also the want of process.[3]

Objections to the proceedings of the justice on the ground that the defendant has had no notice, or but an insufficient notice of such proceedings, are in the nature of a plea in abatement to the jurisdiction of the justice, and are required to be made at the first moment at which the defendant is able to make them;[4] any objections to the process should always be made in the first instance; it will be too late after pleading and going to trial.[5]

A justice can render judgment against a defendant only where process is personally served on him, or he appears in person before the justice and waives process.

A defendant cannot authorize a justice to render judgment against him by sending a letter to such justice requesting him to enter judgment against the defendant in favor of the plaintiff, for an amount named in the letter, although the defendant expressly state that he waived

(1) 4 Bl. Com. 282; 1 Scam. 517. (2) 1 Scam. 174. (3) Id. 267.
(4) 4 Scam. 176. (5) 2 Caine 134.

the service of the process and authorized the judgment. A judgment obtained under such circumstances is not only voidable, but totally void, and no one can acquire any benefit or right under it.[1]

But notice to the defendant need not in all cases be personal; the legislature may prescribe what notice shall be sufficient. Thus in suits by attachment against the property of the defendant, personal service is in certain cases dispensed with, and the justice may entertain jurisdiction of the cause, and render judgment for certain purposes.

IV. OF PROCEEDING WITHOUT JURISDICTION.

It is a general and well settled rule, that where a court of special and limited jurisdiction, like that of a justice of the peace, has neither jurisdiction of the subject matter of the suit, nor of the person of the defendant, everything done therein is absolutely void, and all are trespassers who are concerned in the proceedings.[2] But this rule, so far as respects the officer serving the process, is somewhat modified.[3]

A justice may also be liable as a trespasser, where there is not a total want of jurisdiction, but where some proceeding or proof is wanting, which is necessary, in order to give him authority to act in the particular case; as, if he issue an attachment without any proof of absconding or concealment, as provided by the statute in such cases, which being executed, not only the justice, but also the plaintiff, would be liable as trespassers; but in such case the constable would be excused, the process being regular upon its face.[4]

In justices' court, no formal plea to the jurisdiction of the court is necessary. The question may be raised, and objection stated, at any stage of the proceedings; and the justice, upon becoming satisfied that he has not jurisdiction, should at once dismiss the cause.

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(1) 2 Scam. 468.
(2) Breese 144; 12 Johns. 265; 15 Id. 152; 16 Id. 145.
(3) 5 Wend. 170; 6 Id. 367.
(4) 11 Johns. 175; 3 Cowen 206.

CHAPTER III.

OF THE DIFFERENT FORMS OF ACTIONS.

I. WHAT ACTIONS MAY BE BROUGHT BEFORE JUSTICES OF THE PEACE.

Actions that may be brought before justices of the peace, which will be here noticed, are of two kinds, viz.: those founded on *contracts*, express or implied; and those founded on *torts*, or *wrongs*.

Those founded on contract, are *Debt*, *Covenant* and *Assumpsit;* those on torts, or wrongs, are *Trespass* and *Trover*.

While the principles of law, by which these several actions are distinguished, are of great importance to the lawyer, and are more closely regarded in courts of record, they are, under our statute, at least, of but little practical use to a justice of the peace. The cause of action should, in general, be stated on the docket, by either copying the bill of particulars, note, or contract filed by the plaintiff, by briefly noting its contents, or by stating in substance the nature of the plaintiff's claim; yet it is not always absolutely necessary, and in general it may be more safe not to designate the *name* of the action. It will only be necessary, therefore, to define in general terms, the different actions.

II. OF THE ACTION OF DEBT.

This action is so called because it is in legal consideration for the recovery of a debt.[1] Formerly, in this action, the plaintiff was bound to prove the whole debt he claimed, or recover nothing at all. The debt, being one single cause of action, fixed and determined, and, therefore, if the proof varied from the claim, it could not be looked upon as the same contract whereof the performance was sued for. But this is no longer the case, for it is now completely settled, that the plaintiff in an action of debt may prove and recover less than the sum demanded by the writ.[2]

It is not advisable to bring this action except in cases where no other action will lie. A greater degree of nicety is necessary in prosecuting it, than in *covenant* or *assumpsit*, which will lie in a great variety of cases upon contract where *debt* may also be brought. The cases in which debt is the sole remedy, may probably be reduced to the following: 1. Debt on a *penal* or *single* bond. 2. On judgments in courts of record, and likewise in justices' courts.[3] 3. For various penalties imposed by statute.

As a general rule, however, debt will lie upon any contract, whether under seal, written, verbal, express or implied, where the demand is for a sum of money certain, or a sum that is capable of being readily reduced to a certainty; as, for goods sold, money lent, paid, had and received, and upon a promissory note, bond, or other contract, for the payment of money.

III. OF THE ACTION OF COVENANT.

This action lies to recover damages for the breach of a contract or agreement under seal, and it cannot be maintained except upon a sealed instrument. Covenant is the only remedy for the non-performance of a contract or agreement under seal, where the damages are unliquidated, or cannot be ascertained from the instrument itself; for in such case debt will not lie, and assumpsit will not ordinarily lie on a sealed instrument. Covenant is the usual remedy on all contracts or agreements under seal.

It is not essential that the word covenant should be in the instrument in order to render the defendant liable in covenant; words to that effect will be deemed sufficient.

(1) 1 Chit. pl. 123. (2) 3 Bl. Com. 154 *n*; 2 Chitty Pl. 285, note *o*; 11 East 62.
(3) 16 Johns. 233.

In covenant there is strictly no plea which can be termed the general issue, for *non est factum*, (not his deed) only puts in issue the fact of the execution of the deed, and therefore most matters of defense under this form of action must be specially pleaded, or notice given under the plea of *non est factum*.[1]

The jurisdiction of the justice, in this action, is perhaps, under our statute, somewhat limited. A justice, no doubt, has jurisdiction in this form of action, upon contracts under seal, for rent, and perhaps in one or two other instances under the 17th section of the justices' act.

IV. OF THE ACTION OF ASSUMPSIT.

This action is more extensively used than any other form of action, and under it will be found the largest and most general jurisdiction of the justice.

It is so called from the word *assumpsit*, (he undertook or promised,) which, when the pleadings in courts of record were in Latin, was always inserted in the declaration as descriptive of the defendant's undertaking. It may be defined to be an action for the recovery of damages for the non-performance of a *parol* or *simple* contract; or, in other words, a contract not under seal nor of record, circumstances which distinguish this remedy from others, for the action of debt is in legal consideration for the recovery of a *debt eo nomine* and *in numero*, and is most frequently brought upon a deed; and the action of *covenant*, although in form the recovery of *damages* is sought by the plaintiff, can only be supported upon a contract under seal. Assumpsit however is not sustainable, unless there have been an express *contract*, or unless where the law will imply a contract.[2]

A contract not under seal, whether it be in writing or merely verbal, is a parol or simple contract. Parol or simple contracts are either express or implied. Express contracts are where the terms of the bargain, agreement, or promise, are openly uttered and expressed by the contracting parties, and may be either to do, or to forbear to do, a particular act, as to pay money on the sale or exchange of cattle or goods; to perform work; to let or take lands or houses; to warrant the soundness or quality of cattle or goods; to indemnify; to forbear to sue, &c.[3] So promissory notes and all agreements reduced to writing are express contracts. Implied contracts, or promises, are

(1) 1 Chit. pl. 131 to 138. (2) 1 Chit. pl. 112. (3) 1 Com. Con. 3.

such as reason and justice dictate, and which, therefore, the law presumes every man undertakes to perform. As, if a person is employed by another to do any business for him, or perform any work, and nothing is agreed upon as the price of his labor. So when a man orders goods of a tradesman, without any agreement as to the price, the law implies that the buyer contracted to pay to the seller their real value.[1] So likewise when money is lent and advanced, paid, laid out and expended, or had and received, and nothing is expressly stipulated by the parties as to the repayment thereof, the law raises an *implied* promise that it shall be repaid on request.[2] But in such cases an actual request is not necessary before commencing the suit, but the bringing of the suit is a sufficient request. And in various other instances which might be mentioned, though no express agreement be made, a legal liability arises, and the law presumes that the party promised to pay the debt, or perform the duty or service. In short, assumpsit is a proper form of action to recover damages for the non-performance of all contracts or agreements, verbal or written, express or implied, not under seal.[3]

The declaration in this action should, except in cases of bills of exchange, promissory notes and checks, disclose the consideration upon which the contract was founded, the contract itself, whether express or implied, and the breach thereof; and the damages should be laid sufficient to cover the real amount;[4] and in all actions upon contracts not under seal, except in cases above mentioned, it is incumbent on the plaintiff under the general issue to prove a consideration for the alleged promise of the defendant. This may ordinarily be done, however, by proof of all the circumstances of the transaction. Thus proof of the relation of landlord and tenant, is sufficient proof of consideration for a promise to manage a farm in a husband-like manner. And this manner is proved by evidence of the prevalent course of husbandry in that neighborhood. The same evidence will also necessarily disclose a *privity* existing between the defendant and plaintiff; for if the plaintiff is a stranger to the consideration, he cannot recover; and in all these cases, the plaintiff may recover as much as he proves to be due him, within the sum mentioned, or claimed, in his declaration. If the contract is in writing, and recites that a valuable consideration has been received, this is *prima facie* evidence of the fact, and the burden of disproving it is devolved on the defendant.[5]

(1) 1 Com. Con. 5; 2 Bl. Com. 443.
(2) 1 Com. Con. 6.
(3) 1 Chit. pl. 112 to 122; Cowen Tr. 25 to 157, 1st ed.
(4) 1 Chit. pl. 122.
(5) 2 Greenl. Ev. sec. 105.

V. OF THE ACTION OF TRESPASS.

1. *Of this Action generally.*

The term *trespass*, in its most extensive signification, includes every description of wrong; on which account an action on the case has been usually called "trespass on the case;" but technically it signifies an injury committed *vi et armis*, (by force and arms, or by unlawful means.) The action of trespass lies for injuries committed with force, and generally for such as are immediate. Force may be either actual or implied.[1]

Until recently, as will be seen,[2] justices of the peace, under our statute, had jurisdiction in this action only in case of trespass on personal property. The jurisdiction being now extended to *real* property, this action will be considered under the two different heads of Injuries to Personal Property, and Injuries to Real Property.

2. *Injuries to Personal Property.*

The action of trespass on personal property lies to recover damages for an injury done to personal property, occasioned by actual or implied force, as, for abusing or shooting the animal of another, or intermeddling with his property in exclusion of his right.[3] The action of trespass, in its application to injuries to personal property, may be considered with reference, 1st, To the nature of the thing affected; 2d, the plaintiff's right thereto; and, 3d, the nature of the injury.

And, 1st, *As to the nature of the thing affected.*

Trespass lies for *taking* or injuring all inanimate personal property, and certain domiciled and tame animals, of which the law takes notice, and all domestic animals belonging to, or lawfully in possession of, another, whether he be the owner or not.

2d, *With respect to the plaintiff's interest in the property affected.* He must, at the time when the injury was committed, have had an actual or a constructive possession, and also a general or qualified property therein, which may be either — 1st, in the case of the absolute or general owner, entitled to immediate possession; 2d, the qualified owner, coupled with an interest, and also entitled to immediate possession; 3d, a bailee, with a mere naked authority, unaccompanied with any interest, except as to remuneration for trouble, &c., but who is in actual possession; or, 4th, actual possession, though without the consent of the owner.[4] *In the first instance*, the person who has the

(1) 1 Chit. pl. 191. (2) Ante, pp. 27, 28. (3) 5 Cowen 323; 7 Id. 735. (4) 7 Johns 435.

absolute or general property may support this action, although he has never had the actual possession, it being a rule of law, that the general property of personal chattels *prima facie*, as to all civil purposes draws to it the possession.[1] *In the second case*, also, that of the bailee who has an authority, coupled with an interest, it would seem that trespass may be supported, though he never had actual possession, for an injury done during his interest, as in the case of a factor, or consignee of goods, &c., in which he has an interest in respect to his commission. *In the third instance*, that of a bailee, &c., with a mere naked authority, coupled only with an interest as to remuneration, he may also support this action for an injury done while he was in the actual possession of the thing as a carrier, factor, pawnee, a sheriff, or the like; but it is otherwise in case of a mere servant.[2] *In the fourth instance*, that of the finder of any article, who may maintain trespass or trover against any person but the real owner, and even a person not having a strict legal right, but living in possession, may, it seems, support this action against any person but the legal owner.[3]

3. *Injuries to Real Property.*

Trespass is also the proper remedy to recover damages for an illegal entry upon, or an immediate injury to, *real property* corporeal, in the possession of the plaintiff.[4] This remedy, in its application to injuries to *real* property, may be considered with reference — 1st, to the *nature* of the property affected; 2d, to the plaintiff's right thereto; and, 3d, to the nature of the *injury*, and by whom committed.

1st, *With respect to the nature of the real property affected.* It must in general be something tangible and fixed, as a house, a room, outhouses, or other buildings, or land. Trespass may be supported for an injury to land, though not fenced from the property of others; the term *close* being technical, and signifying the interest in the soil, and not merely a close or inclosure in the common acceptation of that term.[5] It lies, however temporary the plaintiff's interest, and though it be merely in the profits of the soil; as where a person contracted with the owner of a close for the purchase merely of a growing crop of grass, there, it was decided, that the purchaser had such an exclusive possession of the close, though for a limited purpose, that he might maintain

(1) 8 Johns. 435; 2 Saund. 47, *a*. (2) 2 Bl. Com. 396.
(3) See 1 Chit. pl. 194 to 197; see also, 4 Taunt. 549; 2 Saund. 47 *d*; 13 Johns. 141-276; 13 Wend. 143.
(4) 1 Chit. pl. 200. (5) 3 Scam. 259.

trespass *quare clausum fregit* against any person entering the close and taking the grass even with the assent of the owner.[1]

2d, *With respect to the plaintiff's right or interest in the property affected.* The *gist* of this action being the injury to the *possession*, it follows, as a general rule, that a person must have the actual possession of real property to enable him to maintain trespass, and although the title may come in question, yet it is not essential to the action that it should.[2] The owner of wild and uncultivated land is to be deemed in possession so as to enable him to maintain trespass.[3] But where the possession alone is relied on to maintain this action, it must be an actual and not a constructive possession.[4] Actual and exclusive possession, without a legal title, is held sufficient against a wrong doer, or a person who cannot show any right or authority from the real owner.[5]

3d, *With respect to the nature of the injury to real property.* Trespass can only be supported when the injury was committed with force, actual or implied, and immediate, and it lies, however unintentional the trespass; and though the *locus in quo* (place where the trespass was committed) were uninclosed, or the door of the house were open, if the entry were not for a justifiable purpose, and it is held that even shooting at and killing game on another's land, though without an actual entry, is in law an entry.[6] Every unauthorized entry on the land of another is trespass, for which an action will lie.[7] The supreme court of this State have decided that in order to maintain an action of trespass for damage done by cattle or other animals, the owner of the close must show that it was protected by a good and sufficient fence; that the rule of the common law, which requires the owner of such animals to keep them on his own land, is not in force in Illinois.[8] It would no doubt be otherwise, however, when it is shown that the defendant's *beasts* entered the plaintiff's land through a defect in the *partition* fence, which the defendant was bound to keep in repair.[9]

It is held that when a trespass is committed by the coöperation of several persons, they are all trespassers, and may be sued jointly and separately, and any one of them is liable to pay all the damages occasioned by the acts of the *whole*, but there can be but one satisfaction of damages. Thus, where joint trespassers are sued separately, and separate judgments obtained, the plaintiff can have but one satisfaction

(1) 1 Chit. pl. 200. (2) 1 Chit. pl. 202; 15 Ill. 555. (3) 8 Johns. 270. (4) 1 Scam. 181.
(5) 11 East 65; 13 Johns. 141; 7 Cowen 752; 2 Gil. 652. (6) 1 Chit. pl. 206.
(7) 15 Ill. 53. (8) 5 Gil. 130; 13 Ill. 609. (9) 12 Johns. 433; 1 Cowen 79.

for his *damages*, and he may elect the highest sum recovered. He is entitled, however, to his costs in each suit, and when he receives his damages from either one, or discharges either one, without payment, such act discharges all.[1]

VI. OF THE ACTION OF TROVER.

The action of *trover* and conversion was, in its origin, an action of trespass on the case for the recovery of damages against a person who had found goods and refused to deliver them on demand to the owner, but converted them to his own use; from which word finding, (*trouver*) the remedy is called an action of trover. The circumstance of the defendant not being at liberty to wage his law in this action, and the less degree of certainty requisite in describing the goods, gave it so considerable an advantage over the action of detinue, that by a fiction of law, actions of trover were at length permitted to be brought against any person who had in his possession, by any means whatever, the personal property of another, and sold them or used them without the consent of the owner, or refused to deliver them when demanded. The injury lies in the conversion and deprivation of the plaintiff's property, which is the gist of the action, and the statement of the finding or trover is now immaterial and not traversable; and the fact of the conversion does not necessarily import an acquisition of property in the defendant. It is an action for the recovery of damages to the extent of the value of the thing converted. The object and result of the suit are not the recovery of the thing itself, which can only be recovered by an action of detinue or replevin. Lord Mansfield thus defines this action: "In form it (i. e. the trover) is a fiction; in substance it is a remedy to recover the value of personal chattels wrongfully converted by another to his own use; the form supposes that the defendant might have come lawfully by it, and if he did not, yet by bringing this action, the plaintiff waives the trespass; no damages are recoverable for the act of taking; all must be for the act of converting. This is the tort or *maleficium*, (a wrong act,) and to entitle the plaintiff to recover, two things are necessary: 1st, *property in the plaintiff;* 2d, *a wrongful conversion by the defendant.*" [2]

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(1) 8 Cowen 111. (2) See 1 Chit. pl. 168.

CHAPTER IV.

OF THE COMMENCEMENT OF SUITS, AND THE SERVICE AND RETURN OF PROCESS.

I. HOW SUITS MAY BE INSTITUTED.

Suits may be instituted before justices of the peace by process, which may be either a summons, warrant, (or capias,) or an attachment, or by the voluntary agreement of the parties. The proceedings by attachment will be properly noticed in PART THIRD hereof.

II. OF THE PROCESS OF SUMMONS, AND FORMS THEREOF.

By the Revised Statutes, chap. LIX., title JUSTICES AND CONSTABLES, sec. 21, p. 317, it is enacted that "Every suit before a justice, except such as are hereinafter provided for in a different manner, shall be commenced by summons, which shall be in the following form as nearly the case will admit, viz :

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The People of the State of Illinois to any Constable of said County, GREETING:—

You are hereby commanded to summon A. B. to appear before me, at ———, on the ——— day of ———, at —— o'clock —— to answer the complaint of C. D. for a failure to pay him a certain demand not exceeding one hundred dollars; and thereof make due return as the law directs. Given under my hand and seal this ——— day of ———, 184 . JOHN DOE, J. P.

In which summons the justice shall specify a certain place, day and hour for the trial, not less than five, nor more than fifteen days from the date of such summons; at which time and place the defendant is to appear; which process shall be served at least three days before the time of trial mentioned therein, by reading the same to the defendant or defendants."

In estimating time for the return of a summons, one day is to be reckoned inclusive and the other exclusive: that is, the day the summons is issued is not reckoned, but the day of return is. Thus, a summons which is to be made returnable in five days, and is issued on the first day of June, must be made returnable on the sixth.[1]

Upon the back of every summons, the justice should make the following indorsement, showing the name of the process, the parties, the amount of the plaintiff's demand and costs due at the time of issuing:

Form of Indorsement on the back of Summons.

SUMMONS.
A. B.
vs.
C. D.
Demand $——
Cost due, $5\frac{6}{4}$.

The object of the indorsement of the name of the process and parties, will be, first, for the convenience of the constable, who may have a large number of papers in his hands at the same time; and, secondly, for the convenience of the justice upon filing away, who may have frequent occasion to refer to papers in suits that have passed or been disposed of.

(1) 4 Scam. 421.

Too much care cannot be exercised by the justice in preserving and filing all papers in cases disposed of, and in a manner that he may readily refer to them at any moment when called upon to do so; all the papers belonging to or in any way pertaining to one cause should be kept and filed together; to which end it would be well for the justice to provide himself with a sufficient quantity of large envelopes, which may be done at a trifling cost, in each of which may be placed all the papers pertaining to every cause disposed of, leaving the envelope unsealed, and indorsing the names of parties upon the back thereof in proper form.

The amount indorsed as the demand upon the back of the summons, should in general be the true amount which the plaintiff expects to recover, or considers himself entitled to, over and above any set-off of the defendant. The object of this indorsement, therefore, together with the costs due at the time of issuing the process, is to apprise the defendant in due time of the plaintiff's claim, and afford him an opportunity of paying the amount to the constable, if he so desires, and save further costs, and being in accordance with the Revised Statutes, p. 319, sec. 29.

The statute requiring the justice to indorse the amount of the plaintiff's demand upon the back of the summons or warrant, is directory; an omission to do so will not operate to defeat the action. The plaintiff however will be limited to the amount indorsed, and cannot recover a larger sum.[1]

The issuing of the summons by the justice, or other original process, is the commencement of the suit.[2]

The form of summons on the preceding page is the general form prescribed by the statute, in civil actions before justices of the peace, for the commencement of suits, and which is required to be followed in every instance, as nearly as the case will admit; and is therefore the proper form in all civil actions, save perhaps in trespass and trover, or *debt* upon statute penalties, in which cases it is doubtless proper that it should be varied sufficiently to inform the defendant of the nature of the plaintiff's claim.[3]

The following is therefore given as the proper form of summons in the several actions of *Trespass*, *Trover* and *Debt* under penal *statutes*:

(1) 4 Gil. 64; 11 Ill. 619. (2) 1 Scam. 30.

(3) In the case of Bedell vs. Janney et al., (4 Gil. 209,) it is held that the common form of summons, as prescribed by the statute, is the proper form for both the action of *debt* and *assumpsit*.

Form of Summons in Trespass on Personal Property.

STATE OF ILLINOIS, } ss.
—— COUNTY. }

The People of the State of Illinois to any Constable of said County:
GREETING:—

You are hereby commanded to summon A. B. to appear before me, at my office in ———, on the —— day of ———, A. D., 18—, at —— o'clock ——, to answer the complaint of C. D. *in an action of trespass on personal property*, for a failure to pay him a certain demand *for damages*, not exceeding one hundred dollars; and thereof make due return as the law directs. Given under my hand and seal, this —— day of ———, A. D., 18—.

JOHN DOE, J. P. [*Seal.*]

Indorse upon the back as in case of ordinary summons, except the sum demanded, which should be thus: "*Demand for damages,*" $—.

The foregoing form will be the proper form of summons in case of trespass upon *real estate*, by striking out the words "*on personal property,*" and inserting "*upon real estate.*"

Form of Summons in Trover.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The People of the State of Illinois to any Constable of said County:
GREETING:—

You are hereby commanded to summon A. B. to appear before me, at my office in ———, on the —— day of ———, A. D., 18—, at —— o'clock ——, to answer the complaint of C. D., *in an action of trover and conversion*, for failure to pay him a certain sum, not exceeding one hundred dollars; and thereof make due return as the law directs. Given under my hand and seal this —— day of ———, A. D., 18—.

JOHN DOE, J. P. [*Seal.*]

Indorse upon the back, as in case of summons for trespass.

Form of the ordinary Summons in the Action of Debt.

STATE OF ILLINOIS, } ss.
—— COUNTY. }

The People of the State of Illinois to any Constable of said County:
GREETING:—

You are hereby commanded to summon A. B. to appear before me, at ———, on the ——— day of ———, A. D., 18—, at ——

o'clock ——, to answer the complaint of C. D., *in an action of debt*, for a failure to pay him a certain demand, not exceeding one hundred dollars; and thereof make due return as the law directs. Given under my hand and seal, this —— day of ———, A. D., 18—.

JOHN DOE, J. P. [*Seal.*]

Indorsed upon the back the same as in case of common summons,[1] except as to the demand, which should be thus: "*Debt*, $——."

By chap. CIV. of the Rev. Stat., p. 525, a penalty of eight dollars for each tree is given against any person who shall cut, fell, box, bore, or destroy, or carry away, without permission from the owner of the land, any trees of a certain kind therein enumerated, and a penalty of *three* dollars for each tree of such kind as are not there enumerated; which penalties may be recovered, with costs of suit, either by action of *debt* in the name and for the use of the owner of the land, or by action *qui tam*,[2] in the name of any person who will first sue for and recover the same; the one half for the use of the person so suing and the other half for the use of the owner of the land. We will now proceed to suggest the proper form of summons in cases for the recovery of statute penalties, including actions *qui tam*.

Form of Summons in the Action of Debt for trespass by cutting timber, where the owner of the land sues for himself.

STATE OF ILLINOIS, } ss.
—— COUNTY. }

The People of the State of Illinois to any Constable of said County: GREETING:—

You are hereby commanded to summon A. B. to appear before me, at ———, on the —— day of ———, A. D., 18—, at — o'clock, to answer the complaint of C. D., *in an action of debt for cutting timber*, for a failure to pay him a certain demand, not exceeding one hundred

(1) *Ante*, p. 41.

(2) *Qui tam.*—The literal meaning of this term is, "*Who as well.*" When a statute imposes a penalty for the doing or not doing an act, and gives that penalty in part to whosoever will sue for the same, and the other part to the commonwealth, or some charitable, literary, or other institution, or individual, and makes it recoverable by action, such actions are called *qui tam* actions, the plaintiff describing himself as suing *as well* for the commonwealth (or, as the case may be,) as for himself.— 2 Bouv. L. D. 402.

dollars; and thereof make due return as the law directs. Given under my hand and seal, this —— day of ———, A. D., 18—.

JOHN DOE, J. P. [*Seal.*]

Indorse upon the back the same as in case of the ordinary summons in the action of *debt*.

Form of Summons in an Action QUI TAM *for cutting Timber.*

STATE OF ILLINOIS, } *ss.*
—— COUNTY. }

The People of the State of Illinois to any Constable of said County:
GREETING:—

You are hereby commanded to summon A. B. to appear before me at ———, on the —— day of ———, A. D., 18—, at —— o'clock ——, to answer the complaint of A. B., *who sues as well for C. D. as for himself, in an action of debt for cutting timber*, for a failure to pay on them a certain demand, not exceeding one hundred dollars; and thereof make due return as the law directs. Given under my hand and seal this —— day of ———, A. D., 18—.

JOHN DOE, J. P. [*Seal.*]

The two preceding forms, with suggestions given, will doubtless suffice to illustrate sufficiently the important features of the summons in case of statute penalties. It should always be kept in mind that the object and office of the summons, or process of that nature, is to inform the defendant that proceedings are about to be had against him, giving him notice of the time when, and the place where, such proceedings are to be had. Whence it follows that he ought also to be sufficiently advised by the writ, or process, of the nature of such proceedings, to afford him sufficient opportunity of preparing for his defense; keeping this in mind, the justice can generally determine at once what the process should contain, whatever may be the cause of action, or its peculiar foundation. A suit should not, however, in general be dismissed even though it may seem from the defendant's showing that he may not have been fully advised by the process of the particular nature or extent of the plaintiff's claim or demand, but the justice may, in his discretion, continue the case, to afford the defendant proper opportunity to prepare for trial, if he shall deem it essential to justice so to do, upon being satisfied that good cause is shown for such continuance.[1]

(1) Rev. Stat. 319, sec. 27.

The proper forms to be observed by the constable in making return of the summons, or other process, will be found in PART FOURTH hereof, relating more particularly to the office and duties of constables.

III. OF THE WARRANT, AND FORMS THEREOF.

By sec. 22 of the Justices' Act, Revised Statute 317, it is enacted, that "If previous to the commencement of a suit, the plaintiff shall make oath that there is danger that the debt or claim of such plaintiff will be lost, unless the defendant be held to bail, and shall state, under oath, the cause of such danger, so as to satisfy the justice that there is reason to apprehend such loss, the justice shall issue a warrant, which shall be in the following form as nearly as the case will admit, viz:

Form of Warrant prescribed by Statute.

STATE OF ILLINOIS, }
—— COUNTY. }

The People of the State of Illinois to any Constable of said County: GREETING:—

You are hereby commanded to take the body of ——— ——— and bring him forthwith before me, unless special bail be entered; and if such bail be entered, you will then command him to appear before me at ———, on the —— day of ———, at —— o'clock ——, to answer the complaint of A. B. for a failure to pay him a certain demand, not exceeding one hundred dollars; and hereof make due return as the law directs. Given under my hand and seal, this —— day of ——, 184—.

JOHN DOE, J. P.

The foregoing is the ordinary or common form of warrant, or capias, as it is sometimes termed; but being styled warrant by the statute, it should always, in justices' courts, be distinguished by that name. This is the form to be observed in the action of debt or assumpsit, and generally in all cases in actions arising upon contracts; but in case of *trespass* or *trover* this form will be varied to suit the action, according

to sec. 89 of the Justices' Act, Revised Statutes 328, which provides, that "When any person shall be about to commence an action of trespass or trover before a justice of the peace, and he shall make oath before such justice, that he verily believes that the benefit of whatever judgment may be recovered in such action, will be in danger of being lost, unless the defendant or defendants be held to bail; upon such oath being made, the justice shall issue a warrant as in cases for debt, varying the same to suit the action."

It will be observed that simply the oath of the plaintiff is all that is required for the issuing of a warrant; a written affidavit seems not to be necessary, yet the oath may nevertheless be reduced to writing, and filed with the justice, if the party so desires. It has evidently been the policy of the legislature of this State to simplify the duties of justices of the peace, as much as possible, by dispensing with written proceedings as far as it could safely be done and yet ensure the rights of the parties; hence written affidavits, or documents of that nature, preceding the writ, are not in most instances required, but in general the matter may be stated orally by the party, and the law will generally presume all the antecedent steps required by law to have been taken. It is therefore recommended to the justice to avoid attempting to reduce to writing any thing more than the statute actually requires, for while a party may state orally all that is required to entitle him to what he seeks, yet should a justice, unskilled in the arbitrary forms and technicalities of the law, attempt to reduce the same to writing, he might fall far short of the requirements of the law, and innocently do great injustice to the party; but where, however, attorneys are employed, these matters may properly be left at their discretion.

The following is suggested as the proper form of the oath to be administered to the plaintiff applying for the ordinary warrant under section 22:

Form of Oath for Warrant in cases for Debt.

You solemnly swear (*or affirm as the case may be*) that there is danger that your debt or claim against C. D. will be lost unless he, the said C. D., be held to bail, and that you will well and truly state the cause of such danger. So help you God.

The justice should then require the plaintiff to briefly state the *cause* he has to apprehend such danger, and upon being satisfied from the

statement of the plaintiff that there is reason to apprehend such danger, he will issue a warrant as aforesaid.[1]

The following will be the proper form of the oath to be administered to the plaintiff applying for a warrant in case of trespass or trover, under section 89:

Form of Oath for Warrant in case of Trespass or Trover.

You solemnly swear (*or affirm as the case may be*) that you verily believe that the benefit of whatever judgment may be recovered by you in an action of trespass (*or trover as the case may be*) about to be commenced against C. D., will be in danger of being lost, unless he, the said C. D., be held to bail. So help you God.

Upon the proper oath being made in case of trespass or trover, the justice is required, as will be seen, to issue a warrant without further inquiry; no discretion seems allowed him as in cases for debt.

The oath or affidavit for a warrant can be made by the *agent* of the creditor or plaintiff, as well as by the creditor himself.[2]

IV. OF THE ARREST, AND SPECIAL BAIL.

1. *Of the Arrest.*

To arrest is to stop; to seize; to deprive one of his liberty by virtue of legal authority. In a civil action, an arrest is the apprehension of a person by virtue of a lawful authority, to answer the demand against him in such action.[3] Upon a warrant in such case, the defendant is actually arrested and brought before the justice who issued the warrant, unless special bail be entered pursuant to the statute. An arrest, technically and strictly speaking, is by the corporeal seizing or touching the defendant's body.[4] But it is now held that to constitute an arrest, no actual force or manual touching of the body is requisite; it is sufficient if the party be within the power of the officer, and submit to the arrest.[5]

2. *Persons Privileged from Arrest.*

Members of Congress, by Art. I. sec. 6, of the Constitution of the

(1) See 12 Ill. 63. (2) 12 Ill. 61. (3) 1 Bouv. L. D. 128. (4) 3 Bl. Com. 288.
(5) 8 Greenl. 127; 1 Wend. 210; 2 Blackf. 194.

United States, are in all cases, except treason, felony and breach of the peace, privileged from arrest, during their attendance at the session of their respective Houses, and in going to or returning from the same. By the constitution of the State of Illinois, Art. III, Sec. 17, senators and representatives in the State legislature are in like manner privileged from arrest during the session of the general assembly, and in going to or returning from the same. By the State constitution also, Art. VI, Sec. 3, electors are, except in cases of treason, felony, or breach of the peace, privileged from arrest during their attendance at elections, and in going to or returning from the same. By Art. VIII, Sec. 6, the militia are for like causes as aforesaid privileged from arrest during their attendance at musters and election of officers, and in going to or returning from the same. Attorneys and counselors at law, judges, clerks and sheriffs, and all other officers of the several courts within this State, are likewise privileged from arrest while attending courts, and whilst going to or returning from the same.[1] Suitors, witnesses, and other persons necessarily attending any courts of record upon business, are not to be arrested during their actual attendance, which includes their necessary going and returning.

The duties of constables, in relation to arrests, will be properly pointed out in that part of this work which relates more particularly to the office and duties of constables.

3. *Of Special Bail.*

By the Rev. Stat. 317, Justice Act, Sec. 22, it is provided that "in all cases the defendant shall have a right to release his or her body arrested by virtue of a warrant, by giving special bail to the constable executing the same, which shall be indorsed on the back of the warrant in the following form, as nearly as the case will admit, viz.:

"I, G. F., acknowledge myself special bail for the within named C. D. Witness my hand, this —— day of —— 184 . G. F.

"Which indorsement shall be signed by one or more securities, to be approved by the constable taking the same, and shall have the force and effect of a recognizance of bail, the condition of which is, that the defendant, if judgment shall be given against him or her, will pay the same with costs, or surrender his or her body in execution; and in default of such payment or surrender, the goods and chattels of the bail shall be liable for the payment of the judgment and costs. *Provided,*

(1) Rev. Stat., 74, Sec. 7.

That if the body of the defendant shall be rendered in execution by himself or his bail within thirty days after the issuing of such execution, or if a sufficiency of the defendant's property shall be found to satisfy the judgment and costs, the bail shall be exonerated; but if neither the body of the defendant shall be surrendered, nor a sufficiency of his or her property can be found within the time aforesaid to pay the judgment and costs, then the justice shall issue execution against the bail, who shall be dealt with in the same manner as if he were defendant."

"Sec. 92. In all cases in which a defendant shall give special bail under the provisions of this chapter, and shall not be surrendered on or before the return day of the *fieri facias* upon the judgment, nor a sufficiency of property be found to pay the judgment and costs within the time aforesaid, it shall be the duty of the justice of the peace, upon the application of the plaintiff or his agent, to issue a summons against the special bail in the following form as nearly as may be, to wit:

STATE OF ILLINOIS, }
——— COUNTY, }

The People of the State of Illlinois, to any Constable of said County, GREETING:—

You are hereby commanded to summon ——— to appear before me at ———, on the —— day of ——— at —— o'clock, to show cause, if any he have, why judgment should not be rendered against him, as the special bail of —— upon a *capias* issued by me against him in favor of ——— for the sum of —— dollars and —— cents, the amount of the judgment rendered against the said ——— in favor of the said ———, and hereof make due return as the law directs. Given under my hand and seal this —— day of —— 18—.

JOHN DOE, J. P. [L. S.]

"SEC. 93. If the defendant does not appear, the justice shall hear the case, enter judgment, and award execution as in other cases.

"SEC. 94. If the defendant shall appear at the time and place appointed for trial, he shall be permitted to show cause for his failure to comply with the condition of his undertaking, or to show that he hath complied with the same; and if it shall appear that the defendant was prevented from surrendering the body of the original defendant by the act of the plaintiff, or that the said original defendant had departed this life previous to the time required for making such surrender, or that his

health was such as to endanger his life by such surrender, or that he had delivered the body in execution according to the condition of the recognizance, then the bail shall be released and discharged from all liability."

As will readily be seen there is some little conflict or discrepancy between sections 22 and 92; the first provides for execution direct against the bail in case of default of the defendant, while the second provides that a summons shall be issued against the bail in case of such default, and that judgment be obtained before execution. Section 92 being a subsequent section, however, will doubtless have the effect of qualifying the provisions of section 22, yet the effect of the indorsement of special bail upon the warrant is not changed by the provisions of section 92, but only the mode of enforcing the obligation; and it seems clear from this last section, that the bail, in order to exonerate himself, must surrender the defendant on or before the return day of the execution against the goods and chattels of such defendant, provided the same shall not have been satisfied.

The defendant may come in at any time and surrender himself, or he may be surrendered by his bail, and in case he will not voluntarily submit to be surrendered, the bail may arrest and take him at any time and in any place for the purpose of surrendering him.[1] The power of taking and surrendering is not exercised under any judicial process, but results from the nature of the undertaking by the bail. The bail piece is not process, nor in the nature of it, but merely a record or memorandum of the delivery of the principal to his bail. It is clear that the jurisdiction of the court can in no way control the authority of the bail, and as little can the jurisdiction of the State affect his right, as between the bail and his principal; for in the language of the books, bail are said to have their principal always upon a string, which they may pull whenever they please, and surrender him in their own discharge; they may take him even on a Sunday, and may confine him till the next day, and then surrender him; and they may break open the outer door of the principal, if necessary, in order to arrest him; and bail may likewise depute another to take and surrender their principal.[2]

If the plaintiff makes an agreement with the defendant whereby the payment of the judgment is delayed until a later period than it could have been enforced, and without the assent of the bail, the latter will

(1) 2 Johns. 104; Tidd's Pr. 147.
(2) 7 Johns. 145.

be discharged;[1] and so where the plaintiff has prevented a surrender by throwing the bail off his guard.[2]

V. OF SUITS INSTITUTED BY THE VOLUNTARY AGREEMENT OF PARTIES.

Rev. Stat. 321, Chap. LIX, Sec. 42. "If both parties agree to have a difference decided by a justice of the peace without process, he shall enter the same on his docket, noting particularly such consent, and proceed as in other cases."

In instituting suits before justices of the peace by the voluntary agreement of the parties, under our statute, it is held[3] that the parties must actually appear before the justice in person, and there waive the service of process; that a defendant cannot authorize a justice to render judgment against him in favor of the plaintiff for an amount named in the letter, although the defendant expressly state that he waived the service of process and authorized the judgment; that a judgment obtained under such circumstances is not only voidable, but is totally void.

VI. GENERAL RULES APPLICABLE TO THE SUMMONS, WARRANT, OR WRIT OF ATTACHMENT.

In all process, either by summons, warrant, or writ of attachment, if either party sues or is sued in a particular character, such character ought regularly to be set forth in the process.

It is held, however, that upon common process, not bailable, and which does not specify the character or right in which the plaintiff sues, that is in his name alone, he may declare *qui tam*, or as executor, or administrator, or assignee, or in any other special character, for this does not tend to enlarge, but to narrow the demand which the defendant was called upon to answer. But if the process is in a special character, the plaintiff must declare in the same character and cannot declare generally.[4]

Where the plaintiff intends his suit to be in a special character, it ought properly to be so expressed in the process, in order that the proceedings may appear regular, and that the justice may enter the suit properly in his docket at its commencement, and for this further reason,

(1) 10 Johns. 587.
(2) 4 Johns. 480.
(3) 2 Scam. 468.
(4) 2 Caine, 136; 1 Chit. Pl. 284.

that usually there is no formal written declaration wherein the character in which the plaintiff sues is set forth. When the suit is in a special character, it should also be set forth in all process subsequent to that at the commencement of the suit, as a subpœna venire, etc.

The practice of putting only the initial letter of the plaintiff or defendant's first, or christian name, in the process, is a very bad one, and ought not to be practiced or countenanced. The full christian and surname should always be inserted, when known. Names have been given to distinguish individuals, and under our customs, the name of an individual is comprised in both his christian and surname, hence the necessity of using the full christian name in all cases where the name is material.

The mis-spelling a name, when the variation does not materially change the sound, is no ground for a plea in abatement, or for discharging the process. But the reversing the order of christian names, as "Richard John" instead of "John Richard," is in law a mis-nomer, and may be pleaded in abatement.[1]

The omission of the middle name, or the initial letter thereof, commonly called the middle letter, as for instance John Doe, when the actual name is John S. Doe, is not a legal mis-nomer. The omission is immaterial, for the law knows but one christian name. It is competent, if necessary, to show that the individual is known as well without as with the middle name.[2]

Partners must sue and be sued in their individual names, and not in the name of the firm, unless, of course, the name or style of the firm shall properly express both the christian and surname of the partners composing the firm.[3]

Rev. Stat. 319, Sec. 29. "The justice shall indorse on the back of every summons or warrant, the sum demanded by the plaintiff, with the costs due thereon, and the defendant may pay the same to the constable in whose hands such process may be, who shall give a receipt therefor, which shall exonerate the defendant from debt and costs."

"SEC. 81. When the defendant, upon whom any summons or warrant issuing from a justice of the peace shall be served, shall pay, or tender to the constable the amount actually due, with all costs then accrued, and shall prove the same upon trial, and bring the money

(1) 1 Chit. Pl. 280.
(2) 5 Johns. 84; 2 Cowen, 463.
(3) 3 Caine, 170; 1 Scam. 475.

forward and deposit it with the justice of the peace, no costs which shall thereafter accrue shall be adjudged against him, but the plaintiff shall pay the same."

Irregularity of process, whether it be void or voidable, is cured by appearance without objection. A defendant cannot take advantage of any error or defect in the process, after he has appeared to it, even though the process be void, and he was at the time ignorant of the defect.[1]

All objections to the issuing, the form, or the service or return of process, must be taken advantage of the very first opportunity; and if the defendant plead to the suit, or take any similar step, which supposes the process to be valid, he cannot afterwards object to the process itself.[2]

But the mere act of appearing to the process, for the purpose of raising the objection, cannot be construed into a waiver of its defects; for if this were the case, there could be no such thing as an objection to process.[3]

The constable's return upon the process is conclusive upon the defendant, and the truth of it cannot be traversed or questioned by him in that suit, on a plea in abatement or otherwise, in the cause in which it issues. But if it be false in any particular, an action will lie against the constable, at the suit of the party injured.[4]

The return is the evidence upon which the statute authorizes and requires the justice to proceed. He must therefore obtain jurisdiction of the person of the defendant by virtue of the return, and the judgment which may be subsequently rendered, will protect the justice, the party, and the officer who may be instrumental in enforcing it. The return of the officer will be conclusive upon the defendant so far as the proceedings in that suit are concerned.[5]

VII. OF SECURITY FOR COSTS.

Rev. Stat. 327, Chap. LIX. Sec. 83. "No person who is not a resident of this State shall commence any action before a justice of the peace until such non-resident shall file with the justice before whom such action may be brought, a bond, with sufficient security for the payment of all costs which may be awarded against the plaintiff, should he fail in

(1) 1 Scam. 251. (2) 17 Johns. 63; 1 Scam. 266. (3) 14 Johns. 481.
(4) 14 Johns. 481-2. (5) 3 Wend. 302.

his suit; which bond shall be in the following form, as near as may be, inserting the names of the parties, the county and State:

STATE OF ILLINOIS, COUNTY OF ——— { A. B. vs. C. D. } Demand $———

I, E. F., do enter myself security for all costs that may accrue in the above case this ——— day of ———, 18—.

"SEC. 84. Such bond shall be signed by the security, and if the said plaintiff shall be cast in his suit, discontinue or make default, and shall not within ten days thereafter pay to the justice all the costs that may have been occasioned to the defendant, to the justice and constable, jurors or witnesses, the justice shall issue his execution against the security for the amount thereof, accompanied with a bill of costs, in which shall be set down every particular charged. And if any suit shall be commenced by a non-resident as aforesaid, without filing a bond for costs as aforesaid, the suit shall be dismissed on the motion of the defendant, and the plaintiff shall be liable to pay all costs occasioned thereby, which may be recovered before any justice of the county, in the name of the party injured."

"Nothing is more certain," to use the language of our supreme court,[1] "from the act regulating the proceedings before justices of the peace in civil actions, than that a non-resident plaintiff shall not institute a suit until he shall have given a bond for costs." It is a disability imposed on him, and effectually precludes his right to sue until the bond be given; and the disability will not be removed although he sues for the use of a resident.

In all actions before justices of the peace on office bonds for the use of any person, *qui tam* actions, or actions on any penal statute, security for costs shall also be filed before the commencement of the suit, the same as in case of non-residents,[2] and the same form of bond may be used as in case of non-residents.

(1) 1 Scam. 193.

(2) 5 Gilm. 559; 12 Ill. 27.

CHAPTER V.

OF THE APPEARANCE OF THE PARTIES.

I. OF APPEARANCE OF PARTIES OF FULL AGE.

In all courts plaintiffs have the liberty of prosecuting, and defendants have the privilege of defending in their own proper person,[1] except infants, however, and corporations aggregate. The former must appear by guardian or next friend,[2] and the latter by attorney.[3]

Appearance is the presence of the parties in court upon return of the process, and although the party appear by attorney, yet in contemplation of law, the party himself is presumed to be present.[4]

In justices' court, it does not follow that the attorney should be a licensed attorney at law, but it may be any person whom the party thinks proper to select, to aid him in prosecuting or defending his suit.

The authority to appear and act as attorney may be either written or by parol, and a mere verbal request for that purpose is sufficient authority to appear and manage the cause, though not to release the interest of a witness.[5]

It is held that where an attorney commences an action in the name of another, or appears for another, the court will presume that he has authority to do so until the contrary is shown; and if such suit is instituted, or appearance entered without legal authority, the remedy is by motion to the court founded on evidence, to show the abuse (in act-

(1) Rev. Stat. 75, Sec. 12. (2) Rev. Stat. 267. (4) 1 Bouv. L. D. 114.
(5) 11 Johns. 464. (3) Tidd 63; 1 Chit. Pl. 585.

ing without such authority) of process of the court, or irregular act of the attorney in entering such appearance.[1]

A married woman when sued without her husband, must appear in person, but where the husband and wife sue, or are sued, the husband may retain an attorney for them both.[2]

An idiot must likewise appear in person, and any one may be admitted to sue or defend for him, but a lunatic must appear by guardian, if within age.[3] See Rev. Stat. 277, Sec. 5, which provides that conservators may sue and be sued in every instance as the representatives of the lunatic.

II. OF APPEARANCE OF INFANTS.

An infant or minor is every person under twenty-one years.[4] The term *minor* is synonymous with that of *infant*. The terms *major* and *minor* are more particularly used in the civil law. The common law terms are *adult* and *infant*.[5] An infant cannot appear by attorney, he must therefore appear by guardian or next friend.

Rev. Stat. 267, Sec. 13. "Minors may bring suits in all cases whatever, by any person that they may select as their next friend; and the person so selected shall file bond with the clerk of the circuit court, or justice of the peace before whom the suit may be brought, acknowledging himself bound for all the costs that may accrue and legally devolve upon such minor. And after bond shall have been so filed, said suit shall progress to final judgment and execution, as in other cases."

Form of Bond for Costs by next friend in suit by minor.

STATE OF ILLINOIS, } In Justice's Court,
Lake COUNTY, } Before E. S. Ingalls, Esq., J. P.

A. B. }
vs. } Demand $———
C. D. }

I, E. F., do hereby acknowledge myself bound for all the costs that may accrue and legally devolve upon the said A. B. in the above entitled cause. Witness my hand and seal this ——— day of ——— A. D. 185—. E. F. (*Seal.*)

(1) 1 Scam. 293. (2) 2 Saund. 212. (3) 2 Saund. 333.
(4) 1 Bouv. L. D. 685. (5) 2 Id. 143.

If an infant plaintiff appear and prosecute a suit in person, or by attorney, the defendant can take advantage of it only by moving to set aside the proceedings for irregularity, or by pleading in abatement. If the defendant in such a case plead in chief or in bar of the action, he admits the due appearance of the plaintiff and cannot take advantage of it afterwards. It is not a ground of non-suit at the trial.[1]

In a suit against an infant, the plaintiff should see that a guardian is appointed for the defendant, for if no such appointment should be made, a judgment against the defendant would be erroneous.[2] The guardian may be nominated by the infant, and should he fail to do so, the court will appoint such person as may be thought proper, which guardian should be a real person.[3]

III. OF DEFAULT OR WANT OF APPEARANCE, AND THE EFFECT THEREOF.

Rev. Stat. 318, Sec. 23. "If the defendant shall not appear at the time of trial, after giving bail as aforesaid, or after being served with a summons, as described in the twenty-first section of this chapter, and no sufficient reason be assigned to the justice why he or she does not appear, then the justice shall proceed to hear and determine the cause, in the absence of said defendant, but shall not give judgment in favor of the plaintiff, unless the said plaintiff shall fully prove his demand in the same manner as if the defendant had been present and denied the same.

"SEC. 24. If the plaintiff or his agent shall not appear at the time appointed for the trial aforesaid, and no sufficient reason shall be assigned to the justice why such plaintiff or his agent does not appear, the justice shall dismiss the suit, and the plaintiff shall pay the costs, unless the defendant shall consent that such suit shall be continued to another day, in which case the same proceedings shall take place at the second day, so fixed for the trial as above provided; but this section shall not require the dismissal of a suit on a note placed in the hands of a justice for collection."

The justice should always allow a reasonable time for the appearance of the parties after the hour appointed in the process or fixed, on continuance, for trial. In some States this is regulated by statute. In the

(1) 7 Johns. 373. (2) 8 Johns. 418; 2 Cowen, 430. (3) 2 Cowen, 430.

state of New York, one hour is given after the time specified in the summons or attachment, and which is construed to apply also to adjournments.[1] In this State there is no such statutory regulation, but the general practice is to wait full one hour, and which delay is proper and cannot be deemed unreasonable.

(1) 20 Johns. 309.

CHAPTER VI.

OF PLEADINGS.

I. OF PLEADINGS IN GENERAL.

The parties having properly appeared, the next subject of consideration is, the pleadings in the cause. By the pleadings in a suit, it is not meant, as by many people it is understood, the arguing or advocating the cause before the court; but the *allegations* of the parties, briefly setting forth the cause of action on the part of the plaintiff, and the defense on the part of the defendant, which in courts of record are drawn out with great exactness and perspicuity, beginning with the declaration on the part of the plaintiff, followed by the plea of the defendant, the replication of the plaintiff, the rejoinder of the defendant, and so on alternately to a surrejoinder, rebutter and surrebutter, until

an issue is taken; that is, a material fact is affirmed on one side and denied on the other, which fact the jury are called on to try.[1] In other words, pleading is the statement in a logical and legal form of the *facts* which constitute the plaintiff's cause of action, or the defendant's ground of defense; and is the formal mode of alleging that on the record which would be the support or defense of the party, in evidence.[2] And the object of pleading, is to inform the court whose duty it is to declare the law arising upon those facts, and of apprising the opposite party of what is meant to be proved, in order to give him an opportunity to answer or traverse it.[3] It has been the object of the legislature in establishing justices' courts, to dispense with technical forms and pleadings, and to require causes to be disposed of with as little delay and expense as possible.[4] Hence under our statute no written pleadings are required. It will, therefore, be unnecessary to devote any greater share of attention to the subject of pleading, than the requirements of proceedings in justices' courts actually demand.

Rev. Stat. 319, Sec. 28. "When the parties shall appear and be ready for trial, the justice shall proceed to hear and examine their respective allegations and proofs, and shall thereupon give judgment against the party who shall be proved to be indebted to the other."

The allegations of the respective parties, previous to the proofs, which, as we have seen, is understood to be the pleadings in the cause, may or may not be reduced to writing. When reduced to writing, they should be carefully kept and filed by the justice, together with the papers in the case; or if stated orally, the substance thereof should be briefly noted by the justice on his docket, so that if subsequent occasion should require, it may be known what questions were tried by the justice.[5]

Special pleading, by which is meant the allegation of *special* or *new* matter, as distinguished from a direct denial of matter previously alleged on the opposite side, ought not to be countenanced in justices' courts, as it can be of no practical avail, and tends only to embarrass and mislead the justice.[6]

II. OF THE PROPER PARTIES TO THE ACTION.

1. *Plaintiffs.*

The general rule is, that the action should be brought in the name of the party whose legal right has been affected, against the party who

(1) Penn. on Sm. Cau. 123. (2) 1 Chit. Pl. 244. (3) Dougl. 159.
(4) Breese, 96; 2 Gil. 393. (5) 2 Gil. 393. (6) 3 Caine, 272.

committed the injury, or by or against his personal representatives.[1] In general, the action on a contract, whether express or implied, or whether by parol or under seal, or of record, must be brought in the name of the party in whom the legal interest in such contract is vested.[2] It is a general rule, that in case of partners all the members of the firm should be plaintiffs in an action upon a contract made with the firm; nor can any private arrangement by the firm, that one only of the partners shall bring the action, give him a right to sue alone. In case of dormant partners not privy to the contract, it seems that the other members of the firm may omit their names in an action.[3] It is a general rule that a married woman cannot, during her marriage, maintain an action without her husband; either upon contracts made by her before or after her marriage.[4]

2. *Defendants.*

The action upon an express contract, whether it be by deed or merely in writing, or by parol, must in general be brought against the party who made it, either in person or by agent.[5] On implied contracts, against the person subject to the legal liability.[6] A contract made by an agent, as such, is in law the contract of the principal.[7] At law one partner or tenant in common cannot in general sue his copartner or cotenant in an action arising on contract, but must proceed by action of account or bill in equity.[8] It seems that mere dormant partners, and nominal partners having no interest, need not necessarily be joined as defendants. And in case of infants and married women contracting jointly with other persons competent to contract, it is a ground of nonsuit to sue them with the persons who are legally responsible.[9] In general a *feme covert* cannot be sued alone at law: and when a *feme sole* who has entered into a contract, marries, the husband and wife must in general be jointly sued.[10]

III. OF PLEADINGS WHICH USUALLY OCCUR IN JUSTICES' COURTS.

The pleadings which usually occur in justices' courts, are the declaration and plea, replication and demurrers. The declaration is the plaintiff's complaint, or statement of his cause of action; the plea is

(1) 1 Chit. Pl. 2. (2) Id. 3. (3) Id. 13. (4) Id. 31. (5) 8 East, 12.
(6) 1 Chit. Pl. 38. (7) Id. 39. (8) Id. 44, and authorities there cited.
(9) Id. 49. (10) Id. 66.

the defendant's answer thereto; in which, if any new matter is set up, beyond that mentioned, or contemplated in the declaration, as a justification, or reason why the plaintiff should not recover, the plaintiff replies by what is called a replication. Thus, in an action of trespass for damage done by cattle, the defendant may plead the general issue, that is, deny the injury complained of, or might, perhaps, see fit to admit the trespass, but allege by special plea that the close of the plaintiff was not protected by a good and sufficient fence, and therefore the plaintiff ought to be barred from having and maintaining his said action,[1] to which the plaintiff will reply that the close was sufficiently protected, and that he ought not to be barred, &c., when the parties will be at issue, and the cause ready for trial. But in justices' courts, the most proper mode of proceeding, is for the defendant to plead the general issue and give notice of set-off, or of any special matter that he may wish to show on trial to defeat the plaintiff's claim. The demurrer may come from either party, and is that which objects to the form or substance of the pleading of the opposite party, and insists that it is not sufficient in law to sustain or bar the action.[2] The other parts of pleadings, as they seldom occur in this court, will be only occasionally noticed.

IV. OF THE DECLARATION.

The declaration is a specification of the circumstances or statement of the facts which constitute the plaintiff's cause of action.[3] Or in other words, it may be defined to be an amplification, or exposition of the original process, with the addition of the time when, and the place where, the cause of action arose, and of all necessary circumstances.[4] The general requisites of a declaration are, 1st, that it correspond with the process; 2nd, that it contain a statement of all the facts necessary in point of law to sustain the action, and no more; and 3rd, that these circumstances be set forth with certainty and truth.

1. The declaration should correspond with the process in the name of the parties; but in case of the defendant being sued by a wrong name and appearing in his right name, the plaintiff may declare against him by the name in which he appears, stating that he was arrested or served with process by the other; for, by appearing, the defendant admits him-

(1) See 5 Gil. 130; 13 Ill. 609. (2) 3 Bl. Com. 315. (3) 1 Chit. Pl. 279.
(4) Gould Pl. 2; 3 Bl. Com. 299.

self to be the person sued; the variance therefore will be immaterial.[1] The declaration should also correspond with the process in the number of the plaintiffs; thus if the process be in the name of one plaintiff, the declaration cannot be made in the name of two or more, and *vice versa*, if the process is in the name of two or more, the declaration cannot be in the name of one.[2]

By Revised Statutes, 318, Sec. 25: "If two or more persons shall be sued jointly before any justice of the peace, and all of such defendants shall have had notice as aforesaid by warrant or summons, the appearance of any one of the said defendants at the time of trial, shall be sufficient to justify the said justice in proceeding as if all were present; and if none of said defendants shall appear after such notice, the justice shall, if the plaintiff's demand be established as aforesaid, proceed as in other cases of default; and in either of the aforesaid cases the justice shall not divide the amount of the debt proved among the defendants, but shall give one entire judgment for the whole amount proved to be due, against so many of the defendants jointly, as shall be proved to be jointly indebted to the plaintiff. But if it shall appear to the justice that any two or more of the defendants are severally indebted to the plaintiff, upon separate and different debts or causes of action, or upon several or different promises or contracts, such plaintiff shall not be allowed to bring in such separate claims; nor shall the plaintiff be barred by the determination of his suit against such joint defendants, from prosecuting his suit against the respective defendants for the recovery of such separate demands."

But in actions of trespass or trover, if process be issued against two and served on one only, the plaintiff may declare and proceed to judgment against him alone without noticing the others.[3] The provisions of the preceding section of the statute do not extend to cases for tort.

2. As to the facts necessary to be stated, it may suffice to say, that the declaration, whether written or verbal, should allege all the circumstances necessary for the support of the action, and contain a full and regular statement of the injury which the plaintiff has sustained; and the time and place and other circumstances; with such precision, certainty and clearness, that the defendant knowing what he is called upon to answer, may be able to plead a direct and unequivocal plea, and that the court or jury may understand clearly what they are called upon to try.[4]

(1) 1 Cowen, 37. (2) 1 Chit. Pl. 283; 2 Scam. 508. (3) 2 Johns. 365.
(4) See 1 Chit. Pl. 286; also 14 Johns. 369.

If the claim or demand of the plaintiff is upon book account, note of hand or other instrument, it will be sufficient for him to declare generally, producing to the justice his books, note of hand or other instrument, as the case may be, and which will form a part of the declaration, and be sufficiently explicit to enable the opposite party to plead properly, and the court to proceed understandingly with the cause, and will answer the most stringent requirement in justices' court.[1]

3. These circumstances must be stated with certainty and truth. The certainty necessary in a declaration is, to a certain intent in general, which should pervade the whole declaration, and is particularly required in setting forth: *First*, the *parties*—it must be stated with certainty who are the parties to the suit, and therefore a declaration by or against "A. B. & Co." is not sufficient;[2] *Secondly*, the *time*—the declaration must, in general, state a time when every material or traversable fact happened; *Thirdly*, the *place*—it is a general rule that the place of every traversable fact stated in the pleadings must be distinctly alleged; and *fourthly*, other circumstances necessary to maintain the action.

In actions of assumpsit, and especially where the plaintiff's claim is comprised in several items, as for work and labor done and performed, personal property sold and delivered, and the like, the proper manner of proceeding on the part of the plaintiff, on coming to trial, will be to embody his claim in the form of a bill, or formal statement of the several items, commonly called a bill of particulars, in the following form:

WAUKEGAN, ILL., SEPT. 1, 1855.

A. B., 1855	To C. D.	DR.
June 4,	To 5 bushels of wheat, at $2 per bush.,	$10 00
July 25,	" 5 days' labor harvesting, at $2 a day,	10 00
August 1,	" 1 second hand plow (agreed)	8 00
"	" 1 cow	20 00
		$48 00

Which bill or statement so made out, he will produce and file with the justice upon his first appearance on return of process, and thereupon state to the justice that he claims to recover of the defendant upon said statement for the several items therein set forth, and that the articles therein mentioned, were furnished, and the labor performed at the request of the defendant, and at the times therein set forth, and that the

(1) See 3 Caine, 187; 3 Wend. 492. (2) 3 Caine, 170.

defendant had promised to pay for the same, when thereunto requested; that such request had been made, but that the defendant had wholly neglected and refused to pay the same or any part thereof.

V. OF PLEADINGS ON THE PART OF THE DEFENDANT.

1. *When incumbent on the defendant to plead.*

When the plaintiff has filed his declaration, the defendant must put in his excuse or plea.[1] And in suits before justices of the peace it is incumbent on the defendant to state his defense particularly before the commencement of the suit, so that the plaintiff may have notice of it; and it is the duty of the justice to note on his docket the substance of the defense thus stated, that it may be known, should occasion subsequently require, what were the questions tried before the justice.[2]

Pleas are of two sorts, *dilatory* pleas and pleas *to the action*. Dilatory pleas are such as tend merely to delay or put off the suit by questioning the propriety of the remedy, rather than by denying the injury; pleas to the action are such as dispute the very cause of suit.[3]

The general order of pleading is,

1. To the jurisdiction of the court.
2. To the disability of the person.
    1. *Of the plaintiff.*
    2. *Of the defendant.*
3. To the process.
    1. *To the form.*
    2. *To the action of the process.*
4. To the action itself in bar thereof.

By this order of pleading each subsequent plea admits that there is no foundation for the former; as when the defendant pleads to the person, he admits the jurisdiction of the court, and where he pleads to the process, he admits the competency of the plaintiff, and his own responsibility; and when he pleads in bar of the action he admits that there is no foundation for any dilatory plea.[4]

2. *Of Pleas to the Jurisdiction, and in Abatement.*

Pleas to the Jurisdiction.—The general rule in case of dilatory pleas is, that if the party does not avail himself of them, at the first opportu-

(1) 3 Bl. Com. 301. (2) 2 Gil. 389. (3) 3 Bl. Com. 301.
(4) 1 Chit. Pl. 475; Tidd Pr. 572.

nity, he waives his right to take advantage of them.[1] But objections to the jurisdiction of the justice may, in a variety of instances, be taken under the general issue, or at any stage of the suit, where the want of jurisdiction appears. Such are all those cases in which there is a total want of jurisdiction, so that the proceedings before the justice are wholly void, for it is a familiar doctrine that consent of parties cannot confer jurisdiction.[2] As, for instance, where an executor or administrator is defendant, where the amount claimed exceeds twenty dollars.[3] And so in all cases not within the jurisdiction of the justice by statute; yet in all these cases the defendant *may plead* formally the want of jurisdiction, should he choose to adopt that method.

Pleas in Abatement.—Whenever the subject-matter of the plea or defense is, that the plaintiff cannot maintain *any* action *at any time* in respect of the supposed cause of action, it may, and usually must be pleaded in *bar;* but matter which merely defeats the *present* proceeding, and does not show that the plaintiff is *forever* concluded, should in general be pleaded in *abatement.* The leading feature of a plea in abatement is, that it must point out the plaintiff's mistake, and give him a better writ.[4]

Pleas in abatement to the disability of the plaintiff are, that he is not in existence (being only a fictitious person or dead);[5] that the plaintiff is an infant, and has commenced the suit in person or by attorney, and not by next friend.[6]

Where a married woman is interested in the subject-matter of the action, and might join with the husband, but sues alone, her coverture must be pleaded in abatement.[7]

Pleas in abatement to the disability of the defendant are, that the defendant is a married woman, and is sued without her husband.[8] That the defendant is privileged from arrest where the process is by warrant, &c.

Pleas in abatement to the process are various: As misnomer of the plaintiff or defendant, that the plaintiffs or defendants suing or being sued, as husband and wife, are not married, that one of the plaintiffs or defendants was fictitious or dead at the time of the commencement of the suit, or any other plea for want of proper parties, as that there are other joint contractors, &c., other executors or administrators, or other persons not joined, who ought to be made parties to the suit.[9]

(1) 1 Scam. 554; Breese, 96.
(2) 12 Ill. 122.
(3) 12 Ill. 122.
(4) 1 Chit. Pl. 481.
(5) 19 Johns. 308.
(6) 7 Johns. 373.
(7) 1 Chit. Pl. 484.
(8) 1 Chit. Pl. 484.
(9) 1 Chit. Pl. 487.

Strictness is required in pleas in abatement. They are dilatory pleas, and looked upon with suspicion. They will not be sustained by any intendment in their favor.[1]

If the plea be untrue in fact, the plaintiff should deny it by replication; or if it be insufficient in point of law, he may demur.[2] If an issue in fact be joined on a plea in abatement, and found for the plaintiff, the judgment is final that the plaintiff recover; but if there be judgment in favor of the plaintiff, on demurrer to a plea in abatement, or replication thereto, the judgment is that the defendant answer over, that, is plead again.[3] The judgment for the defendant in either case is that the writ be quashed, or if it be a temporary disability, that the plaint remain without day.[4]

Revised Statute, 43, title, "ABATEMENT," Sec. 1. "No plea in abatement, other than a plea to the jurisdiction of the court, or when the matters relied upon to establish the truth of such plea appear of record, shall be admitted or received by any court of this state, unless the party offering the same, or some other person for him, file an affidavit of the truth thereof."[5]

The foregoing provision, although no doubt intended more particularly for courts of record, will apply with equal force and effect to justices of the peace; in which case a mere affidavit, embracing the facts relied on, may suffice and answer the requirements of the statute. Yet it will always be advisable to reduce the plea to writing in proper form, and subjoin the proper affidavit of the truth thereof. The following forms are therefore given as applicable to justices' court.

Forms of Pleas in Abatement.

No. 1.

MISNOMER; or where the defendant is sued by a wrong name.

In Justice's Court—Before Joseph L. Williams, Esquire, Justice.

E——— D———,
Sued by the name of C. D.
Ats.
A——— B———.

E—— D—— sued by the name of C—— D—— comes, and by way of plea in abatement for misnomer says, that he is named and

(1) 13 Wend. 495. (2) 1 Chit. Pl. 498. (3) Id. 500. (4) 1 Scam. 319.
(5) See also Revised Statutes, 233, chap. XL., secs. 7 and 8 in relation to actions by and against partners and joint payees or obligees and joint payors or obligors.

called E—— D——, and by that name ever has been known and called, and that he has never been known or called by the name of C—— D——, and this he is ready to verify. Wherefore he prays judgment of the said process and that the same may be quashed.

E—— D——.

STATE OF ILLINOIS, } *ss.*
Lake COUNTY, }

E—— D——, defendant in the above entitled cause, sued by the name of C—— D——, being duly sworn says, that the above plea is true in substance and fact.

Subscribed and sworn to before me, this — day of — A.D., 18—. JOSEPH L. WILLIAMS, *J. P.* } E—— D——.

To this plea the plaintiff may reply that the said defendant is as well known by the name of C—— D—— as by the name of E—— D——. If the defendant shows by proof that his name is E—— D——, the plaintiff must prove that he is as well known by the name of C—— D——, or his suit will abate.[1]

No. 2.

NONJOINDER—Where all the parties liable are not sued.

In Justice's Court—Before E. S. Ingalls, Esquire, Justice.

C—— D——, *Ats.* A—— B——.

The said C—— D—— comes, and by way of plea in abatement for nonjoinder, says that his supposed liabilities herein, if any such exist, were made by the said defendant jointly with one E—— F——, who is still living, and not by the said defendant alone; and this he is ready to verify. Wherefore he prays judgment of the said process herein, and that the same may be quashed. C—— D——.

STATE OF ILLINOIS, } *ss.*
Lake COUNTY, }

C—— D——, the above named defendant, being duly sworn, says that the above plea is true in substance and fact.

Subscribed and sworn to before me, this — day of —, A.D., 18—. E. S. INGALLS, *J. P.* } C—— D——.

(1) See 1 Chit. Pl. 498.

The names of all the contracting parties omitted must be disclosed by the plea, with an averment that they are still living.[1]

No. 3.

NONJOINDER—Where all the persons contracted with have not joined as plaintiffs.

(*Commence as before, No.* 2.) "Comes, and by way of plea in abatement for nonjoinder of proper plaintiffs, says that the supposed liabilities herein, if any such exist, were made by the said defendant with the said A. B. and one R. S. jointly, the said R. S. being still living, and this he is ready to verify," &c. (*Conclude as before, No.* 2.)

No. 4.

COVERTURE—That the plaintiff is a married woman suing alone.

(*Commence as before, No.* 2.) "Comes, and by way of plea in abatement for the nonjoinder of proper plaintiffs, says that the said plaintiff, at and before the commencement of this suit, was and still is married to one E. F. then and yet her husband, who is still living," &c. (*Conclude as before.*)

No. 5.

COVERTURE—That the defendant is a married woman and is sued without her husband.

In Justice's Court—Before Orlando S. Wright, Esquire, Justice.

C. F. sued by the name of C. D.
Ats.
A—— B——.

The said defendant, to wit: C. F., sued by the name of C. D., comes, and by way of plea in abatement for the nonjoinder of proper defendants, says that at the time of the commencement of this suit, she was and still is married to one E. F., who is still living, and this she is ready to verify, &c. (*Conclude as before, No.* 2.)

No. 6.

ANOTHER ACTION PENDING—That another action is pending for the same cause.

(*Commence as before, No.* 2.) "Comes, and by way of plea in abatement herein, says that at and before the commencement of this suit, another action was and still is pending for the same cause (*state*

(1) 3 Chit. Pl. 900, *note.*

where the suit is pending) and between the same parties, and this he is ready to verify," &c. (*Conclude as before, No.* 2.)

It will be understood, that all these several pleas must be verified by affidavit.[1]

3. *Of Pleas in Bar.*

Pleas in bar go to the merits of the case, and deny that the plaintiff has any cause of action, and do not, like pleas in abatement, give a better writ. They either conclude the plaintiff by matter of estoppel, which, however, rarely occurs in a plea; or they show that the plaintiff never had any cause of action; or admitting that he had, insist that it is determined by some subsequent matter.[2]

General issue.—When the defendant means to deny the whole charge contained in the declaration, or that which constitutes the gist or foundation of the action, he should plead the *general issue*, or general plea, being that which traverses, thwarts and denies at once the whole declaration; without offering any special matter whereby to evade it; as in assumpsit, *non-assumpsit*, that he made no such promise, &c.; in debt on simple contract, or on judgment before a justice of the peace, *nil debet*, that he does not owe the debt; in debt on speciality, *non est factum*, that the instrument is not his deed; in debt on record, *nul tiel record*, that there is no such record; in trespass, *non culpabilis*, not guilty.[3]

The following Rules will be observed as to what may be given in evidence under the general issue, and what pleaded specially.

In Assumpsit.—Under the general issue, in an action of assumpsit, the defendant may give in evidence that another person ought to have been made coplaintiff; that at the time the supposed contract was entered into, the defendant was an infant, a lunatic, or drunk by contrivance of the plaintiff, or a married woman, or under duress; and the want of sufficient or legal consideration for the contract. So a release or parol discharge before breach, or an alteration in the terms of the contract, or non-performance by the plaintiff of a condition precedent, or that the contract was performed by payment, &c., or that it afterwards became illegal or impossible to be performed, may, when they constitute a sufficient defense, be given in evidence under the general issue.[4] These defenses show that the plaintiff never had any cause

(1) Upon the subject of pleas in abatement, see 3 Chit. Pl. 895 to 905 and authorities cited.
(2) 1 Chit. Pl. 503. (3) Tidd Pr. 591; 3 Bl. Com. 306. (4) 1 Chit. Pl. 512.

of action.[1] So the defendant may show, under the general issue, that he offered to perform his part of the contract, but was prevented by the plaintiff.[2]

There are, however, some defenses which in assumpsit, must be pleaded specially, or notice thereof given with the general issue, as tender, set-off, and the statute of limitations.[3] And so of a former recovery.[4] Also the defense of usury.[5]

In Debt.—In the action of debt on simple contract or legal liabilities, as for escape, &c. under the general issue *nil debet*, any matter may be given in evidence which shows that nothing was due at that time, as payment, performance, release, or other matter in discharge of the action. The defense must plead specially, or give notice thereof, with a general issue of the same matter as in assumpsit, as tender, set-off, statute of limitations, and a former suit or recovery.[6]

In debt on bond or other specialty under the general issue *non est factum*, the defendant may give in evidence that the deed was delivered to a third person as an *escrow*, or that it was void at common law *ab initio*, or that it was obtained by fraud, or made by a married woman or a lunatic, &c., or that it became void after it was made, and before the commencement of the action, by erasure, alteration, addition or otherwise. But matter which shows that the deed was merely voidable on account of infancy, or duress, or that it was void by statute in respect to usury, gaming or the like, must in general be pleaded.[7]

In debt on record, as the general issue *nul tiel record*, merely puts in issue the existence of the record as stated, any matter in discharge of the action, must be pleaded; such as payment, or release, or that the debt was levied by execution.[8]

In debt on statute, *nil debet* is the proper plea, though *not guilty*, would in some cases suffice. The statute of limitations may, in an action by a common informer, be given in evidence under the general issue; but a former recovery by another person cannot, but must be pleaded specially, or notice given.[9]

In Trover.—In this action, under the general issue, *not guilty*, it is not usual to plead any other plea, except the statute of limitations, and a release. The defendant, however, is at *liberty* to plead specially any thing which admits the property in the plaintiff, and the conversion,

(1) 1 Chit. Pl. 513. (2) 13 Johns. 56. (3) 1 Chit. Pl. 515. (4) Id. 514, note *g*.
(5) 1 Scam. 212; Rev. Stat. 295, sec. 4. (6) 1 Chit. Pl. 517. (7) 1 Chit. Pl. 519.
(8) Id. 521. (9) Id. 523.

but justifies the conversion. The statute of limitations must be pleaded specially; and it seems to be injudicious to plead specially a former recovery, or verdict in a prior action.[1] In this action, the defendant may, under the general issue, give in evidence, property in a third person.[2]

In Trespass.—In this action, whether it be trespass to personal or real property, the defendant may give in evidence under the general issue, any matter which directly controverts the truth of any allegations which the plaintiff makes, and is bound to prove in the first instance in support of his case. But where the act would *prima facie* appear to be a trespass, any matter of justification or excuse, or done by virtue of a warrant or authority, must, in general, be specially pleaded, or notice thereof given with the general issue.[3]

In all actions of trespass, matter in discharge of the action must be pleaded, or notice thereof given; as accord and satisfaction, arbitrament, release, former recovery, and the statute of limitations.[4]

4. *Of Set-Off.*

Set-off is a demand which a defendant makes against the plaintiff in the suit for the purpose of liquidating the whole or a part of his claim.[5] It takes place only in actions on contracts for the payment of money, as assumpsit, debt and covenant. A set-off is not allowed in actions arising *ex delicto*, as upon the case, trespass, replevin or detinue,[6] nor in an action of trover,[7] unless it arise out of the same subject matter.[8] A set-off was unknown to the common law, according to which, mutual debts were distinct and inextinguishable except by actual payment or release.[9] Set-off is therefore a matter of statutory regulation.

By the Rev. Stat. 320, Sec. 35, it is enacted that, "In all suits which shall be commenced before a justice of the peace, each party shall bring forward all his or her demands against the other, existing at the time of the commencement of the suit, which are of such a nature as to be consolidated, and which do not exceed one hundred dollars when consolidated into one action or defense; and on refusing or neglecting to do the same, shall forever be debarred from the privilege of suing for any such debt or demand;" and by

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(1) 1 Chit. Pl. 537. (2) 13 Johns. 276; 15 Johns. 207. (3) 1 Chit. Pl. 539.
(4) 1 Chit. Pl. 540. (5) 2 Bouv. L. D. 513. (6) Bull. N. P. 181.
(7) 12 Ill. 99. (8) 14 Ill. 424. (9) 1 Rawle R. 293; Bab. Set-off 1.

"SEC. 34. No party shall be permitted to introduce at the trial, any note, bond, debt, or other claim against his adversary, which he shall have acquired after the commencement of the suit."

Where actions are brought before a justice of the peace on two notes, returnable at the same time, which if consolidated, would exceed one hundred dollars, a judgment on the first note is not a bar to a judgment on the second. Each note constitutes a separate demand. If a controversy exist as to the amount of a set-off, a party is not bound to give credit before the commencement of a suit for the exact amount to which the trial may show the party entitled.[1]

A note transferred by delivery merely, cannot be set off by the holder, in an action against him by a third party. The holder could not sue upon the note in his own name, and it therefore is not a legal subsisting cause of action in his favor.[2] Demands to be set off must be mutual, and exist between the parties to the record.[3]

A separate demand cannot be set off against a joint demand; nor can a joint demand be set off against a separate debt,[4] unless upon some prior agreement.[5]

Recoupment.—Mutual demands arising out of the same subject-matter, and capable of being balanced against each other, may be adjusted in one action, by *recoupment*. It is not necessary that the opposing claims should be of the same character. A claim originating in contract, may be set up against one founded in *tort*, if the counter claims arise out of the same subject-matter, and are susceptible of adjustment in one action; but the defendant in such case cannot, as in set-off, recover any excess in his favor; his claim is used in mitigation of damages only.[6]

In an action of *assumpsit* for the recovery of the price of an article sold at a stipulated sum, a defendant may give evidence showing the true value of the article sold, in case of a *breach of warranty*, in reduction of the amount claimed, as well in cases of a *sale with warranty*, as in *cases of fraud;* such evidence being allowed to avoid circuity of action, and to prevent further litigation upon the same matter.[7]

The defendant should always, at the time of joining issue, give notice with his plea, of his set-off, or he will in strictness thereafter be precluded from making it at the trial.[8] In case of *recoupment* the same

(1) 11 Ill. 563. (2) 15 Ill. 230. (3) 4 Gil. 136; 11 Ill. 28, 644.
(4) 11 Ill. 28. (5) 2 Taunt. 170. (6) 14 Ill. 424.
(7) 4 Wend. 483; 8 Id. 109. (8) 10 Johns. 108; 12 Id. 205.

precaution should likewise be taken.[1] But this will generally be a matter of discretion with the justice.

5. *Of Pleas, Puis Darrein Continuance.*[2]

Formerly there were formal adjournments or continuances of the proceedings in a suit, for certain purposes, from one term to another, and during the interval the parties were, of course, out of court; and when any matter arose which was a ground of defense, since the last continuance, the defendant was allowed to plead it, which allowance was an exception to the general rule that the defendant can plead but one plea of one kind or class.[3]

If any matter of defense has arisen in a suit, after an issue in fact or joinder in demurrer, and before the trial of the cause, it may be pleaded by the defendant; as that the plaintiff has given him a release, that the defendant has paid the demand; and in short, any matter which if it had occurred before the commencement of the suit, would have been a good defense.[4]

A plea *puis darrein continuance* waives all previous pleas, and if the matter of that plea be determined against the defendant, it is a confession of the matter in issue. The plaintiff must nevertheless prove his demand, the same as if no plea had been put in, *in the cause.*[5]

It seems to be settled that this plea may, in all cases, be received in a justice's court, where it could properly be received in a court of record.[6]

6. *Of Pleading title.*

In case of trespass by cutting timber it is provided, by the Rev. Stat. 525, Sec. 2, "That penalties herein above provided, shall be recoverable, with costs of suit, either by action of debt, in the name and for the use of the owner or owners of the land, or by action *qui tam* in the name of any person who will first sue for and recover the same; the one-half for the use of the person so suing, and the other half for the use of the owner or owners of the land. *Provided*, That if in any action that may be instituted by virtue of the provisions herein contained, before a justice of the peace, the defendant shall set up a title to the land on which the tree or trees are alleged to have been cut, felled, boxed, bored or destroyed, and shall forthwith give good and

(1) 22 Wend. 155.
(2) An old French word signifying *since the last continuance.* 2 Bouv. L. D. 389.
(3) 2 Bouv. L. D. 389.
(4) 1 Chit. Pl. 697.
(5) 14 Wend. 161; 10 Id. 675.
(6) 1 Hill, 69.

sufficient security, to prosecute his claim or title to the said land to effect, within one year, or to appear and defend an action to be instituted against him within one year, by virtue of the provisions herein contained in any court of record within the State, having cognizance thereof, and in either case to abide by and satisfy the judgment that may be given in such court; then the said justice shall proceed no further in the said cause, but shall forthwith dismiss the parties; and it shall be the duty of the said justice, thereupon, to tax the bill of costs that may have accrued before him; and so soon as the action shall be renewed or instituted for the purpose aforesaid, to transmit the said bill, together with the recognizance to be taken as aforesaid to the clerk of the court in which such action shall be instituted or renewed; which costs so taxed and transmitted, shall be made a part of the judgment to be rendered as aforesaid.

"SEC. 3. If the said recognizance shall be forfeited for not prosecuting, as aforesaid, the justice shall proceed to enter judgment against the defendant for the demand of the plaintiff, which shall be taken to be confessed, and execution shall thereupon issue against the defendant and his security or securities; and if the said recognizance shall be forfeited for not appearing and defending, or not abiding by and satisfying the judgment that shall be given in the court above, the party, for whose benefit such recognizance was taken, may, by a writ or writs of *scire facias*, proceed to judgment and execution thereon."

Form of Recognizance of Defendant when Title to Land is set up.

STATE OF ILLINOIS, }
—— COUNTY, } *ss.*

Be it remembered that on — day of —, 18—, A. B. of —— in said county, and C. D., and E. F., of the same place, personally came before L. M., Esquire, a Justice of the Peace of the said county, and severally and respectively acknowledge themselves to be indebted to G. H., that is to say, the said A. B. in the sum of *fifty* dollars, and the said C. D. and E. F. in the sum of *fifty* dollars, each to be levied of their respective goods and chattels, lands, and tenements, to the use of the said G. H., if the said A. B. shall make default in the condition following:

WHEREAS, in an action of debt, under the Revised Statute, chapter one hundred and four, title, "Trespass," before L. M., Esquire, a Justice of the Peace of the county of ——, in which the above named G. H. is plaintiff, and the above bounden A. B. defendant, the said

A. B. sets up title to the following described tract of land, to wit: (*describe the land,*) upon which it is alleged by the said plaintiff that the said defendant has cut certain trees, (*or as the case may be.*)

Now the condition of this recognizance is such, that if the said A. B. shall prosecute his claim or title to the said land to effect within one year, or appear and defend an action to be instituted against him within one year, under and by virtue of the provisions contained in the aforesaid chapter of the Revised Statutes, in any court of record within this State having cognizance thereof, and in either case will abide by and satisfy the judgment that may be given in such court, then this recognizance to be void, otherwise to remain in full force.

Taken, subscribed and acknowledged, the —— day of —— 18—, before me, L. M., *J. P.*

A. B. [SEAL.]
C. D. [SEAL.]
E. F. [SEAL.]

VI. OF THE REPLICATION.

The replication is the plaintiff's answer to the defendant's plea.[1] When the plea of the defendant has been put in, if it does not amount to an issue or total contradiction of the declaration, but only evades it, the plaintiff may plead again, and *reply* to the defendant's plea, by way of replication; either traversing it, that is, totally denying it; or he may allege new matter in contradiction to the defendant's plea.[2] Pleadings before justices of the peace, however, will seldom extend beyond the *plea*, or defendant's answer to the plaintiff's declaration.

VII. OF DEMURRERS.

When the declaration, plea or replication, &c., appears on the face of it, and without reference to *extrinsic* matter, to be defective in point of law, the opposite party may in general *demur*. A demurrer has been defined to be a declaration, that the party demurring will "go no further," because the other has not shown sufficient matter against him.[3] Demurrers are either *general* or *special;* they are *general* when no particular cause is alleged; and *special,* when the particular imperfection is pointed out, and insisted upon as the ground of demurrer.[4]

(1) 2 Bouv. L. D. 439. (2) 3 Bl. Com. 310. (3) 1 Chit. Pl. 700. (4) Id. 701.

In practice before justices of the peace, it is apprehended that as the pleadings are generally put in *orally*, the party demurring to a pleading, will usually point out at the time the defect of which he complains, so that demurrers in this court will usually be special. If the opposite party be satisfied that the pleading demurred to is defective, he should apply to the court for leave to amend, which should, of course, be granted. If, however, he think the pleading sufficient, he should join in demurrer, by insisting that the pleading demurred to is sufficient to sustain or bar the action. This would form what is called an *issue in law*, which is to be decided by the court upon the facts alleged by the party in the pleading demurred to, for a demurrer admits the facts alleged in the pleading to be true, but insists that they are not sufficient in law to sustain, or bar the action.

If the justice should decide in favor of the party demurring, he should, of course, permit the opposite party to amend his pleading thus demurred to; and on the other hand, if he should decide against the party demurring, he will permit him to withdraw the demurrer, and answer to the pleading demurred to. If, however, no application be made to amend or answer the pleading, the judgment will be final; if in favor of the defendant, for his costs, and if the demurrer be to a declaration, or other pleading of the plaintiff, or by the plaintiff to a pleading of the defendant, and is decided in the plaintiff's favor, the court must proceed and ascertain the amount of his demand, and render judgment against the defendant therefor.[1]

(1) See 1 Chit. Pl. 700 to 709; Gould's Pl. Ch. 9.

CHAPTER VII.

OF WITNESSES, COMPELLING THE ATTENDANCE THEREOF, TAKING DEPOSITIONS, AND OF OATHS AND AFFIRMATIONS.

I. OF COMPELLING THE ATTENDANCE OF WITNESSES; AND HEREIN,
   1. *Of the Subpœna and Service thereof.*
   2. *Of the fees allowed to Witnesses.*
   3. *Of proving Demand, Discount, or Set-off by Adverse Party.*
   4. *Of Attachment against Defaulting Witness.*

II. OF TAKING DEPOSITIONS.

III. OF OATHS AND AFFIRMATIONS.

I. OF COMPELLING THE ATTENDANCE OF WITNESSES; AND HEREIN,

1. *Of the Subpœna, and Service thereof.*

Revised Statutes, 320, Sec. 36: "When either party shall require the attendance of a witness, in any suit pending before a justice, it shall be the duty of the justice to issue a subpœna in the following form, as nearly as the case will admit, viz:

Form of Subpœna.

STATE OF ILLINOIS, }
—— COUNTY, }

The People of the State of Illinois, to A. B.:

You are hereby commanded to appear before me at ———, on the ——— day of ———, at —— o'clock, —— then and there to testify the truth in a matter in suit, wherein C. D. is plaintiff, and E. F. defendant. And this you are not to omit under the penalty of the law.

Given under my hand and seal, this ——— day of ———, 18—.

JOHN DOE, J. P.

Which subpœna may be served by a constable, or any other person, by reading the same to the witness, but no mileage shall be allowed to the person serving the same.

"SEC. 37. In all cases where a justice of the peace is required to issue a subpœna, at the instance of either party to a suit, it shall be his duty to insert the names of four witnesses in each subpœna, if the party demanding the same shall require the attendance of that number. And in no case shall a justice of the peace be permitted to charge and receive pay for any subpœna commanding the citation of a less number, where as many as four shall be required by the same party at the same time, to be used in the same suit."

It not unfrequently happens that the party requiring the attendance of a witness, wishes also the exhibition in court of certain books and papers in his possession, or under his control, in which case a *subpœna duces tecum* may be issued, which is a writ or process of the same kind as the ordinary subpœna, including a clause requiring the witness to bring with him and produce to the court, books, papers, &c., in his hands, tending to elucidate the matter in issue.[1]

Form of Subpœna duces tecum.

STATE OF ILLINOIS, }
Pike COUNTY. }

The People of the State of Illinois, to A. B.:

You are hereby commanded to appear before me at ———, on the ——— day of ———, at —— o'clock, ——, then and there to testify the truth in a matter in suit, wherein C. D. is plaintiff, and E. F. defendant, and that you then and there bring with you, and produce at the time and place aforesaid, to be used as evidence, (*here describe the document required particularly by date, &c., as the case may permit.*) And this you are not to omit under the penalty of the law.

Given under my hand and seal, this ——— day of ———, 18—.

JOHN DOE, J. P.

2. *Of the Fees allowed to Witnesses.*

Revised Stat. 320, Sec. 38. "Each witness so summoned shall be entitled to fifty cents for attending on each trial, to be taxed with the other costs of suit, and paid when the debt and costs are collected; but if more than two witnesses shall be sworn in any case to testify to one

(1) 3 Bl. Com. 383.

fact on the same side, the party requiring such extra witness shall be at the whole expense of procuring the same; but no such fee shall be taxed by the justice, unless claimed by the witness attending."

By this section, it will be seen that witnesses are allowed fees only in case they have been regularly summoned according to the provisions of section 36, and also where fees are claimed; which may be done at any time before the costs are taxed up by the justice. Witnesses who are *subpœnaed* and attend in a cause, on the trial, are entitled to their fees whether they are sworn or not.[1]

3. *Of proving Demand, Discount, or Set-off by adverse party.*

Rev. Stat. 320, Sec. 39. "In all trials before justices of the peace, when either party may not have a witness or other legal testimony to establish his or her demand, discount, or set-off, the party claiming such demand, discount, or set-off, may be permitted to prove the same by the testimony of the adverse party. And if such adverse party shall not appear at the time of trial, or shall refuse to be sworn or to testify, then the party claiming the same shall be permitted to prove his or her demand, discount, or set-off, by his or her own oath; *provided*, that such party claiming the benefit of his own oath or that of the adverse party, shall first make oath that he has a demand, discount, or set-off, in said cause, and that he knows of no witness by whom he can prove the same except by his own oath, or that of the adverse party; *provided further*, that no person shall be allowed to prove his demand, discount, or set-off, unless the adverse party be present, or shall have been notified thereof, and for which purpose the justice may continue the cause for such time as may be necessary."

Form of Oath to be Administered, where evidence of adverse party is desired.

You do solemnly swear that you have a demand, discount, or set-off, against C. D. in the cause now in hearing, and that you know of no witness by whom you can prove the same, except by your own oath, or that of the said C. D.

"Sec. 40. When any plaintiff, at the time of commencing his suit, shall signify his desire to prove his debt or demand, as provided in the preceding section, and shall file the necessary affidavit, the justice may issue his summons in the following form:

(1) 3 Scam. 17.

"STATE OF ILLINOIS, } sct.
"—— COUNTY, }

"*The People of the State of Illinois to any Constable of said County,*

"GREETING:

"You are commanded to summon C. D. to appear before me at my office in ———, in said county, on the —— day of ——, 18—, at the hour of — o'clock, —, to answer the complaint of A. B. for a failure to pay him a certain demand not exceeding one hundred dollars, and hereof make due return as the law directs. The said defendant is hereby also notified that the said plaintiff says that he has no witness by whom to prove his demand, except it be by his own oath or the oath of the said defendant; and unless the said defendant appear at the trial of said complaint, the plaintiff will be permitted to prove his demand by his own oath, as by law is directed in such cases.

"Given under my hand and seal at my office in ———, in said county, this —— day of ——, A.D. 18—.

"E—— F——, *J. P.* [L. S.]

"Sec. 41. If the defendant or defendants shall not appear at the time of trial, after being served with such summons according to law, and no sufficient reason be assigned to the justice why he or she does not appear, then the plaintiff shall be permitted to prove his or her demand by his or her own oath, without giving any other or further notice to the defendant or defendants."

4. *Of Attachment against Defaulting Witness.*

By the Rev. Stat. 322, Sec. 48, it is provided that in all cases where a witness shall be duly served with a subpœna, and shall fail to attend at the trial, conformably thereto, the justice shall have power to issue an attachment, directed to any constable of the county, commanding him forthwith to bring before such justice the body of such witness, so failing to attend as aforesaid, to show cause why he should not be fined for such contempt; and on the appearance of such witness on such attachment, it shall be lawful for the justice of the peace to fine him in any sum not less than one dollar nor more than ten dollars, or wholly discharge him, if satisfactory excuse be made.

It has sometimes been held necessary that the cause should be called on for trial, the jury sworn and the witness called to testify, before an attachment can issue against him for default; but the better opinion is, that the witness is to be deemed guilty of contempt whenever it is dis-

tinctly shown that he is absent from court with intent to disobey the writ of *subpœna*, and that the calling of him in court is of no other use than to obtain clear evidence of his having neglected to appear, but that is not necessary, if it can be clearly shown by other means that he has disobeyed the order of court. An attachment for contempt proceeds not upon the ground of any damage sustained by an individual, but is instituted to vindicate the dignity of the court; and it is said, that it must be a perfectly clear case to call for the exercise of this extraordinary jurisdiction; the motion for an attachment should therefore be brought forward as soon as possible; and the party applying must show by affidavit or otherwise that the *subpœna* was seasonably and personally served on the witness.[1]

Form of Attachment Against a Defaulting Witness.

STATE OF ILLINOIS, } *ss.*
—— COUNTY, }

The People of the State of Illinois to any Constable of said County,
GREETING:

We command you to attach C. D., if he may be found in your county, and bring him forthwith before E. F., Esquire, a justice of the peace in and for the said county, at his office in ———, in said county, to answer unto us and show cause, if any he has, why he should not be fined for contempt, in not obeying our writ of *subpœna*, commanding him to appear on the — day of —, 18—, before the said justice, to testify in a suit then and there depending, to be tried between J. K., plaintiff, and L. M., defendant, on the part of the plaintiff, (*or "defendant."*) And we further command you to detain him in your custody until he shall be discharged by said justice, or be further dealt with according to law.

Given under the hand and seal of said justice, this — day of ——, 18—. E. F., *J. P.* [SEAL.]

For further forms of proceeding in the foregoing case, see "DOCKET ENTRIES."

II. OF TAKING DEPOSITIONS.

A Deposition, is the testimony of a witness reduced to writing in

(1) 1 Greenl. Ev. § 319.

due form of law, taken by virtue of a commission or other authority of a competent tribunal.[1]

Revised Statutes, 319, Sec. 32. "If any witness residing within the county wherein a suit shall be pending before a justice, shall be unable to attend on account of age, sickness or other cause, it shall be lawful for the justice before whom such suit shall be pending, or some other justice of the county, to take the deposition of such witness in writing; and the justice before whom the suit shall be pending, shall adjourn the trial, not more than six days, for that purpose, and shall give both parties notice of the time and place of taking such deposition."

Form of Notice for taking deposition of Witness residing in the County, who is unable to attend a trial on account of Sickness or other cause.

In Justice's Court.—Before E. F., Esquire, Justice.

A. B.
vs.
C. D.

It appearing satisfactorily to the undersigned, a justice of the peace, of the county of ———, that G. H. of said county, is a material witness for the plaintiff in the above entitled suit now pending before him. And that on account of his age, (*or sickness, or other cause,*) he is unable to attend the trial.

You are therefore notified, that on the ——— day of ———, A. D. 18—, at ——— o'clock in the forenoon, the deposition of the said G. H. will be taken by me, (*or "by K. L., Esquire, a justice of the peace of said county,"*) in writing, at the residence of the said witness, in ———, in said county, to be read in evidence on the trial of said cause.

Dated the ——— day of ———, A. D. 18—.

To the plaintiff (*or "defendant."*) E. F., *J. P.*

Form of Deposition taken pursuant to the foregoing Notice.

In Justice's Court.—Before E. F., Esquire, Justice.

A. B.
vs.
C. D.

Deposition of G. H., aged about ——— years, a witness in the

(1) 1 Bouv. L. D. 445.

above entitled suit, taken by E. F., Esquire, a justice of the peace of the county of ———, on the ——— day of ———, 18—, at the residence of the said witness in ———, in said county, in the presence of the said plaintiff and defendant, on the part of said plaintiff (*or "defendant."*)

——— County, *ss*: G. H., being duly sworn, deposes and says as follows, viz: (*Here insert the testimony of the witness, giving his own language as near as possible.*)

(Signed) G. H.

STATE OF ILLINOIS, } *ss.*
—— COUNTY, }

I, the subscriber, a justice of the peace of the said county, do certify that the above deposition was taken by me at the time and place mentioned in the caption thereof; that the said witness was first duly sworn, and that the said deposition was carefully read to the witness and signed by him.

Dated this ——— day of ———, 18—. E. F.,
Justice of the Peace.

"SEC. 33. If any witness, whose testimony shall be material in a suit pending before a justice, shall reside out of the county wherein such suit shall be pending, the party desiring it, may take his, her or their deposition or depositions, before any justice of the peace in the county in which such witness or witnesses reside; and the depositions taken in conformity thereto may be given in evidence in said suit, if it shall be made to appear that the opposite party had reasonable notice of the time and place of taking such depositions."

Form of Notice to take the Deposition of a Witness residing out of the County in which suit is pending.

In Justice's Court.—Before E. F., Esquire, Justice.

A. B. }
vs.
C. D. }

"Sir:—Take notice that on the —— day of ———, A. D. 18—, between the hours of ——— in the morning and ——— in the evening of the same day, and continuing from day to day if necessary, at

the house of ———, in the county of ——— and state of Illinois, and before J. K., a justice of the peace of said county, I shall proceed to take the deposition of L. M. of said county, to be read as evidence in the above entitled cause.

Dated the ——— day of ———, 18—.

Yours, &c.,

To A. B., C. D.

Plaintiff in the above entitled suit.

The form of deposition heretofore given in case of witness being unable to attend at a trial on account of sickness or other cause, can be used in the foregoing instance by being varied to suit the occasion.

Rev. Stat. 322, Sec. 52. "In all cases before justices of the peace, either party may have the case continued any reasonable time, not exceeding one month, for the purpose of taking the deposition of any non-resident witness, which deposition shall be taken in conformity to the manner of taking and returning depositions of non-resident witnesses in the circuit courts in this State."

The following is the manner of taking and returning depositions of non-resident witnesses in the circuit court as provided by the Rev. Stat. 233, Chap. XL., Sec. 10. "When the testimony of any non-resident witness or witnesses shall be necessary in any civil cause depending in any court of law or equity in this State, it shall be lawful for the party wishing to use the same, on giving to the adverse party, or his attorney, ten days' previous notice, together with a copy of the interrogatories intended to be put to such witness or witnesses, to sue out from the proper clerk's office a *dedimus potestatum*, or commission under the seal of the court, directed to any number of persons not exceeding three, as commissioners, or to any judge or justice of the peace of the county or city in which such witnesses may reside, authorizing and requiring him or them to cause such witness or witnesses to come before him or them, at such time and place as he or they may designate, and appoint and faithfully to take his, her, or their deposition or depositions upon all such interrogatories as may be inclosed with or attached to said commission, both on the part of the plaintiff and defendant, and none others, and to certify the same when thus taken, together with the said commission and interrogatories, into the court in which such cause shall be depending, with the least possible delay."

"SEC. 12. Previous to the examination of any witness whose deposition is about to be taken as aforesaid, he or she shall be sworn, (*or affirmed,*) by the person or persons authorized to take the same, to testify the truth in relation to the matter in controversy so far as he or she may be interrogated, whereupon the said commissioner or commissioners, judge, justice of the peace, or clerk, (*as the case may be,*) shall proceed to examine such witness upon all such interrogatories as may be inclosed with or attached to any such commission as aforesaid, and which are directed to be put to such witness, or, where no such commission shall be necessary, upon all such interrogatories as may be directed to be put by either party litigant, and shall cause such interrogatories, together with the answers of the witness thereto, to be reduced to writing in the order in which they shall be proposed and answered, and signed by such witness; after which it shall be the duty of the person or persons taking such deposition, to annex at the foot thereof a certificate subscribed by himself or themselves, stating that it was sworn to and signed by the deponent, and the time and place, when and where the same was taken; and every such deposition when thus taken and subscribed, and all exhibits produced to the said commissioner or commissioners, judge, justice of the peace, or clerk, as aforesaid, or which shall be proved or referred to by any witness, together with the commission and interrogatories, if any, shall be inclosed, sealed up, and directed to the clerk of the court in which the action shall be pending, with the names of the parties litigant endorsed thereon; *Provided*, That when any deposition shall be taken as aforesaid by any judge or justice of the peace out of this State, such return shall be accompanied by a certificate of his official character under the great seal of the State, or under the seal of the proper court of record of the county or city wherein such deposition shall be taken."

No authority is directly conferred by the foregoing sections upon justices of the peace to appoint commissioners to take depositions. A justice's court being one of inferior jurisdiction, can take nothing by implication.[1] Hence it would seem that a justice of the peace had not authority under the statute to appoint commissioners for taking depositions. It is therefore proper that the dedimus, or commission, should be directed to a judge or justice of the peace upon whom authority is conferred by our statute to take depositions in such cases.

(1) 1 Johns. cases, 20, 228; 1 Scam. 237; 3 Id. 194; 4 Id. 88.

Form of Notice for taking out Commission to examine a non-resident Witness.

In Justice's Court.—Before Elisha P. Ferry, Esquire, Justice.

A. B.
vs.
C. D.

SIR:—

Take notice that on the — day of —, A.D. 18—, at — o'clock, in the —noon, I will attend before the said justice at his office in *Waukegan*, in the county of *Lake*, for the purpose of suing out a commission directed to *William Fairchild*, Esq., a justice of the peace in and for the county of Oneida, in the State of New York, residing in the town of Augusta, to take the deposition of E. F., a resident of the last mentioned place, on the annexed interrogatories, to be read in evidence on the trial of this cause now depending before the said justice, when and where you may attend, and file cross interrogatories if you think proper.

Dated this — day of —, 18—.

Yours, &c. A. B.

To C. D.

Form of Interrogatories to be annexed to the foregoing Commission.

Interrogatories to be propounded to E. F., of the town of Augusta, in the county of Oneida and State of New York, a witness to be produced, sworn and examined, in a certain cause now depending before Elisha P. Ferry, Esquire, a justice of the peace of the county of Lake and State of Illinois, wherein A. B. is plaintiff and C. D. is defendant, on the part and behalf of the said plaintiff, under and by virtue of the commission hereto annexed.

First.—What is your age, occupation and place of residence?

Second.—Do you know the parties, plaintiff and defendant, in the title of these interrogatories named, or either, and which of them, and how long have you known them respectively?

Third.—&c.

Fourth.—Do you know any other matter or thing touching the matter in question, that may tend to the benefit or advantage of the plaintiff?

If yea, declare the same as fully and at large, as if you had been particularly interrogated thereto.

Cross Interrogatories.

Interrogatories to be propounded to the said E. F., by way of cross examination.

(*State interrogatories as the circumstances of the case require.*)

Form of Commission to take Deposition of non-resident Witness.

STATE OF ILLINOIS, } ss.
Lake COUNTY, }

The People of the State of Illinois to William Fairchild, Esq., a Justice of the Peace of the county of Oneida, in the State of New York.

Whereas, it appears to Elisha P. Ferry, Esquire, one of the justices of the peace in and for the county of *Lake*, that E. F., of the town of Augusta, in the county of Oneida and State of New York, is a material witness in a certain cause now depending before the said justice, between A. B., plaintiff, and C. D., defendant,

Therefore we, in confidence of your prudence and fidelity, do, by these presents, appoint you to examine said witness, and authorize and employ you at a certain day and place to be by you for that purpose appointed, to examine on oath the said witness, on all the interrogatories hereto annexed, to be taken before you, and cause such examination to be reduced to writing and signed by such witness, and to certify and return the depositions annexed hereto to the said justice, under your seal, with the names of the parties endorsed thereon. And you will return also, with said deposition, a certificate of your official character, under the seal of the proper court of record in the county for which you are acting.

In witness whereof, the said justice has hereunto set his hand and seal, the — day of —, A.D. 18—.

ELISHA P. FERRY, *J. P.* [SEAL.]

Form of Deposition taken in pursuance of the foregoing Commission.

Deposition of E. F., of Oneida county, in the State of New York, a witness, aged — years, produced, sworn, and examined before William Fairchild, Esquire, a justice of the peace in and for the county and State aforesaid, on the — day of —, 18—, at the office of the said William Fairchild, Esq., in the town of Augusta, in said county, by virtue of a commission issued by Elisha P. Ferry, a justice of the peace of the county of *Lake*, in the State of Illinois, to me directed for

the examination of the said E. F., a witness in a suit depending before the said justice, between A. B., plaintiff, and C. D., defendant.

First.—To the first interrogatory this deponent says, &c.

Second.—To the second interrogatory this deponent says, &c.

(The witness must make answer to each interrogatory separately. If there be any cross interrogatories, the witness will go on thus:)

First.—To the first cross interrogatory he says, &c.

(Signed) E. F.

Form of Certificate to be attached to the foregoing Deposition.

STATE OF NEW YORK, } *ss.*
Oneida COUNTY, }

I, *William Fairchild*, a justice of the peace of said county, do certify that the foregoing deposition was taken by me at the time and place mentioned in the caption thereof; that the said witness was first duly sworn, and that the same was carefully read to said witness, and signed by him.

Dated this — day of ——, A.D. 18—.

WILLIAM FAIRCHILD, *J. P.*

In sending out a commission to take the deposition of a non-resident witness, it would always be well to send also the form of the caption and certificate, as a guide for the Commissioner.

III. OF OATHS AND AFFIRMATIONS.

An Oath is a declaration made according to law before a competent tribunal or officer, to tell the truth; or it is the act of one, who, when lawfully required to tell the truth, takes God to witness that what he says is true. It is a religious act, by which the party invokes God not only to witness the truth and sincerity of his promise, but also to avenge his imposture or violated faith, or, in other words, to punish his perjury, if he shall be guilty of it.[1] By a later definition, an oath has been briefly defined to be: "An outward pledge, given by the juror," (or person taking it) "that his attestation, or promise, is made under an immediate sense of his responsibility to God."[2]

(1) 2 Bouv. L. D. 233; 1 Stark. Ev. 23; See I Greenl. Ev. Sec. 328, where a somewhat different definition of an oath has been given. (2) Tyler on oaths, 12, 13.

Oaths are taken in various forms; the most usual is upon the gospel, by taking the book in the hand; the words commonly in use are:

"You do swear that," &c., (*and concluding*) "so help you God," (*and then kissing the book.*)[1]

Another form is by the witness, or party promising, holding up his right hand; the words to be repeated by the officer, in this case, are:

"You do swear by the ever living God that," &c.[2]

Another form of attestation, is by *affirmation*, which is defined to be, a solemn declaration and asseveration, which a witness makes before an officer competent to administer an oath in a like case, to tell the truth as if he had been sworn.[3]

Rev. Stat. 393, Section 1. "Whenever any person shall be required to take an oath before he enters upon the discharge of any office, place or business, or on any other lawful occasion, and such person shall declare that he or she has conscientious scruples about the present mode of administering oaths by laying the hand on and kissing the gospels, it shall be lawful for any person empowered to administer the oath, to administer it in the following form, to wit: The person swearing shall, with his or her hand uplifted, *swear by the ever living God*, and shall not be compelled to lay the hand on or kiss the gospels. And oaths so administered shall be equally effectual, and subject such persons to the like pains and penalties for willful and corrupt perjury, as oaths administered in the usual form.

"Sec. 2. Whenever any person required to take or subscribe an oath, as aforesaid, and in all cases where an oath is upon any lawful occasion to be administered, and such persons shall have conscientious scruples against taking an oath, he or she shall be admitted, instead of taking an oath, to make his or her solemn affirmation, or declaration, in the following form, to wit: '*You do solemnly, sincerely, and truly declare and affirm,*' which solemn affirmation, or declaration, shall be equally valid as if such person had taken an oath in the usual form, and every person guilty of falsely and corruptly declaring, as aforesaid, shall incur and suffer the like pains and penalties as are or shall be inflicted on persons convicted of willful and corrupt perjury."

Swearing the witness by the uplifted hand, is held to be a legal swearing, independent of the statute.[4]

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(1) 2 Bouv. L. D. 233. (2) 2 Bouv. L. D. 233; Rev. Stat. 393, Sec. 1.
(3) 1 Bouv. L. D. 86; 1 Greenl. Ev. Sec. 371. (4) Breese, 28; 2 Gil. 540.

CHAPTER VIII.

OF THE TRIAL AND INCIDENTS THERETO.

I. OF INCIDENTS OCCURRING PREVIOUS TO THE COMMENCEMENT OF THE TRIAL.

1. *Of Continuance.*

Revised Statutes 318, Sec. 27. "Previous to the commencement of any trial before a justice of the peace, either party may move to have such trial put off for a time not exceeding ten days, upon making proof, either upon his own oath or that of a credible witness, that the said party cannot safely proceed to trial, on account of the absence of a material witness, or on account of any other cause or disa-

bility, which would prevent them from obtaining justice at such trial; and if the justice be satisfied that the party so applying cannot safely proceed to trial, and also that the party so applying has used due diligence to be ready at the time of trial first appointed, and that his not being ready is not the effect of such party's own neglect or inattention, then the said justice shall order the trial of said cause to be deferred to another day and hour within ten days, to be by him appointed; and the party praying such continuance shall pay all the costs occasioned thereby: *Provided*, the justice may at any time continue any case without oath, if the parties consent; or if but one party be present and shall consent, or if he shall deem it essential to justice so to do for any good cause shown."

Form of Oath to be administered by the Justice upon application for the continuance of a Cause.

You do solemnly swear that you will true answers make to such questions as may be put to you, touching your present application for continuance of the cause now pending, in which you are plaintiff and C. D. is defendant, (*or as the case may be*), so help you God.

The justice will then interrogate the party, as to the grounds of his application for continuance, or may allow the opposite party to do so, as he may think proper.

A suit may also be continued, or adjourned for a time not more than six days, for the purpose of taking the deposition of a witness residing in the county, who is unable to attend a trial on account of age, sickness or other cause.[1]

A cause may also be continued by the justice for such a time as may be necessary, for the purpose of notifying the adverse party, who may not be present, that the party applying has a demand, discount or set-off, and that he knows of no witness by whom he can prove the same, except by his own oath or that of the adverse party.[2]

A case may likewise be continued any reasonable time, not exceeding one month, for the purpose of taking the deposition of any non-resident witness.[3]

When a jury is demanded by either party, the justice may, if necessary, adjourn the cause to any time, not exceeding three days, for the purpose of empanneling a jury.[4]

(1) Rev. Stat. 319, Sec. 32. (2) Rev. Stat. 320, Sec. 40. (3) Rev. Stat. 322, Sec. 52.
(4) Rev. Stat. 321, Sec. 44.

2. *Of Change of Venue, or removing the Suit from one Justice to another.*

Revised Statutes, 322, Sec. 51. "Previous to the commencement of any trial before a justice of the peace, the defendant, or his or her agent, may make oath that it is the belief of such deponent that the defendant cannot have an impartial trial before such justice; whereupon it shall be the duty of the justice immediately to transmit all the papers and documents belonging to the suit, to the nearest justice of the peace, who shall proceed as if the said suit had been instituted before him."

Form of Oath to be administered by the Justice upon application for Change of Venue.

You do solemnly swear that it is your belief that you cannot have an impartial trial before me, in the case now pending, in which you are defendant, and A. B. is plaintiff, (*or in case the oath is made by the agent, then say,* "in the case now pending, in which A. B. is plaintiff and C. D. is defendant.")

In case of change of venue, as aforesaid, the justice will copy from his docket the proceedings of the cause as far as the same has progressed before him, adding thereto a certificate in the following form:

Form of Certificate by the Justice to accompany the Papers and Documents on Change of Venue.

STATE OF ILLINOIS, }
—— COUNTY, } *ss.*

I., E. F., a justice of the peace in and for the said county, do hereby certify that the foregoing is a true copy of the proceedings in the cause therein entitled had before me, and that herewith enclosed are all the papers and documents belonging to the said suit.

Witness my hand this — day of —, A. D., 18—.

E. F., *J. P.*

Upon granting a change of venue, all the papers pertaining to the cause, should be properly enclosed by the justice in a wrapper or envelope, and addressed to the nearest justice of the peace, and it will be his duty it is to see that they are safely transmitted, with as little delay as possible. The papers are usually entrusted by the justice, with the constable, if in attendance, or the plaintiff in the suit.

The consent of parties to a change of venue, without fulfilling any of

the requirements of the statute, is proper.[1] A party who has obtained a change of venue, cannot object to a trial in the court to which he has caused the case to be removed, if enough appears to give the court jurisdiction.[2]

II. OF TRIAL IN THE ABSENCE OF THE DEFENDANT.

Revised Statutes, 318, Sec. 23. "If the defendant shall not appear at the time of trial, after giving bail as aforesaid, or after being served with a summons, as described in the twenty-first section of this chapter, and no sufficient reason be assigned to the justice, why he or she does not appear, then the justice shall proceed to hear and determine the cause, in the absence of said defendant, but shall not give judgment in favor of the plaintiff, unless the said plaintiff shall fully prove his demand in the same manner as if the defendant had been present and denied the same."

The omission of the defendant to appear and plead, is not considered as an admission of the plaintiff's demand, but he must establish it by testimony in the same manner as though an issue had been joined.

The justice is bound to hear the merits in all cases before judgment against the defendant. Strictly speaking there is no such a thing before a justice of the peace as a judgment by default, but always a trial or a hearing in the nature of a trial.[3]

III. OF TRIAL BEFORE THE JUSTICE, WITHOUT A JURY.

Rev. Stat. 319, Sec. 28. "When the parties shall appear and be ready for trial, the justice shall proceed to hear and examine their respective allegations and proofs, and shall thereon give judgment against the party who shall be proved to be indebted to the other, for so much money in dollars and cents as shall appear to be due, with costs of suit; but if neither party shall appear to be indebted to the other, then the judgment shall be against the plaintiff for the costs of suit only; and if such judgment be rendered upon any note or bond, or for a balance due upon a settled account, the justice shall allow in-

(1) 3 Scam. 354. (2) 13 Ill. 76. (3) 8 Cowen, 133; 10 Johns. 106.

terest from the time when the same became due, and include the same in the said judgment; and in all cases the judgment shall bear interest at the rate of six per cent. per annum until paid."

A justice of the peace must not decide on his own previous knowledge of facts, but only on evidence adduced before him. He must decide upon evidence produced in court.[1]

In trials before a justice alone, if the party means to submit to a non-suit, he must do so before the cause is finally submitted for advisement, or the judgment will be a bar to a new action.[2]

In an action against several, for a tort, where the trial is before a justice, without a jury, he may, when the plaintiff closes his proof, discharge a defendant against whom no evidence has been given. No judgment, however, should be entered under such circumstances, until the final disposition of the cause.[3] Most of the rules which govern proceedings in justices' courts in trials of issue of fact, are applicable as well to trials by jury, as to trials before the justice, without a jury. Hence, the further general rules which govern proceedings before justices of the peace in trials of issue of fact, will be found under the following head, and to which reference will generally be had.

IV. OF TRIAL BY JURY.

1. *When the jury shall be demanded, and how obtained.*

Revised Statutes 321, Sec. 44. "At any time before judgment is given in any suit before a justice, either party may demand to have the cause tried by a jury, provided the matter in controversy exceed twenty dollars; whereupon, it shall be the duty of the justice to issue his writ, directed to any constable, commanding him to summon a jury of six men, or twelve, if a less number be objected to; and the said jury shall be empanneled as soon as may be, the justice adjourning the cause, if necessary, to any time not exceeding three days, for that purpose. The jury, when empanneled, shall be sworn by the justice to try the case according to the evidence, and the justice shall enter judgment upon their verdict, according to the finding thereof."

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(1) 2 Johns. 189. (2) 11 Johns. 457. (3) 3 Hill, 104.

"Sec. 45. The following shall be the form of the writ for summoning the jurors, viz:

STATE OF ILLINOIS, }
—— COUNTY. }

The People of the State of Illinois to any constable of said County, GREETING:—

We command you to summon ——— lawful men of your county to appear before me at ———, on the ——— day of ———, 18—, who are not of kin to ———, plaintiff, or to ———, defendant, to make a jury between said parties in a plea of ———, because as well the said plaintiff as the said defendant have put themselves upon the country for trial, and have you then there the names of the jury and this writ.

Witness my hand and seal this ——— day of ———, 18—.

JOHN DOE, *J. P.*"

"Sec. 47. No justice of the peace shall order a trial by jury without the consent of all parties, unless such jury be demanded before the hearing of any evidence in the case, nor unless the party demanding such jury shall first pay the fees to which such are by law entitled."

Upon the return of the venire by the constable, with the panel of jurors, the parties being ready for trial, the justice will proceed to call the names of the jurors, for the purpose of ascertaining that the number required have been summoned, and all the persons so summoned are in attendance. The justice should then enter upon his docket the names of those who have been summoned, and the names of those who appeared, and those who did not appear.

"Sec. 49. If any juror summoned as aforesaid shall be interested in the event of the suit, or of kin to either party, or shall have expressed his opinion on the matter about to be tried, or shall for any other cause, to be judged of by the justice, be considered as a partial or improper juror in that case, the justice shall discharge such juror; and when, by such discharge, or the failure of any juror to attend, the jury shall not be complete, the justice shall direct the constable to summon as many persons as shall be required to complete such jury instantly from among the bystanders or other persons in his bailiwick, which summons shall be verbal; and the persons so summoned shall be bound to serve on such jury, and on refusal or failure to do so, may be attached and fined for contempt, as aforesaid."[1]

(1) Jurors so summoned are called *talesmen*, from a latin word to denote persons of *like* qualifications.

2. *Who shall be competent to serve as Jurors.*

Rev. Stat. 308, Sec. 1. "All free white male taxable inhabitants in any of the counties in this state, being natural born citizens of the United States, or naturalized according to the constitution and laws of the United States, and of this state, between the ages of twenty-one and sixty years, not being judges of the supreme or circuit court, county commissioners, judges of probate, clerks of the circuit or county commissioners' court, sheriffs, coroners, postmasters, licensed attorneys, overseers of the high way, or occupiers of mills, ferries, toll bridges or turnpike-roads, being of sound mind and discretion, and not subject to any bodily infirmity amounting to a disability, shall be considered and deemed as competent persons, (*except in cases where legal disabilities may be imposed for the commission of some criminal offence,*) to serve on all grand and petit juries in and for the bodies of their counties respectively."

By the act to establish and maintain a system of free schools, approved February 15, 1855, school commissioners, trustees of schools, school directors, and all other school officers, are exempt from serving on juries.

3. *Proceedings against defaulting Jurors.*

In all cases where a person has been summoned as a juror, to try any cause before a justice of the peace, and shall fail to attend at the time and place appointed in such summons, the justice has power to issue an attachment, directed to any constable of the county, commanding him forthwith to bring before such justice, the body of such juror so failing to attend as aforesaid, to show cause why he should not be fined for such contempt; and on the appearance of such juror on such attachment, it is lawful for the justice to fine him in any sum not less than one dollar, nor more than ten dollars, or wholly discharge him, if satisfactory excuse be made.[1]

Form of Attachment against Defaulting Juror.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The People of the State of Illinois, to any Constable of said County, GREETING:

Whereas, C. D. was summoned to appear this day before E. F.,

(1) Rev. Stat. 322, Sec. 48.

Esquire, a justice of the peace in and for the county aforesaid, to serve as a juror in a certain cause then and there depending, to be tried between G. H., plaintiff, and J. K., defendant, and failed to appear.

We therefore command you to attach the said C. D., and forthwith to bring him before the said justice of the peace, to answer for contempt in not obeying said summons, and to show cause, if any he has, why he should not be fined for such contempt.

Given under the hand and seal of said justice, this ——— day of ——— A. D. 18—. E. F., (SEAL.)

Justice of the Peace.

In proceeding against a defaulting juror, the return of the constable on the venire, will be taken as sufficient evidence of the summoning of the juror.[1] And the docket of the justice will be sufficient evidence that the juror made default in appearing.

4. *Of Challenges.*

Before the jury are sworn, if either party have any objection, either of interest, or favor, or for other cause, against the constable summoning them, or any of the jurors, whether originally summoned on a venire, or from the bystanders as *talesman*, he must state his objection to the justice, which is called a challenge.[2] Challenges are of two sorts; challenges to the *array*, and challenges to the *polls*.[3] A challenge to the array is an objection at once to all the jurors returned by the constable collectively; not for any defect in them, but for some partiality or default in the constable who summoned the jury.[4] It is two fold, viz: a principal challenge, and a challenge to the array for favor.

The causes of principal challenge to the array are such as the following: That the constable, or officer who makes the array, or in other words, who summoned and returned the jury, is of kindred or affinity to either party within the ninth degree; that one or more of the jury are returned at the nomination of either party; that an action of battery, or other action implying malice, is pending at the suit of either party against the officer, or at the suit of the officer against either party; that the action of debt is pending at the suit of either party against the officer, but not if by the officer against either party; that the officer is under the distress of either party; that the officer is counsel, attorney,

(1) 14 Johns. 481.
(2) Cowen Tr., 4th Ed., Sec. 1290.
(3) 3 Bl. Com. 359.
(4) Co. Litt. 156, 158; 3 Bl. Com. 359.

or servant of either party, or is an arbitrator in the same matter, and has treated thereof.[1]

A justice has not a right to challenge a panel of jurors and issue a new *venire* on his own motion without an objection by the party.[2] But he may on his own motion challenge and set aside a juror for intoxication; indeed, it is held to be his duty to do so, if the intoxication be apparent.[3]

The causes of challenge to the array for favor are such as imply at least a probability of bias and partiality in the officer, but do not amount to a principal challenge. Thus, that the plaintiff or defendant is the tenant of the officer, or that the son of the officer has married the daughter of the plaintiff or defendant.[4]

A challenge to the polls is an objection made separately to each juror as he is about to be sworn. Challenges to the polls, like those to the array, are either principal or to the favor.[5] *First*, principal challenges may be made on various grounds, and may be classed under the following heads:

1. *Propter Defectum;* that the juror is not qualified on account of some personal objection, as alienage, infancy, old age, or want of those qualifications required by legislative enactment.[6] But a matter which merely *exempts* a man from serving on a jury, and does not incapacitate him, is not a cause of challenge.[7]

2. *Propter Affectum;* because of some presumed or actual partiality in the juror who is made the subject of the objection; on this ground a juror may be objected to, if he is related to either party within the ninth degree, or is so connected by affinity; this is supposed to bias the juror's mind, and is only a presumption of partiality.[8] The smallest degree of interest in the matter to be tried, is a decisive objection against a juror.[9] But it is provided by statute, that in all actions brought by or against a county, the inhabitants of the county so suing, or being sued, may be jurors, if otherwise competent or qualified according to law,[10] and also on the trial of every action in which a town will be a party, or interested, the electors and inhabitants thereof, are competent jurors; but not so, in suits and proceedings by and against towns.[11] So it is a principal cause of challenge that he has

(1) 10 Johns. 107; 1 Hill, 654; 7 Cowen, 479; *note* (a.)
(2) 15 Johns. 469.
(3) 2 Cowen, 430.
(4) Co. Litt. 156.
(5) 1 Bouv. L. D. 233.
(6) See Rev. Stat. 308, Sec. 1.
(7) Edw. Tr., 3d Ed. 87; 1 Cowen 438, *note*.
(8) 6 Greenl. 307; 3 Day, 491.
(9) See 1 Bouv. L. D. 233, Tit. "Challenge," and authorities there cited.
(10) Rev. Stat. 132, Sec. 18.
(11) See Haines' Town. Org. 31, Sec. 5, and *note*.

taken information of the cause beforehand; that he has declared his opinion of the cause in advance,[1] or upon any one principal point or ingredient in the cause,[2] but not when he merely expresses a conditional opinion, thus: "If the reports of the neighbors be true the defendant is wrong and the plaintiff is right;"[3] that since he has been returned he has eaten or drank at the expense of one or more of the parties; that one of the parties had labored the juror and given him money or other things for giving his verdict; that an action implying malice or displeasure is pending between the juror and one of the parties, but if not implying malice or displeasure, it is but matter of challenge to the favor.[4]

3. *Propter Delictum*, as that the juror has been convicted of some crime; in that case he ceases to be a good and legal man, and is rendered incapable of serving as a juror.[5]

Secondly: Challenges to the poll for favor may be made, when, although the juror is not so evidently partial that his supposed bias will be sufficient to authorize a principal challenge, yet there are reasonable grounds to suspect that he will act under some undue influence or prejudice. The causes for such challenge are manifestly very numerous, and depend on a variety of circumtances. The fact to be ascertained is whether the juror is altogether indifferent as he stands unsworn, because, even unconsciously to himself, he may be swayed to one side. The line which separates the causes for principal challenges and for challenge to the favor, is not very distinctly marked. That the juror has acted as godfather to the child of the prosecutor or defendant, is cause for a principal challenge,[6] while the fact that the party and the juror are fellow servants, and that the latter has been entertained at the house of the former, is only cause for challenge to the favor.[7]

Challenge, when and how made. There can be no challenge either to the array or to the polls before a full jury appear; therefore, if a sufficient number of jurors who have been summoned on the *venire*, do not appear, no challenge can properly be made until a sufficient number have been summoned, and appeared as *talesmen*, to complete the jury.[8] And no juror can be challenged after he has been sworn to try the cause. Challenges to the polls for favor, were, at common law, tried

(1) Breese, 29. (2) Burr's Trial, 418. (3) 8 Johns. 445.
(4) 1 Cowen, 438, *note;* 3 Bac. Ab. 748; 4 Scam. 88. (5) Rev. Stat. 182, Sec. 174.
(6) Co. Litt. 157 a. (7) Co. Litt. 147; See 1 Bouv. L. D. 234.
(8) 7 Cowen, 478.

by the aid of triors, being two indifferent persons named by the court.[1] But by our statute it is provided, that if any juror shall be interested in the event of the suit, or of kin to either party, or shall have expressed his opinion on the matter about to be tried, or shall, for any other cause, to be judged of by the justice, be considered as a partial or improper juror, in that case the justice shall discharge such juror.[2] By this statute, it appears that a challenge to the polls for favor, as well as a principal challenge, is to be tried by the justice alone, without the aid of triors.[3] On a challenge, either principal or to the favor, the juror may himself be examined on oath of *voir dire*, with regard to such causes of challenge as are not to his dishonor or discredit; but not with regard to any crime, or any thing which tends to his disgrace or disadvantage.[4] The oath may be in the following form:

Form of Juror's Oath, touching his competency.

You do swear, that you will true answers make to such questions as may be put to you, touching your competency as an impartial juror, between A. B., plaintiff, and C. D., defendant, so help you, God.[5]

Issuing of a new venire.—If on a challenge to the array, the challenge is allowed, a new venire should be issued.

As a general rule, a justice cannot try a cause without a jury, after a jury has been demanded.[6]

But if a venire be improperly suppressed by the party demanding it, the justice has a right to try the cause without a jury. As, if the justice should deliver the venire to the party for the purpose of handing to the constable, which he should neglect to do, and the party should not appear at the return of the venire, the justice would have a right to consider it as a waiver of the trial by jury; and, although he might issue another venire, he would not be bound so to do.[7]

The party demanding a trial by jury has undoubtedly a right to waive such trial after a venire has been issued; but if the venire has been served and returned, the other party would have a right to insist that the cause should be tried by the jury thus returned, notwithstanding the party originally demanding such trial should waive it; or, if a jury should not be obtained on that venire, he might require that a new venire should be issued at his instance.[8]

When a new venire is issued, it will be considered as the process of

(1) 4 Bl. Com. 362. (2) Rev. Stat. 322, Sec. 49. (3) Cot. Tr. 428.
(4) 3 Bl. Com. 364; 19 Johns. 115. (5) Cowen Tr. 4th Ed., Sec. 1299.
(6) 8 Johns. 460. (7) 19 Johns. 384. (8) Edw. Tr. 3d Ed. 89.

the party at whose instance the first venire was issued, and no objection to the form of it can be made by him.[1]

5. *Of Swearing the Jury.*

After a full jury has been obtained, they are then to be sworn to try the cause. The whole panel may be sworn together, or any number at a time, as may be thought convenient. They must be sworn by the justice to try the case according to the evidence;[2] the following will be the proper form of the oath:

Form of Juror's Oath.

You, and each of you, do swear that you will well and truly try the matter in difference between A. B., plaintiff, and C. D., defendant, and unless sooner discharged by the court, a true verdict give according to evidence.

Swearing the jury is a matter of form, and an irregularity in swearing them, not objected to at the time, cannot be assigned as error.[3]

After the jury are sworn, the justice should call over their names, and as the jurors answer, the constable should count them for the purpose of ascertaining that the jury contains the requisite number, and the justice should then, likewise, take the precaution to ask them if they have all been sworn. The jury should then be seated together, to hear the proofs and allegations of the parties.

V. OF PROCEEDINGS ON THE TRIAL.

The jury being ready to hear the merits, and to fix their attention the closer to the facts, which they are impanneled and sworn to try, the nature of the case and the evidence intended to be produced, are next laid before them by the plaintiff or party holding the affirmative, and when the evidence of such party is gone through, the other side opens the adverse case, and supports it by evidence; and then the party which began is heard by way of reply.[4]

The proper, and most expedient practice, however, is for the plaintiff, or party holding the affirmative, before commencing the evidence, to briefly state his case to the court or jury, as the case may be, and for

(1) 2 Caines, 134.
(2) Rev. Stat. 321, Sec. 44.
(3) Breese, 12.
(4) 3 Bl. Com. 367.

the other party thereupon to answer, and state his defense, so that the nature of the case may be fairly understood before commencing the evidence, in order for a more clear understanding of the testimony, as the trial progresses; after which the plaintiff will call his witnesses to prove his case. When the party thus holding the affirmative finishes his evidence, the defendant or adverse party follows; when he is done, the party having the affirmative will be permitted to give evidence to rebut the testimony of his adversary, and impeach the credit of his witnesses; and then the other party the same right.[1]

As a general rule the plaintiff holds the affirmative, but it will fall upon the defendant in cases like the following: Where the defendant, without pleading the general issue, merely pleads payment of the plaintiff's demand, on which issue is joined, this plea admits the matters stated in the declaration, and it will be incumbent on the defendant in the first place to prove the payment; he therefore holds the affirmative, and will have the right to open the case and first call and examine his witnesses.[2]

When a witness has been sworn, he is first to be examined by the party who calls him, and he has in general a right to go through with his examination before the other party puts any questions to him. The witness may then be cross-examined by the other party, and afterwards the party who first called him may reëxamine him, and so alternately until both parties are through.[3]

In strictness, the party calling a witness is bound to finish his questions on the examination in chief; then the defendant must do the same on cross-examination; and the witness can be reëxamined only to cut down or explain matter which comes out on the cross-examination. The recalling of a witness after his examination has been closed, is a matter of discretion in the court.[4]

The judgment of the court or verdict of the jury, must be according to the proof, or evidence adduced in the cause.[5]

All evidence before a justice of the peace is required to be under oath, and by parol, except where it shall be necessary to exhibit the

(1) Cowen Tr., 4th Ed., Sec. 1306.
(2) Edw. Tr., 3d Ed., 90.
(3) Phil. Ev. 205.
(4) 2 Scam. 494.
(5) Rev. Stat. 319, Sec. 28; 321, Sec. 44. Evidence signifies that which demonstrates, makes clear, or ascertains the truth of the very fact or point in issue, either on the one side or on the other, and no evidence ought to be admitted to any other point. 3 Bl. Com. 367. Proof is the conviction or persuasion of the mind of a judge or jury by the exhibition of evidence, of the reality of a fact alleged, as *to prove*, is to determine or persuade that a thing does or does not exist. 2 Bouv. L. D. 380.

signature or hand-writing of a party against him, and except such evidence as shall be taken by deposition in conformity to the statute.[1]

Form of Oath to Witness, generally or in chief.

You do swear, that the evidence you shall give, relative to the matter in difference between A. B., plaintiff, and C. D., defendant, shall be the truth, the whole truth, and nothing but the truth.[2]

Where a witness is supposed to have an interest in the cause, the party against whom he is called, may require that the witness be sworn on his *voir dire*, as to whether he has an interest in the cause or not.[3]

Form of Witness' Oath of voir dire.

You do swear, that you will true answers make to such questions as shall be put to you touching your interest in the cause now in hearing, wherein A. B. is plaintiff, and C. D. is defendant.

The interest of a witness, may likewise be shown by other testimony. But whether the election of one of these modes will preclude the party from afterwards resorting to the other, it seems, is not clearly settled by the authorities.[4]

Form of Oath of Witness to prove the Interest of another witness.

You do swear, that you will true answers make to such questions as may be put to you, touching the interest of E. F. in the cause now in hearing, wherein A. B. is plaintiff, and C. D. is defendant.

When the Parties may be Sworn.—The general rule of the common law is, that a *party to the record* in the civil suit, *cannot be a witness*, either for himself, or for a co-suitor in the cause.[5] But as we have before seen,[6] our statute provides that when either party may not have a witness or other legal testimony, to establish his or her demand, discount or set-off, such party may be permitted to prove the same by his or her own oath, *provided* the adverse party shall first refuse to be sworn, or shall not be present after having been notified pursuant to the statute.[7] In relation to the examination

(1) Rev. Stat. 319, Sec. 30.

(2) The oath administered to a witness is not only, that what he deposes shall be true, but that he shall also depose the whole truth. 3 Bl. Com. 372.

(3) *Voir dire*—to speak truly, to tell the truth. 2 Bouv. L. D. 634. See 1 Greenl. Ev. Sec. 423.

(4) 1 Greenl. Ev., Sec. 423; but see 2 Bouv. L. D. 634, title "Voir."

(5) 1 Greenl. Ev., Sec. 329. (6) Ante, p. 81. (7) See Rev. Stat. 320, Sec. 39

of the adverse party, under this provision of the statute, the supreme court have laid down the following rule:[1] That the statute which allows the parties in trials commenced before justices of the peace to avail themselves of the oath of the adverse parties, is in derogation of the principles of the common law, and must be construed to embrace only such cases as are within both the letter and spirit of its provisions.

If the party to whom the oath is referred, declines to be sworn as a witness, or refuses to testify when sworn, the opposite party may then become a witness in his own behalf, and testify in relation to the matter in question. But if the party first called is sworn, and testifies in good faith, the object of the statute is answered, and the party claiming the benefit of the statutory provision is not permitted to become a witness for himself.

If a party to the suit is sworn, he is bound to testify fairly and fully so far as he may be interrogated. If he manifests a disposition to conceal or withhold the truth, does not give explicit answers, or deprives the party calling him of the benefit of the facts within his knowledge, the court may hold that he refuses to testify, and allow the other party to become a witness. It is also held,[2] that where a party to a suit pending before a justice of the peace makes the necessary preliminary oath to authorize him to call upon the adverse party to testify, and either the adverse party, or the party making such oath is sworn, he does not become a general witness, but his testimony will be confined "to the demand, discount, or set-off," in reference to which he has been sworn. If the party has paid or discharged the demand in reference to which he was sworn and interrogated, he may state that fact, and such statement will be received as responsive to the question propounded to him. But if he only claims that he is not legally bound to pay such demand, by reason of his having a subsisting account or set-off against the party calling on him to testify, he cannot proceed to establish such account, or set-off, by his own oath, in the first instance, by virtue of his having been sworn at the instance of the adverse party, but must prove the same by other and disinterested evidence, if he has it, if not, he must first call on the adverse party to be sworn.

Revised Statutes, 319, Sec. 31. "No party to any suit before a justice shall be permitted to deny his or her signature to any written instrument, upon which such suit shall be founded, or which shall be offered as a set-off or acquittance for the debt demanded in such suit,

(1) See 11 Ill. 599. (2) 4 Scam. 543.

unless the said denial be under the oath of the party so denying the signature purporting to be his or her own."

Form of Oath to be administered to Defendant denying Signature to Instrument upon which Suit is founded.

You do swear that the written instrument upon which the suit now in hearing, against you, is founded, and which is here now offered in evidence, is not your signature.

Form of Oath to be administered to Plaintiff, denying Signature to Instrument offered as Set-off or Acquittance.

You do swear that the written instrument here now offered as a set-off, (*or acquittance, as the case may be*) for the debt demanded by you in the suit now in hearing against C. D., is not your signature.

Contempt of Court.—Our statute provides that every person who shall apppear before a justice of the peace when acting as such, or who shall be present at any legal proceeding before a justice, shall demean himself in a decent, orderly and respectful manner, and for failure to do so, such person shall be fined by the said justice for contempt, in any sum not more than five dollars.[1]

For forms of proceeding in relation to this subject, see PART THIRD, chapter 4, title, CONTEMPT OF COURT.

Proceedings after the evidence is closed.—After the evidence is closed, the parties, by themselves or counsel, may make such observations to the jury as are applicable to their case; the party holding the affirmative closing the argument. This is the natural order of the trial either before the justice or jury.[2]

It is discretionary with the court to hear evidence after the argument of a cause is opened by counsel. This is at all times, and before all courts, matter of discretion, and before justices of the peace much more ought this discretion to be indulged.[3]

If the plaintiff be satisfied that his proof is insufficient to sustain his action, he may at any time before the cause is submitted to the justice, elect to withdraw, and submit to a non-suit; but he cannot do this, it seems, after the cause has been finally submitted for advisement.[4] But

(1) It is held that the power to punish for contempt is an incident to all courts of justice independent of statutory provisions. Breese, 266; see also 3 Scam. 405.
(2) Cowen Tr. 4th Ed. Sec. 1307. (3) Breese, 35. (4) 11 Johns. 457.

if the trial be by jury, he may submit to a non-suit at any time before the verdict is pronounced by the foreman.[1]

After the testimony of the plaintiff is closed, the justice may non-suit the plaintiff, if, in his opinion, the testimony offered does not support the action.[2] But after the cause has been submitted to the jury, the justice has no right to take the cause from them and non-suit the plaintiff,[3] unless in case when the plaintiff fails to appear upon being called, on return of the verdict of the jury.[4]

The jury, after the proofs are summed up, unless the case be very clear, withdraw to some convenient place, to consider their verdict; and in order to avoid intemperance and causeless delay, are to be kept without meat, drink, fire or candle, unless by permission of the court, till they are all unanimously agreed.[5] When the jurors retire to deliberate upon the case, a constable ought to be sworn to take charge of them.[6]

Form of Constable's Oath, on retiring with a Jury to consider their Verdict.

You do swear that you will, to the utmost of your ability, keep the persons sworn as jurors on this trial, together, in some private and convenient place, without meat or drink, except ordered by the court; that you will not suffer any communication, orally or otherwise, to be made to them; that you will not communicate with them yourself, orally or otherwise, unless by order of the court, or to ask them if they have agreed on their verdict, until they shall be discharged; and that you will not, before they render their verdict, communicate to any person the state of their deliberations, or the verdict they have agreed on.

After the jury have retired to consider of their verdict, they may come back into court and hear evidence of any matter of which they have doubts,[7] or to ask any information or explanation of the justice in regard to the law; but this should only be in the presence of the parties.[8]

The justice should have no intercourse with the jury after they have retired to consider of their verdict, except with the consent or in the presence of the parties.[9]

When the jury are unanimously agreed, they will return into court with their verdict, upon which the justice will call the names of the

(1) 5 Johns. 346.
(2) 11 Johns. 299.
(3) 3 Johns. 430.
(4) 5 Johns. 346; 3 Bl. Com. 377.
(5) 3 Bl. Com. 376.
(6) 3 Bac. Ab. 768.
(7) 7 Johns. 32.
(8) 13 Wend. 274.
(9) 1 Cowen, 258; 13 Johns. 487; 10 Id. 239.

jurors, and if the plaintiff, or some one for him, does not appear, he may be non-suited, and the defendant may recover his costs.[1] If the plaintiff appear, the justice should say to the jury: *Gentlemen, have you agreed on your verdict?* To which the foreman answers in the *affirmative.* The justice should then say, *Who do you find for,* the plaintiff or the defendant? To which the foreman answers, *We find for the plaintiff,* (or *defendant,* as the case may be, stating how much, or how they find the issue). The justice, after noting the verdict, should then say to the jury, *Listen to your verdict as the court has recorded it. You say you find, &c.,* (repeating the verdict,) *and so say you all gentlemen?* If no one dissents, this will be the verdict in the cause.[2]

The law as to trials by jury in other courts, applies to justices' courts. Thus after a verdict is pronounced in court by the jury, they may alter it before it is recorded.[3] So after a verdict is received, either party may require that the jurors be polled, which is done by the justice calling each juror by name, and asking him separately: "*Is this your verdict?*" and should either of the jurors answer in the negative, it is no verdict, and the jury must be sent out again.[4]

Justices should not too readily listen to applications from a jury to be discharged in case of a disagreement, for in most cases it is not to be expected that a jury will at once all agree in opinion upon a case submitted to them, and notwithstanding an appparently irreconcilable difference of opinion, at first, a jury by discussion and reflection will usually agree. Still, however, a jury should not be kept out so long that their verdict may be the effect of compulsion, and not of their reason and understanding.[5]

VI. OF REFERRING THE DIFFERENCE BETWEEN THE PARTIES TO ARBITRATORS.

Rev. Stat. 321, Sec. 43. "In all cases the parties to a suit before a justice shall have the privilege of referring the difference between them to arbitrators, mutually chosen by them, who shall examine the matter in controversy, and make out their award thereon in writing, and deliver the same to the justice, who shall enter the said award on his docket and give judgment according thereto."

(1) 3 Bl. Com. 377. (2) Penn. on sm. causes, 177-8. (3) 6 Johns. 68.
(4) 7 Johns. 32; 3 Id. 255. (5) See 1 Johns. cas. 275, 301; 18 Johns. 187; 13 Wend. 55.

Where parties agree to refer the matter in difference between them to arbitrators, it is proper that such agreement be reduced to writing and filed with the justice.

Form of Agreement referring a matter in difference to Arbitrators.

In Justice's Court :—Before Enos W. Smith, Esquire, Justice.

John Smith,
vs.
John Doe.

We, the subscribers, the parties named in the above entitled suit, do hereby agree to refer the matter in difference between us in said suit, to A. B., C. D. and E. F., arbitrators mutually chosen by us.

Dated this ——— day of ———, 18—.

JOHN SMITH.
JOHN DOE.

Form of Notice to Arbitrators.

In Justice's Court :—Before Enos W. Smith, Esquire, Justice.

John Smith,
vs.
John Doe.

To A. B., C. D. and E. F. :—

Gentlemen :—You will please to take notice that the parties to the above entitled suit have mutually referred the difference between them in said suit, to you as arbitrators. You will, therefore, proceed and examine the matter in controversy between the said parties, and make out your award thereon in writing, and deliver the same to me.

Dated this ——— day of ———, 18—.

ENOS W. SMITH, *J. P.*

Form of Notice to Parties.

In Justice's Court :—Before Enos W. Smith, Esquire, Justice.

John Smith,
vs.
John Doe.

To John Smith,

Sir :—We, the undersigned arbitrators, to whom the difference

between the parties to the above entitled suit has been referred, will proceed to hear and determine the same on the ——— day of ———, 18—, at ——— o'clock in the —— noon, at the office of ———, in ———, in the county of McHenry, and state of Illinois.

Dated this —— day of ———, 18—.

A. B.
C. D.
E. F.

A copy of the foregoing notice should be served on each party.

Form of Award of Arbitrators.

In Justice's Court :—Before Enos W. Smith, Esquire, Justice.

John Smith,
vs.
John Doe,

The matter in difference between the parties to the above entitled suit, having been referred to the subscribers, arbitrators, mutually chosen by them to examine the matter in controversy in said suit, and make out their award thereon in writing, and deliver the same to the said justice, and the said arbitrators being first duly sworn, and they having heard the proofs and allegations of the parties, and having considered the same, do award, adjudge and determine, that there is due from the defendant to the plaintiff, the sum of ——— dollars, and that the said defendant pay the said sum to the said plaintiff; and all the costs of suit.

In witness whereof, we have hereunto set our hands this ——— day of ———, 18—.

A. B.
C. D.
E. F.

An award by arbitrators bars all suits springing out of the subject matter of the award.[1]

An appeal may be prosecuted from the judgment of a justice on an award, not for the purpose of going behind the award, and re-investigating the matters passed upon by the arbitrators, but for the purpose of determining the correctness of the decision of the justice; and if it

(1) 3 Scam. 245.

be found invalid, the parties will be remitted to their original rights, and may investigate all the matters anew.[1]

Where a suit is pending before a justice of the peace, and the parties refer the same to arbitrators, they must be bound by the decision of the arbitrators.[2]

The award of two of three arbitrators is void, if the third arbitrator has no notice to act in the matter.[3]

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(1) 13 Ill. 293. (2) 2 Scam. 489. (3) 1 Gil. 92.

CHAPTER IX.

OF EVIDENCE.

I. OF THE NATURE OF EVIDENCE.

Upon the subject of evidence, a few only of the rules of most general use can be given; the limits assigned to this work will permit nothing like a full treatise upon this subject, which would require a volume of itself.

Evidence consists of either positive or presumptive proof. The proof is positive, when a witness speaks to a fact from his own immediate knowledge; and presumptive, when the fact itself is not proved by direct evidence, but is to be inferred from the proof of circumstances which either necessarily or usually attend such facts.[1]

Thus, a receipt for rent due on a certain day, is strong presumptive evidence that the former rent has been paid. But it is only presumptive evidence, and the other party will be allowed to prove the contrary.[2]

(1) Phil. Ev. 111.

(2) Phil. Ev. 113.

The general rule is, that the matter in issue is to be proved by the party who asserts the affirmative.[1]

But where one party charges another with a culpable omission, or breach of duty, the general rule above laid down does not apply. In such a case, the person who makes the charge is bound to prove it, though it may involve a negative; for it is one of the first principles of justice not to presume that a person has acted illegally until the contrary is proved.[2]

It is also a general rule, that the best evidence must be given of which the nature of the case is capable. The true meaning of this rule is not, that the strongest possible assurance of the matter in question is required; but that no evidence shall be given which, from the nature of the thing, supposes still greater evidence behind in the party's possession or power. Thus, if a party offer a copy of a deed or will, when he is able to produce the original, this raises a presumption that there is something in the deed or will, which, if produced, would make against the party, and therefore a copy, in such a case, is not evidence. But if he prove the original deed or will to be in the hands of the adverse party, to whom he has given notice to produce it, who refuses, or that the original has been lost or destroyed without his default, no such presumption can reasonably be made, and a copy, or parol evidence, will be admitted.[3]

Under this rule, it is not necessary, as above observed, to give the strongest possible assurance of a fact. Thus, to prove the plaintiff's demand satisfied, the defendant may prove the fact of payment, or the plaintiff's admission to that effect, though it should appear that the plaintiff had signed a receipt, and it may be said the receipt would be more satisfactory proof.[4]

So, if it should be necessary to prove the hand-writing of a person to an instrument not a party to the suit, it will not be necessary to call that person to prove that he signed the instrument; but it may be proved by others acquainted with his hand-writing.[5]

It is also a general rule, that hearsay evidence of a fact is not admissible.[6] To this rule there are some exceptions. Thus, hearsay evidence is admissible to prove a pedigree,[7] or the death of a person.[8]

Hearsay is often admitted as evidence as part of the *res gesta;* as, where it is necessary to inquire into the nature of a particular act, and

(1) Phil. Ev. 150. (2) Id. 151; 19 Johns. 345. (3) Phil. Ev. 167.
(4) Id. 169; 7 Cowen, 334. (5) Phil. Ev. 69, 170.
(6) Id. 173. (7) 8 Johns. 128; 5 Cowen, 237, 314. (8) 15 Johns. 226.

the intention of the person who did the act, proof of what the person said at the time of doing it, is admissible evidence for the purpose of showing its true character.[1]

The declarations of *deceased* persons have also been admitted in cases where they appear to have been made against their interest; as, entries in their books charging them with the receipt of money on account of a third person, or acknowledging the payment of money due to themselves.[2]

Entries in the books of a tradesman by his deceased clerk, who therein supplies proof of a charge against himself, have been admitted, on the same principle, to be evidence of the delivery of goods, or of other matter there stated within his own knowledge.[3]

The account books of a party, though the entries are made by himself, are in certain cases admissible in evidence. The general rule upon this subject is laid down in *Vosburgh* v. *Thayer*.[4] In that case, it appeared that Thayer sued Vosburgh before a justice, for butchers' meat furnished by him to Vosburgh and his family. It was proved by several witnesses that he had been in the daily practice of supplying them with meat during the period for which he claimed payment. It was proved by some of those who dealt with him, that he kept just and honest accounts. He then offered his books of account in evidence, it appearing that he had no clerk. The books were objected to, but admitted. In deciding this case, the court say, "the admission of books of account in evidence, under proper limitations and restrictions, is not calculated to excite alarm, or to produce injurious consequences. They are not evidence of money lent. This was so held in *Case* v. *Potter*,[5] because such transactions are not, in the usual course of business, matter of book account. They are not evidence in the case of a single charge, because there exists, in such case, no regular dealing between the parties. They ought not to be admitted, when there are several charges, unless a foundation is first laid for their admission, by proving that the party had no clerk; that some of the articles charged have been delivered; that the books produced are the account books of the party, and that he keeps fair and honest accounts, and this by those who have dealt and settled with him. Under these restrictions, from the necessity of the case, and the consideration that the party debited is shown to have reposed confidence by dealing with and being intrusted by the other party, they are evidence for the consideration of the jury. Testing

(1) Phil. Ev. 202. (2) Id. 191. (3) Id. 195. (4) 12 Johns. 461.
(5) 8 Johns. 212.

the proceeding in this case, by these rules, there is no ground for reversing the judgment."

In a suit by a shoemaker for work done in the line of his business, to the amount of $11.50, after the proof of the delivery of one pair of shoes and the mending of another pair, that the plaintiff kept honest and fair books, and had no clerk, it was held that the plaintiff's account books were competent evidence.[1]

In the case of a public officer, as a sheriff, deputy sheriff, justice of the peace, constable, &c., it is sufficient to prove by reputation, that he acts as a public officer, without producing his appointment.[2]

If a witness who has been sworn and examined on a former trial or action between the same parties, and where the point in issue was the same, is since dead, what he swore at the former trial may be given in evidence; but the words of the witness must be proved, not what is supposed to be the substance of his testimony. And the witness must be dead; his being out of the jurisdiction of the court will not be sufficient.[3] In such case, also, the testimony of a witness who cannot be found, after diligent inquiry, has been permitted to be proved, the same as in case of a witness since deceased.[4]

II. OF THE COMPETENCY OF WITNESSES.

The most formidable difficulty that presents itself to the justice, as well on a hearing by himself as on trial before a jury, is to determine upon the admission or rejection of testimony. This difficulty will discover itself in various shapes, and often in disguised forms. The intrinsic difficulty of the thing renders it next to impossible to lay down abstract rules that will be a guide in all cases. We will, therefore, next consider a few of the general rules in relation to the competency of witnesses.

When a witness appears, he must be regularly sworn, unless an objection be made to his *competency*. An exception to the *credibility* of a witness cannot exclude him from being sworn. The exception of kindred, for example, although it is a good cause of challenge against a juror, is not an objection to the competency of a witness; a father is a

(1) 11 Wend. 568. (2) 3 Johns. 431. (3) 6 Cowen, 162; Phil. Ev. 199, 200.
(4) See 1 Greenl. 163, and note.

competent witness for or against his son, or a son for or against his father. Such objections may affect the credibility, but do not affect the competency of a witness.[1]

Husband and wife, however, cannot be witnesses for or against each other, in any civil suit.[2]

The objections to the competency of witnesses are four-fold; 1st. For want of reason or understanding; 2d. Defect of religious principles; 3d. Infamy of character; and 4th. On the ground of interest.[3]

1st. Persons who have not the use of reason are, from their infirmity, utterly incapable of giving evidence, as persons insane, idiots and lunatics, under the influence of their malady.[4]

But lunatics and others, who are subject to temporary fits of insanity, may be witnesses in their lucid intervals, if they have sufficiently recovered their understanding.

A person born deaf and dumb is not on that account incompetent, but if he has sufficient understanding, may give evidence by signs, with the assistance of an interpreter.[5]

There is no precise age at which infants are excluded from being witnesses. Infants above fourteen are admissible the same as of full age. But under that age, their admissibility is regulated by their apparent sense and understanding of the nature and obligation of an oath.[6]

A witness, while in a state of intoxication, ought not to be sworn, nor be permitted to testify; and the justice may decide, from his own view, whether the witness is in such a situation that he ought not to be sworn, or admitted to testify.[7]

2d. Defect of religious principle. The proper test of a witness' competency, on the ground of his religious principles, is, "whether he believes in the existence of a God, who will punish him if he swears falsely."[8]

All persons who believe in the existence of a God, and a future state, though they disbelieve in a punishment hereafter for crimes committed here, are competent witnesses.[9]

A witness who believes in a God, and in punishment by him in this life only, is a competent witness. It is not necessary, in order to render a man a competent witness, that he should believe anything more

(1) Phil. Ev. 13. (2) Id. 63, 64. (3) Id. 13.
(4) 10 Johns. 362; 16 Johns. 143. (5) Phil. Ev. 14.
(6) Id. 14, 16. (7) 16 Johns. 143. (8) 2 Cowen, 432, and note.
(9) Breese, 29.

than that there is a Supreme Being, and that he will reward and punish either in this life, or a future life. Nothing but the belief of a God, and that he will reward and punish us according to our deserts, is necessary to qualify a man to take an oath.[1]

If a witness believe that he will be punished by his God, even in this world, if he swears falsely, there is a binding tie upon the conscience of the witness, and he must be sworn; and the strength or weakness of that tie is only proper to be taken into consideration, in deciding upon the degree of credit which is to be given to his testimony. It is a question as to his credibility and not to his competency.[2]

The common law recognizes any mode of swearing a witness, that he believes to be binding on his conscience;[3] and our statute, it seems, does not vary the common law in this respect.[4] Therefore, a witness may be sworn according to the form which he holds to be most solemn, and which is sanctified by the usage of the country, or of the sect to which he belongs. A Jew is sworn on the Pentateuch, a Mahomedan on the Koran, &c.[5]

3d. Incompetency on account of infamy of character.—Each and every person, who may have been convicted of the crime of rape, kidnapping, wilful and corrupt perjury, or subornation of perjury, arson, burglary, robbery, sodomy, or the crime against nature, incest, larceny, forgery, counterfeiting, or bigamy, are deemed infamous, and are forever rendered incapable of giving testimony.[6] The competency of a witness may, no doubt, be restored, however, by executive pardon.[7]

A conviction of a person for a crime, so as to exclude him from being a witness, cannot, in any case be proved by parol; and the witness himself is not to be questioned respecting it.[8]

4. Incompetency on account of interest.—It is a general rule that all persons interested in the event of a suit are to be excluded from giving evidence in favor of the party to which their interest inclines them.[9]

In Van Nuys *v.* Terhune,[10] the court lay down the following rule: "That if a witness will not gain or lose by the event of the cause, or

(1) 2 Cowen, 572, *note;* 1 Starkie Ev. 93.
(2) 2 Cowen, 483, *note.*
(3) 2 Gil. 554.
(4) Breese, 28.
(5) 1 Starkie Ev. 23.
(6) Rev. Stat. 182, Sec. 174.
(7) See Const. Ill., Art. IV, Sec. 8; see also 1 Stark. Ev. 99, and authorities cited, by which it is held, that a pardon restores competency in all cases where the disability is a consequence of the judgment and not a part of it.
(8) Phil. Ev. 24; 13 Johns. 82; 14 Id. 182.
(9) Phil. Ev. 34.
(10) 3 Johns. Cas. 82.

if the verdict cannot be given in evidence for or against him in another suit, the objection goes to his credit only, and not to his competency."

When a witness is interested in any part of the demand of the party, he cannot be permitted to testify as to another part.[1]

If a witness have a direct interest, however small, in the event of a cause, he cannot be permitted to testify in favor of such interest; as, if he has given a bond of indemnity to the plaintiff against the costs of the suit.[2]

But a remote or contingent interest, goes only to the credit of a witness, not to his competency;[3] as, in a suit for a penalty which is to be applied to the support of the poor of the town of which the witness is a taxable inhabitant, the interest is too remote and contingent.[4]

An interest in the question alone will not render a witness incompetent, but goes to his credit only; as, when the witness has a cause depending upon the same question,[5] or is a co-trespasser.[6]

A person interested in the event, is competent when called to give evidence contrary to his interest.[7]

If a witness stands in that situation, that which way soever the suit may terminate, he will be equally liable, and to the same extent to the losing party, he is admissible.[8]

A witness liable to lose by the determination of the cause against the party calling him, is yet competent if he be fully secured and indemnified against the loss.[9]

Neither a party to a suit on record, nor a party in interest when a suit is in the name of a third person as a trustee, can be compelled to testify without his consent.[10]

One defendant cannot regularly be a witness for his co-defendant; but in actions for torts, if no evidence has been produced against one defendant, he is entitled to his discharge as soon as the plaintiff has closed his case, and then may give evidence for the others. But if there is any, even the slightest, evidence against him, he cannot be thus discharged.[11] But in actions on contracts it is otherwise.

As a party on record is not a competent witness, so neither is the husband or wife of the party competent to give evidence either for or

(1) 4 Johns. 293.
(2) 11 Johns. 57.
(3) 5 Johns. 256; 9 Id. 219.
(4) 12 Johns. 286; 1 Id. 486.
(5) 5 Johns. 256.
(6) 7 Cowen, 344.
(7) 1 Johns. 159; 7 Cowen, 752.
(8) 16 Johns. 89.
(9) 7 Cowen, 358.
(10) 7 Cowen, 174.
(11) Phil. Ev. 61; 14 Johns. 119; 1 Wend. 119.

against the party. They cannot be witnesses for each other, because their interests are absolutely the same; and they cannot be witnesses against each other, because it is contrary to the legal policy of marriage.[1]

As the parties to a suit cannot be compelled to give evidence, statements or representations made by them against their interest, must be evidence against them, and in many cases they will be the strongest evidence. The admissions of a party to the suit against his interest are evidence in favor of the other side, whether made by the real party on the record, or by a nominal party who sues as trustee for the benefit of another, or whether by the party who is really interested in the suit, though not named on the record.[2]

But where the plaintiff previous to the suit had assigned his interest in the debt or *chose in action*, of which the defendant had notice, evidence of *confessions* afterwards made by the plaintiff, as to the demands of the defendant against him, and which might impair the interest so assigned, or prejudice the rights of the assignee, for whose benefit the suit is brought, is inadmissible.[3]

When the confession or declaration of a party is given in evidence, the whole must be taken together.[4]

Thus, if a defendant in an action for money had and received, say that he had received the money, but that it was his due, it amounts to a denial of the plaintiff's demand.[5]

The confession of a defendant that he had purchased goods, but that he had paid for them, is not sufficient to entitle the plaintiff to recover.[6]

A witness, however, after being sworn in chief, may be examined as to his interest, and when a witness in any stage of his examination discovers himself to be interested in favor of the party calling him, his testimony may be rejected.[7]

Whatever interest a witness may have had, if he be divested of it by release or payment, or by any other means, when he is ready to be sworn, there is no objection to his competency.[8]

But a release after the examination in chief of an interested witness, is too late to render his testimony competent.[9]

An actual release is in some cases unnecessary, and the witness, though interested, will be admitted without a release. As, when the

(1) Phil. Ev. 63, 64.
(2) Phil. Ev. 71, 72.
(3) 20 Johns. 142.
(4) 3 Johns. 427; 10 Id. 38; 9 Id. 141.
(5) 3 Johns. 427.
(6) 15 Johns. 329.
(7) 6 Johns. 523.
(8) Phil. Ev. 97; 8 Johns. 377; 1 Johns. Cas. 270.
(9) 14 Johns. 378; 1 Caine, 14.

witness offers to release his interest, but the other party refuses to accept it, in that case the evidence of the witness may be received; or, if the party on whose side the witness is interested, make an offer to remove all interest, by a release or otherwise, and the witness refuses, that will not deprive the party of his testimony.[1]

III. OF THE EXAMINATION OF WITNESSES.

When a witness is called, he is to be sworn in chief, unless an objection is made to his competency,[2] in which case, the party objecting proves his incompetency; or, if the objection be on account of interest, the witness himself may be examined on his *voir dire*, as before noticed;[3] but latterly, it is not usual to examine a witness on his *voir dire*, but to permit him to be sworn in chief, after which he may be examined as to his interest.[4]

A witness is not to be compelled to answer any question which will render him infamous or disgraced.[5] But this is a personal privilege only, and the witness may, if he see proper, waive it, and answer the question; but the court should inform him of his privilege. Thus, in an action for a breach of promise of marriage, a witness may be asked if he had had any improper connection with the plaintiff; and the witness may, if he see proper, answer the question, but he is not bound to answer it.[6]

A witness can depose to such facts only as are within his own recollection, but to assist his memory, he may use a written entry or memorandum, or the copy of a memorandum; and if, afterwards, he can swear positively to the truth of the fact there stated, such evidence will be sufficient.[7]

In general, the opinion of a witness is not evidence; he must speak to facts. But in questions of science, or trade, or others of the same kind, persons of skill may speak not only as to facts, but are also allowed to give their opinion in evidence. Evidence of character is founded on opinion.[8]

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(1) Phil. Ev. 99.
(2) See ante, p. 117.
(3) Ante, p. 105.
(4) Phil. Ev. 204.
(5) Phil. Ev. 206; 13 Johns. 82.
(6) 6 Cowen, 254.
(7) Phil. Ev. 209; 2 Caine, 129.
(8) Phil. Ev. 209.

The party against whom a witness is called, may disprove the acts stated by him, or may impeach his credibility by examining other witnesses as to his general character, but they will not be allowed to speak to particular facts or parts of his conduct. The regular mode is to inquire whether they have the means of knowing the witness' general character as to truth and veracity, and whether, from such knowledge, they would believe him on his oath.[1] The knowledge as to a witness' character, must be derived from his general reputation, and not what an individual knows of him.

The credit of a witness may also be impeached, by proof that he has made statements out of court on the same subject, contrary to what he swears at the trial. In answer to such evidence, the party calling the witness, may show that he has affirmed the same thing before, on other occasions, and that he is still consistent with himself.[2]

But evidence is inadmissible to support the testimony of a witness, by showing his good character, or the consistency between his former declarations and his evidence on the trial, unless he is first impeached.[3]

A party will not be permitted to produce general evidence, to discredit his own witness; that is, he will not be allowed to prove that his character is bad, for the purpose of showing that he is unworthy of credit.[4] But if a witness unexpectedly give evidence against the party calling him, another witness may be called to prove the facts otherwise.[5]

The competency of witnesses, and the inadmissibility of evidence, are questions to be decided by the justice alone. In the higher courts, a bill of exceptions may be taken to the opinion of the court on questions of this kind. But this is a proceeding not applicable to a justice's court.

IV. OF WRITTEN EVIDENCE.

1. *Of Public and Private Writings.*

Writings are either public or private. Some public writings are of record; others, not of record.[6]

Public writings of record are acts of the legislature, and of courts of justice which are courts of record.

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(1) Phil. Ev. 212. (2) Id. 213. (3) 5 Cowen, 314.
(4) 7 Cowen, 238. (5) Phil. Ev. 213. (6) Id. 218.

Acts of the legislature are of two kinds: public acts, which relate to the whole State at large, and private acts, which relate to particular classes of men, or to certain individuals.[1]

The general rule is, that public acts of the legislature are to be taken notice of judicially, by courts of law, without being formally set forth; but private acts are not regarded by the judges, unless formally shown and pleaded.[2]

Copies of records in courts of justice are of two kinds: under seal, and not under seal. Those under seal are called exemplifications, and are of higher credit than any sworn copy.[3]

Copies of records not under seal are also of two kinds: sworn copies, and office copies.

Copies of records may be proved by a witness who has compared the copy with the original, or who has examined the copy while another person read the original, and these are called sworn copies.[4]

Office copies are such as are authenticated, under the hand of an officer, or person intrusted for that purpose, as the clerk of the court.[5]

2. *Of the Proof of Private Writings.*

The execution of every instrument to which there is a subscribing witness, whether under seal or not, ought to be proved by the subscribing witness, if he can be procured, and is capable of being examined.[6]

And this rule is so strictly observed that a deed executed by a third person not a party to the suit to which there is a subscribing witness, cannot be proved by the party executing it, nor by the party to whom it is given, but the subscribing witness should be called.[7]

So in the case of a deed or instrument under seal, to which there is a subscribing witness, proof of the confession of the party that he executed the deed is not sufficient, but the subscribing witness must be produced, or if he cannot be, his hand-writing must be proved.[8]

But as to instruments not under seal, the rule is otherwise; in that case the acknowledgement of the party is sufficient.[9] If a written instrument is attested, but none of the witnesses are capable of being examined, the course then is to prove an attesting witness' hand-writing, and this will be a sufficient proof of the execution, without proving the hand-writing of the party;[10] as where the attesting witness is dead,[11] or blind,

(1) Phil. Ev. 219. (2) Id. 220. (3) Id. 289. (4) Id. 291.
(5) Id. 294. (6) Id. 356. (7) Id. 357; 9 Johns. 236.
(8) 3 Johns. 477. (9) 2 Johns. 451; 16 Id. 201.
(10) 4 Johns. 461. (11) 1 Johns. Cas. 230; 4 Johns. 461.

or incompetent to give evidence, either from insanity or from infamy of character, or from interest, or when the subscribing witness is out of the State or the jurisdiction of the court, which, in a justice's court, is when the witness is not in the same or next adjoining county,[1] or where he cannot be found after strict and diligent inquiry.[2]

If there are two or more subscribing witnesses, the calling of one to prove the instrument is sufficient; or if the absence of all of them be accounted for, proof of the hand-writing of one of them, or of the party signing the instrument, will be sufficient.[3]

But if there are two or more subscribing witnesses, it is not enough to prove one of them dead or out of the jurisdiction of the court, and then prove his hand-writing with that of the party, but the absence of all the subscribing witnesses must be accounted for.[4]

But in cases where there is no subscribing witness, or the subscribing witness denies having any knowledge of the execution;[5] or where the name of a fictitious person is inserted; or where the attesting witness was interested at the time of the execution, and continues so at the time of the trial; or where the person who has put his name as a subscribing witness, did so without the knowledge or consent of the parties; or if, after diligent inquiry, nothing can be heard of the subscribing witness, so that he can neither be produced himself, nor his hand-writing proved; or if, at the time of the execution, he was of such an infamous character as to make him incompetent to give evidence—in these cases the instrument may be proved by proving the hand-writing of the party, or by any person present at the execution who did not subscribe it as a witness, or by proof of the admission of the party that he executed the instrument.[6]

3. *Of Proof of Hand-writing.*

The simplest and most obvious proof of hand-writing is the testimony of a witness who saw the paper or signature actually written. But a great variety of cases must continually occur where such a direct kind of evidence cannot possibly be produced.[7]

The hand-writing of a person may therefore be sufficiently proved by a witness who is previously acquainted with his hand-writing, and who testifies that he believes the hand-writing in question to be his. This previous acquaintance with the hand-writing of a person may be

(1) 12 Johns. 188. (2) Phil. Ev. 362. (4) 11 Johns. 64; 12 Id. 188.
(4) 5 Cowen, 383. (5) 2 Johns. 451. (6) Phil. Ev. 361–4.
(7) Id. 364.

derived either from having seen the person write, or from papers received in the course of business, which there is sufficient reason to believe were written by the party, as letters, notes which have been paid, &c.[1]

Hand-writing cannot be proved by comparing the paper in dispute with other papers acknowledged to be genuine, either by a witness or by the court or jury.[2]

4. *Of Proving Proceedings before a Justice.*

The proceedings and judgment in a justice's court, are not strictly and technically a record; yet the material parts are in writing, and cannot be proved by parol.[3]

A judgment of an inferior court, not of record, is usually established by the production of the book containing the minutes of the proceedings of the court, from the proper place of deposit, proved to be such by oral testimony.[4] In order to entitle a transcript of a judgment of a justice of the peace of another State, to be received in evidence in this State, it must be shown, that by the laws of the State where the judgment was rendered, the justice had jurisdiction over the subject-matter upon which he attempted to adjudicate.[5]

V. OF PAROL EVIDENCE TO EXPLAIN, VARY, OR CONTRADICT WRITTEN INSTRUMENTS.

Parol evidence is not admissible to explain an ambiguity which appears on the face of an instrument, but it can be explained only by collecting the general intention from other parts of the writing, or by a reference to some event, or some other writing, or some medium of explanation adverted to in the instrument. If it be incapable of being explained in this way, it will be void, for uncertainty. The declaration of the parties as to their intention, is inadmissible.[6]

But where there is no ambiguity on the face of an instrument, but a doubt is produced by extrinsic evidence, or some collateral matter out of the instrument, as, if it should appear that there were two persons of the same name, as is mentioned in the instrument, parol

(1) Phil. Ev. 364; 2 Johns. Cas. 211; 19 Johns. 134.
(2) 2 Johns. Cas. 211; Phil. Ev. 371; 13 Johns. 238.
(3) 11 Johns. 166.
(4) 1 Stark. 256.
(5) 1 Scam. 558.
(6) Phil. Ev. 416; 11 Johns. 201.

evidence is admissible to explain the ambiguity, and show which person was intended.[1]

It is a general rule that written agreements, whether specialties or simple contracts, and whether within or without the statute of frauds, are not to be contradicted, varied, or materially affected by parol testimony;[2] as, to show that an agreement, absolute on its face, was intended to be upon condition,[3] to show a mistake as to the time of payment or other matter.[4]

The above rule, however, does not exclude parol evidence of *fraud*, or the *want* or *failure* of consideration, or the *enlargement* of *the time for performance*, or *a waiver* of *the performance of a written simple contract*,[5] or of a bond.[6]

But a receipt, although absolute in its terms, and expressed to be in full, is not conclusive, and parol evidence is admissible to show a mistake in it, or to explain or contradict it.[7] So, parol evidence may be received to impeach the consideration of a note, but not to vary its terms.[8] But parol evidence cannot be given of the contents of a written instrument or record, in the power of the party to produce.[9]

Parol evidence may be introduced to show the understanding with which a note was indorsed, without violating the rule that a written contract cannot be contradicted by parol proof.[10]

Parol testimony may be given of the time of filing a deed for record.[11]

The law presumes that an instrument was executed the day it bears date; but parol testimony is admissible to show that it was, in fact, executed on a different day.[12]

VI. OF CONFIDENTIAL AND PRIVILEGED COMMUNICATIONS.

A counsel or attorney is not to be permitted to testify as to confidential communications made to him by his client. This prohibition extends

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(1) Phil. Ev. 416; 11 Johns. 201.
(2) 1 Cowen, 249; 1 Johns, 139; 3 Id. 68; 12 Id. 427–488. (3) 1 Cowen, 249.
(4) 8 Johns. 189, 375; 18 Id. 45. Parol evidence may be admitted to show that an absolute deed, whatever may be its covenants, was intended as a mortgage, or mere security for the payment of a debt, and the grantor can have relief in equity. 3 Gil. 394.
(5) 1 Cowen, 250. (6) 3 Johns. 528.
(7) 7 Cowen, 334; 5 Johns. 58; 1 Johns. Cas. 145; 2 Johns. 378; 3 Id. 319; 8 Id. 389; 9 Id. 310.
(8) 12 Ill. 287. (9) Breese, 232; 2 Scam. 42. (10) 11 Ill. 575.
(11) 1 Gil. 575. (12) 133 Ill. 13.

not only to the suit in which the communication is made, but to any other suit, and to any period of time.[1]

To entitle communications between individuals to be considered as confidential and privileged, the relation of client and attorney must exist, the party must consult the attorney in a matter in which his private interest is concerned, and make the statements to him, with the view to enable the attorney correctly to understand his cause.[2]

Where an attorney is consulted merely as a friend, and where neither he nor the persons communicating with him, supposes that the relation of attorney and client exists between them, the communications will not be considered as privileged.[3]

(1) Phil. Ev. 103; 1 Greenl. Ev. Sec. 237. (2) 3 Gil. 299. (3) 14 Ill. 89.

CHAPTER X.

OF THE DOCKET, AND FORMS OF DOCKET ENTRIES.

I. OF THE DOCKET.
II. OF FORMS OF DOCKET ENTRIES.

1. *Where the Parties appear, and the Trial is by Jury.*
2. *Where Suit is commenced by Warrant, the Execution sworn out and returned not satisfied, and ca. sa. issued against the Body.*
3. *Where Suit is brought on Promissory Note placed in the hands of the Justice for collection, and the Parties do not appear.*
4. *Where the Parties agree to have a Difference decided by the Justice without process.*
5. *Where Judgment is by Confession.*
6. *Where Proceeding is against Garnishee after Execution is returned, "no property found."*
7. *Where Administrators or Executors are Parties to a Suit.*
8. *Minutes of Conviction of Witness attached for Non-attendance.*
9. *Memorandum to be entered where Cause is appealed.*
10. *Entry of Acknowledgement of Chattel Mortgage.*

I. OF DOCKET ENTRIES.

By Rev. Stat. 316, Sec. 20, it is enacted, that "It shall be the duty of every justice, whenever a suit shall be commenced before him, to record in a book kept for that purpose, the names of the parties, the amount and nature of the debt sued for, the date and description of the process issued, and the name of the officer to whom such process shall be

delivered, and throughout the whole of the proceeedings in any suit, it shall be his duty whenever any process shall be issued or returned, or any order made, or judgment rendered, to make a written memorandum of the same, in the same book, and to file and safely keep all papers given him in charge."

The book in which the justice records his proceedings, as required by the foregoing section, is called his docket. The docket entry of a justice is not technically a record, but it has all the effect of a record, and should be made in language as explicit and certain as to matters of substance, as a judgment of a court of record. It should clearly appear from the docket itself, who the parties are, plaintiff and defendant, and in whose favor and against whom the judgment was rendered.[1]

If strict attention is paid to the requirements of the statute, as contained in the section hereinbefore given, there can be no difficulty in determining what the entries upon the docket should be in each particular case. The requirements of the statute may be thus arranged:

1st. The names of the parties.

2d. The amount and nature of the debt sued for.

3d. The date and description of the process issued, and the name of the officer to whom such process shall be delivered.

The justice will also note the return of the original process, and enter every subsequent process issued; also note the return thereof.

He will note every material incident occurring in the progress of the trial, and make a memorandum of every order he shall make, and of the judgment he may render. All of which matters should be stated in the order of time in which they transpired. The justice is not bound, however, and it is held that he ought not to state on his docket the evidence that was given by witnesses on the trial, nor what testimony was overruled, or what the parties said or urged before him.[2] A justice may, after his docket is made up, amend it according to the truth,[3] and correct mere clerical errors, or an omission or mistake in the costs.[4]

A few forms of entries will here be given to illustrate the foregoing directions, which may serve to some extent as a guide for the justice in civil proceedings. Further illustrations, in case of summary proceed-

(1) 1 Dougl. Mich. R. 503.

(2) Wright's R. 418. This has no reference, however, to the statements of the parties before the commencement of the trial, necessary to inform the court and the opposite party of the plaintiff's claim, or the defendant's ground of defence, for it is proper, as we have before seen, (Ante, p. 61,) that these should be noted upon the docket. But it has reference to the arguments or summing up of the parties, at the conclusion, or during the progress of the trial.

(3) 1 Green, 195.

(4) Swan's Tr. 3d Ed. 116.

ings, and the like, will be found in other parts of this work, which will readily be found by reference to the index, under the head of "Docket Entries."

II FORMS OF DOCKET ENTRIES.

1. *Where Parties appear, and the Trial is by Jury.*

STATE OF ILLINOIS, }
Lake COUNTY. }

In Justice's Court.—Before William C. Newman, Justice.

A. B. } Plaintiff's Demand, $10.00.
vs. } For property wrongfully taken and converted by the
C. D. } Defendant.

1855—September 1st.—Summons issued, returnable the 6th of September, instant, at one o'clock, P. M., and delivered to Chauncey Buell, constable, to serve. One subpœna issued on the part of the plaintiff. One subpœna issued on the part of the defendant; both delivered to constable Buell to serve.

September 4th.—Summons returned by constable Buell. Personally served by reading to the defendant, the 3rd day of September, 1855. Constable's fees, 30 cents. The subpœnas of the plaintiff and defendant likewise returned by constable Buell. Served on the persons therein named. Constable's fees, 35 cents.

September 6th, 10 o'clock, P. M.—Parties appear; Plaintiff claims of the defendant *Ten* dollars, for a quantity of Hay, the property of the plaintiff, wrongfully taken and converted by the defendant. Defendant denies the taking of the property, and demands that the cause be tried by a jury, and pays the fees required by law. Venire issued, directed to any constable, commanding him to summon a jury of six men. Cause adjourned to September, 7th instant,

PLAINTIFF'S COSTS.

Justice's Fees.

Summons,	18¾
Docketing suit,	12½
One subpœna,	18¾
Swearing one witness,	6¼
Entering judgment,	25

Constable's Fees.

On summons,	30
On subpœna,	17½
Two witness' fees,	1 00

DEFENDANT'S COSTS.

Justice's Fees.

One subpœna,	18¾
" venire,	25
Swearing one witness,	6¼
" jury,	37½
" constable,	6¼

Constable's Fees.

On subpœna,	17½
On venire,	50
Attending trial,	25
One witness' fee,	50
Jury fee,	1 50

at two o'clock, P. M., to obtain a jury. Venire delivered to constable Buell to serve.

September 7th, 2 o'clock, P. M.—Parties reappear. Venire returned by constable Buell, with the following names of the jury: A. B., C. D., E. F., G. H., I. J. and K. L., who, upon being called, appeared, and were sworn to try the cause.

John Doe and Richard Roe, were summoned and attended, and were sworn as witnesses on the part of the plaintiff.

John Smith, summoned and attended, and was sworn as a witness on the part of the defendant. All of whom claim fees.

After hearing the testimony, the jury retire, under the charge of constable Buell, sworn for that purpose. The jury return into court, and say that they find for the plaintiff, and assess his damages at ten dollars. It is, therefore, considered by the court, that the said plaintiff have and recover of the said defendant the sum of *ten dollars*, for his damages, with costs of suit herein, taxed at ——— dollars and ——— cents.

WILLIAM C. NEWMAN.

2. *Where suit is commenced by Warrant, the Execution sworn out and returned not satisfied, and ca. sa. issued against the Body.*

STATE OF ILLINOIS, }
Lake COUNTY. }

In Justice's Court.—Before Harrison P. Nelson, Justice.

A. B. }
vs. } Plaintiff's demand, $75.00.
C. D. } On promissory note.

1855—April 2d.—This day comes the said plaintiff, who, having made oath that there is danger that his demand against C. D. will be lost, unless the said defendant be held to bail, and states under oath the cause of such danger, and it appearing satisfactorily that there is reason to apprehend such loss, a warrant is issued, returnable in case of special bail, April 7th, instant, at 10 o'clock, A. M., and delivered to Charles Haynes, constable, to execute. Defendant brought into court forthwith, by constable Haynes, and warrant returned executed accordingly, April 2d, 1855. Constable's fees, 35 cents. Plaintiff claims

PLAINTIFF'S COSTS.

Justice's Fees.

One oath,	6¼
Warrant,	25
Docketing suit,	12½
Entering judgment,	25
Oath and execution,	31
Oath and ca. sa.,	25

Constable's Fees.

On summons,	35
Serving and returning execution,	50

of the defendant, $72 10, on promissory note, drawn by said defendant, in favor of John Tyler, and by him assigned to said plaintiff, for $70, with interest, and bearing date October 1st, 1854, and due 90 days after date.

Defendant says he cannot deny the plaintiff's demand. The said promissory note is, therefore, offered in evidence by the plaintiff.

Whereupon, it is considered by the court, that the said plaintiff have and recover of the said defendant, the sum of *seventy-two dollars* and *ten cents*, for his demand against the said defendant, with costs of suit herein, taxed at *one dollar* and *three* and *three-fourths cents*.

HARRISON P. NEWMAN.

April 2d, 1855. — Execution sworn out by plaintiff, and delivered to constable Buell, to execute.

June 12th, 1855.—Execution returned by constable Buell. "No property found."

June 15th, 1855.—Ca. Sa. issued on oath of plaintiff, and delivered to constable Buell, to execute.

3. *Where Suit is brought on Promissory Note placed in the hands of the Justice for Collection, and the Parties do not appear.*

STATE OF ILLINOIS, }
Lake COUNTY. }

In Justice's Court—Before Joseph L. Williams, Justice.

A. B. }
vs. } Demand of plaintiff, $52.00, on promissory note.
C. D. }

1855—April 2nd.—Summons issued, returnable the 7th April instant, at 10 o'clock, A. M., and delivered to Parnell Munson, constable, to serve.

April 5th.—Summons returned by constable Munson. Personally served, by reading to the defendant, the 4th day of April, 1855. Constable's fees, 30 cents.

April 7th, 10 o'clock, A. M.—Demand of the plaintiff being upon promissory note left for collection, which is drawn by the defendant in favor of the said plaintiff, for fifty

PLAINTIFF'S COSTS.

Justice's Fees.

Summons.....18¾
Docketing suit.....12½
Entering judgment.....25

Constable's Fees.

On summons.....30

April 27th, 1855. Execution issued, and delivered to constable Munson to serve.

July 6th, 1855. Execution returned by constable Munson satisfied, and money paid to plaintiff.

dollars, with interest, dated October 6th, 1854, and due thirty days after date. The defendant being called, comes not, but fails to appear and show cause why judgment should not be rendered. Whereupon it is considered by the court, that the said plaintiff have and recover of the said defendant the sum of *fifty-one dollars* and *fifty cents*, for his demand against the said defendant, and costs of suit herein, taxed at *eighty-seven* and *a half cents*. JOSEPH L. WILLIAMS.

In case of suit upon notes placed in the hands of the justice for collection, the cause should not be dismissed, although the plaintiff may fail to appear.[1] And in such case, should the defendant set up any defense to the note, it will be proper for the justice to continue the cause to another day, if he should deem it essential to justice so to do, and notify the plaintiff thereof.

In the three preceding examples, the costs attending the suit have been set down in the margin, for the purpose of illustrating the manner proper to be observed in taxing costs, which will doubtless suffice as a precedent for all cases.

4. *Where the Parties agree to have a Difference decided by the Justice without process.*

STATE OF ILLINOIS, }
Lake COUNTY. }

In Justice's Court—Before Amos S. Waterman, Justice.

A. B. }
vs. } Demand of plaintiff, $50.00, for goods sold and delivered.
C. D. }

1855—October 2d.—This day comes the said A. B. and C. D., and agree to have the matter in difference between them decided by me without process.

Plaintiff claims of the defendant fifty dollars for goods sold and delivered, and files a bill of items.

Defendant denies the plaintiff's account, and claims that the same, if correct, has been fully paid.

E. F. and G. H. sworn as witnesses on the part of the plaintiff, and L. M. sworn on the part of the defendant.

(1) Rev. Stat. 318, Sec. 24.

Upon hearing the evidence in the cause, it is considered by the court, that the said plaintiff have and recover of the said defendant the sum of *twenty-five* dollars, for his demand against the said defendant, with costs of suit herein, taxed at —— cents.

AMOS S. WATERMAN.

5. *Where Judgment is by Confession.*

STATE OF ILLINOIS, }
Lake COUNTY. }

In Justice's Court—Before John L. Turner, Justice.

A. B. } Plaintiff's demand, $25.00, for property sold and
vs. } delivered.
C. D. }

1855—September 3d.—This day comes the said A. B. and C. D. The said C. D. waives process, and enters his appearance herein, and confesses that he is indebted to the said A. B. in the sum of twenty-five dollars, and the said parties request that judgment may be rendered accordingly for that amount. Whereupon, it is considered by the court, that the said plaintiff have and recover of the said defendant, the sum of *twenty-five dollars*, for his demand against the said defendant, and the costs of suit herein, taxed at —— cents.

JOHN L. TURNER.

6. *Where proceeding is against Garnishee, after execution is returned "no property found."*

STATE OF ILLINOIS, }
Lake COUNTY. }

In Justice's Court—Before Hiram Hugunin, Justice.

A. B. }
vs. } Demand, $50.00.
C. D. } Proceeding by Garnishee summons.
Garnishee of E. F. }

1855—September 3d.—Garnishee summons issued on affidavit of the said A. B., return-

able forthwith, and delivered to Norman Brown, constable, to serve. Summons returned by constable Brown at this date, personally served by reading to the said C. D. Constable's fees, 35 cents. Whereas judgment was rendered by me on the 10th day of *April, A.D.* 1855, in favor of the above A. B., and against E. F., for the sum of *forty-eight dollars* debt, and *one dollar* and *fifty cents*, costs of suit; and on the 10th day of *July, A.D.* 1855, an execution was returned by Horace Hinckley, constable, "no property found." The above named C. D., on examination on oath, as garnishee, testifies, that he was and still is indebted to the said E. F., in the sum of fifty dollars. It is therefore considered by the court, that the plaintiff have and recover of the said C. D., as garnishee of the said E. F., the sum of —— dollars and —— cents, being the amount of judgment, costs and interest in the proceedings aforesaid, together with the costs herein, taxed at ——.

HIRAM HUGUNIN.

7. *Where Administrators or Executors are Parties to a Suit.*

STATE OF ILLINOIS, }
Lake COUNTY. }

In Justice's Court—Before L. M., Justice.

A. B. administrator of the Estate of C. D., deceased, *vs.* E. F. and G. H.	Demand, $20.00, for property purchased at administrator's sale.

(*The entries will then follow as in other cases, according to the facts.*)

Where an executor is a party, he will be described thus: "A. B., executor of the last will and testament of C. D., deceased." When executors or administrators are defendants, they will, of course, be described in the same manner as when plaintiffs.

8. *Minutes of Conviction of Witness attached for Non-attendance.*

STATE OF ILLINOIS, }
—— COUNTY, } *ss.*

Be it remembered that on the — day of —, 18—, John Doe is convicted before me, E. F., a justice of the peace of said county,

for his non-attendance as a witness to testify in a suit depending before me, wherein A. B. is plaintiff, and C. D. is defendant, it having been made to appear to me that he was duly subpœnaed to attend as a witness in said suit, and the said John Doe not having purged himself when called upon by me to show cause why he should not be fined for the said contempt; I do, therefore, adjudge and determine that, for the said contempt the said John Doe pay a fine of five dollars, and that he be imprisoned in the common jail of said county until he pay the fine aforesaid, or until he be duly discharged according to law.

In witness whereof, I have hereunto set my hand and seal this — day of —, 18—. E. F. [L. S.]

9. *Memorandum to be entered where a Cause is appealed.*

When a cause is appealed, the following memorandum should be made upon the docket:

August 10, 1855. The above named defendant, with *Alvin Marsh* as his security, filed his bond for an appeal to the *Circuit* court, which bond was approved by me, and appeal granted.

August 12, 1855. Bond, transcript, and all the papers in the case, this day filed in the office of the Clerk of the *Circuit* court.

AMOS S. WATERMAN, *J. P.*

11. *Entry of Acknowledgment of Chattel Mortgage.*

A. B.
to
C. D.

Mortgage of (here describe the property,) acknowledged this —— day —— of ——, 18—.

The name of the mortgagor will be inserted in place of A. B., and the name of the mortgagee in place of C. D.[1]

(1) Rev. Stat. 9, Sec. 2.

CHAPTER XI.

OF JUDGMENT, COSTS, AND FILING TRANSCRIPT.

I. OF JUDGMENTS.
II. OF COSTS.
III. OF FILING TRANSCRIPT.

I. OF JUDGMENTS.

A judgment is the decision or sentence of the law, given by a court of justice, or other competent tribunal, as the result of proceedings instituted therein, for the redress of an injury.

The language of judgments, therefore, is not that "it is decreed" or "resolved" by the court; but "it is considered" (consideratum est per curiam) that the plaintiff recover his debt, damages, or possession, as the case may require, or that the defendant do go without day.[1] This implies that the judgment is not so much the decision of the court as the sentence of the law pronounced by the court after due deliberation and inquiry.[2] To be valid, a judicial judgment must be given by a competent tribunal, at a time and place duly appointed, in comformity to law. A judgment would be null if the justice had not jurisdiction of the matter;[3] or if, having such jurisdiction, he exercised it when there was no court held, or out of his district; or if he rendered judgment before the cause was prepared for a hearing. The judgment must confine itself to the question raised before the court, and cannot extend beyond it.[4]

There are four kinds of judgments in civil cases, namely: 1. When the facts are admitted by the parties, but the law is disputed; as in

(1) 1 Bouv. L. D. title "judgment." (2) 3 Bl. Com. 395. (3) See ante, p. 29; 4 Scam. 371.
(4) 1 Bouv. L. D. title "judgment."

case of judgment upon demurrer. 2. When the law is presumed to be admitted, but the facts disputed; as in case of judgment upon verdict. 3. When both the law and the facts are admitted by confession; as in case of *coynovit actionem*, (a confession or acknowledgment of the action) on the part of the defendant; or a *nolle prosequi* (proceed no further) on the part of the plaintiff. 4. By default of either party in the course of legal proceedings. But under our statute, where the defendant fails to appear, it will not be taken as a confession of the plaintiff's demand. The plaintiff is nevertheless bound to prove his demand the same as if the defendant had appeared and denied the same.[1]

All these species of judgments, before mentioned, are either *interlocutory* or *final*. *Interlocutory* judgments are such as are given in in the middle of a cause upon some plea, proceeding, or default which is only intermediate, and does not finally determine or complete the suit. Of this nature are all judgments for the plaintiff upon pleas in abatement of the suit or action; in which it is considered by the court, that the defendant do answer over, *respondeat ouster;* that is, put in a more substantial plea. It is easy to observe that the judgment here given is not final, but merely interlocutory; for there are afterwards further proceedings to be had, when the defendant has put in a better answer.[2] *Final* judgments are such as at once put an end to the action, by declaring that the plaintiff has either entitled himself, or has not, to recover the remedy he sues for.[3]

The power of the justice in relation to rendering judgment, is a matter of statutory regulation, and has no doubt been already sufficiently recited or referred to in different portions of the preceding pages, to give the justice a full and fair idea upon this subject, should he not have already gained a sufficient knowledge in relation thereto from the statute itself. The following general suggestions, may therefore suffice in closing this division of the present chapter.

Nothing will be presumed against a judgment, and it will be regarded as right, until the contrary appears.[4]

A judgment against one member of a firm, for a debt due by the firm, is a bar to a recovery against the other members.[5]

A party that has been compelled to pay money by compulsion, under

(1) Rev. Stat. 318, Sec. 23.
(2) 3 Bl. Com. 397.
(3) 3 Id. 398.
(4) 3 Scam. 117.
(5) 2 Gil. 414.

the judgment and process of a court of competent jurisdiction, cannot be compelled to pay the same a second time.[1]

The dismissal of a suit by a justice of the peace, is not such a judgment as will bar a subsequent suit for the same demand, or for a different cause of action.[2] A justice of the peace has no authority to render a judgment against any defendant who is not served with process, although one of the defendants is regularly served.[3]

The admission of a party in an action before a justice of the peace, that a claim produced against him is correct, is not confession of judgment; he may nevertheless prove payment or set-off; and such admission will not deprive him of his right of appeal.[4]

II. OF COSTS.

Costs are the expenses of a suit, or action, which may be recovered by law from the losing party. At common law, neither the plaintiff nor the defendant could recover costs as is now allowed by statute. In actions where damages were given, costs were taken into account, and included in the amount of damages. But because those damages were frequently inadequate to the plaintiff's expenses, a provision was finally made, by statute, for costs.[5] In suits before justices of the peace, costs can only be recovered, where expressly given by the statute. As we have seen, the statute provides for costs in the following cases: Where the plaintiff, or his agent, fails to appear at the time appointed for trial, and the suit in consequence is dismissed, the plaintiff must pay the costs.[6] Where a case is continued to another day, the party applying for such continuance may be taxed with costs occasioned thereby.[7] Where the parties appear, and the justice shall give judgment against the party who shall be proved to be indebted to the other, the costs of suit will follow the judgment;[8] but when neither party appears to be indebted to the other, then the judgment will be against the plaintiff for the costs of suit only.[9] In case of a jury trial, the justice must enter judgment upon the verdict of the jury.[10]

(1) 4 Gil. 354.
(2) 1 Id. 667.
(3) 1 Scam. 590.
(4) 13 Ill. 313.
(5) 3 Bl. Com. 400.
(6) Ante, p. 58; Rev. Stat. 318, Sec. 24.
(7) Ante, p. 93; Rev. Stat. 318, Sec. 27.
(8) Ante, p. 95; Rev. Stat. 319, Sec. 28.
(9) Ibid.
(10) Ante, p. 96; Rev. Stat. 321, Sec. 44.

Where a matter in difference between parties to a suit is referred to arbitrators, the justice must note the award upon his docket, and give judgment according thereto.[1]

Justices' Fees in Civil Cases.

Rev. Stat. 246, Sec. 17. "For every warrant, summons, or subpœna, eighteen and three-fourths cents.

For each continuance, twelve and a half cents.

Administering an oath, six and a fourth cents.

Issuing dedimus to take depositions, twenty-five cents.

Taking each deposition when required, for every seventy-two words, twelve and a half cents.

Entering judgment, twenty-five cents.

Issuing execution, twenty-five cents.

Entering security on docket, twenty-five cents.

Scire facias to be served on security, twenty five cents.

Notification to each referee, twenty-five cents.

Entering the award of referees, thirty-seven and a half cents.

Entering appeal from justice's judgment, twenty-five cents.

For each transcript of the judgment and proceedings before the justice on appeal, twenty-five cents.

Issuing process of attachment, and taking bond and security, seventy-five cents.

Entering judgment on the same, twenty-five cents.

Docketing each suit, twelve and a half cents.

Taking the acknowledgment or proof of a deed or other instrument of writing, twenty-five cents.

For each precept, on forcible entry and detainer, fifty cents.

On trial, per day, two dollars.

Making complete copy of proceedings thereon, two dollars.

For each jury warrant, twenty-five cents.

For each marriage ceremony performed, one dollar.

For each certificate thereof, twenty-five cents.

For administering the oath to the finder, or taker up in cases of estrays, &c., making an entry thereof, with the report of the appraisers, and making, and transmitting a certificate thereof to the clerk of the county commissioners' court, fifty cents."

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(1) Ante, p. 109; Rev. Stat. 321, Sec. 43.

For taking acknowledgment of chattel mortgage, and entering the same on his docket, the justice will receive twenty-five cents.[1]

Jurors' Fees.

Each juror in a civil cause before a justice of the peace, is allowed twenty-five cents.[2]

Witnesses' Fees.

Each witness, when summoned, according to the statute, is allowed fifty cents for attending on each trial.[3]

Every witness, when attending for the purpose of having his deposition taken, per day, fifty cents.[4]

Arbitrators' Fees.

For every arbitrator, or referee, for each day he shall be necessarily employed in making up his award in cases before justices of the peace, one dollar.[5]

III. OF FILING TRANSCRIPT.

Whenever it appears, by the return of any execution issued pursuant to the statute,[6] that the defendant has not personal property sufficient to satisfy the debt and costs within the county in which judgment was rendered, and it is desired by the plaintiff to have the same levied on real property, in that or any other county, it is lawful for the justice to certify to the clerk of the circuit court of the county in which such judgment was rendered, a transcript, which must be filed by said clerk, and the judgment will, thenceforward, have all the effect of a judgment of the said circuit court, and execution may issue thereon, out of that court, as in other cases.[7]

By an act approved February 27th, 1847,[8] it is enacted, "Sec. 3. Transcripts hereafter filed shall contain a copy of the original and each subsequent summons or process issued by the justice of the peace, the return of the officer or officers thereon, the judgment and execution or executions issued thereon, with the return of the officer or officers upon

(1) Rev. Stat. 92, Sec. 2. (2) Id. 311, Sec. 20. (3) Ante, p. 80; Rev. Stat. 320, Sec. 38.
(4) Id. 247, Sec. 20. (5) Id. 248, Sec. 22. (6) See Id. 323, Sec. 54.
(7) Id. 323, Sec. 57. (8) See Sess. Laws, 1847, p. 56.

the same; and no execution shall hereafter be issued upon a transcript, unless the same be made conformable to this act.

"Sec. 4. Every transcript desired to be used for the purposes mentioned in this act, shall be certified by the justice of the peace making the same, to be truly copied from the files and books of his office." Which act took effect, by its terms, on the first day of June, 1847. The following will be the proper method of making and certifying such transcripts, to be varied according to circumstances:

Form of Transcript of Proceedings before a Justice, to be filed in Circuit Clerk's Office, to become lien on real estate.

Transcript of proceedings lately had before *Charles Hall*, Esquire, a justice of the peace in and for the county of LAKE, in the State of Illinois, between A. B. plaintiff, and C. D. defendant.

(*Here insert the summons or process preceding the judgment, and then say:*)

Upon which summons, (*or other process, as the case may be*), there appears the following indorsement:

(*Here insert the constable's return.*)

(*After the constable's return, a true copy from the docket of the justice, in relation to the proceedings in the cause will then be given, which of course will show the issuing and returning of the execution; then say:*)

Upon which execution, issued and returned as aforesaid, there appears the following indorsement:

(*Here insert such indorsements as may have been made by the constable in full.*)

To all of which the justice will add the following certificate:

STATE OF ILLINOIS, } *ss.*
Lake COUNTY, }

I, Charles Hall, a justice of the peace in and for said county, do certify that the foregoing transcript is truly copied from the files and books of my office. In witness thereof, I have hereunto set my hand, this —— day of ——, A.D., 18—.

CHARLES HALL, *J. P.*

CHAPTER XII.

OF APPEALS AND WRIT OF CERTIORARI.

I. OF APPEALS.

Rev. Stat. 323, Sec. 58. "Appeals from judgments of justices of the peace to the circuit court shall be granted in all cases, except on judgment confessed: *Provided*, The party praying for an appeal shall, within twenty days from the rendering of the judgment from which he desires to take an appeal, enter into bond with security, to be approved and conditioned as hereinafter provided.

"Sec. 59. The bond required to be given, shall be in substance as follows:

"Know all men by these presents, that we, A. B. and C. D., are held and firmly bound unto E. F. in the penal sum of (here insert double the amount of judgment and costs) dollars, lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs and administrators, jointly, severally and firmly, by these presents.

"Witness our hands and seals, this —— day of ——, 18—.

"The condition of the above obligation is such, that whereas the said E. F. did, on the —— day of ——, A.D. 18—, before ———, a justice of the peace for the county of ———, recover a judgment against the above bounden A. B., for the sum of ——— dollars, from which judgment the said E. F. has taken an appeal to the circuit court

of the county of ——— aforesaid and State of Illinois. Now, if the said A. B. shall prosecute his appeal with effect, and shall pay whatever judgment may be rendered by the court upon dismissal or trial of said appeal, then the above obligation to be void, otherwise to remain in full force and effect.

[L. S.]
[L. S.]
[L. S.]

"Approved by me at my office, this — day of ——, 18—.

L. M., *J. P.*

"Sec. 60. The party desiring such appeal, may file his bond in the office of the justice, who shall have rendered the judgment; such bond to be approved by such justice, whose duty it shall be to suspend all proceedings in the case; and if execution shall have been issued, he shall recall the same, and who shall, within twenty days after receiving and approving of the appeal bond, file the same in the office of the clerk of the circuit court, together with all the papers and transcript of the judgment he had given, with a certificate under his hand that the said transcript and papers contain a full and perfect statement of all the proceedings before him.

"Sec. 61. Or the appealing party may file his bond in the office of the clerk of the circuit court of the proper county, within the time aforesaid, which bond shall be approved by the clerk; upon the filing and approval of which bond the clerk shall issue a *supersedeas* enjoining the justice and constable from proceeding any further in said suit, and suspending all proceedings in relation thereto; and shall issue a summons to the appellee to appear at the term of the court to which the appeal is returnable, which summons shall be served and returned as in other cases.

"Sec. 62. So soon as the clerk shall issue a *supersedeas*, as aforesaid, the justice who gave the judgment, and any constable in whose hands an execution or other process may be, in relation thereto, shall suspend all further proceedings thereon; and the said justice shall return all the papers, and a transcript of the judgment he had given, to the clerk of said court, with a certificate, under his hand, that the said transcript and papers contain a full and perfect statement of all the proceedings before him.

"Sec. 63. One or more plaintiffs or defendants, in causes decided by justices of the peace, shall be allowed the right of appeal to the

circuit court without the consent of the others; and when one of several appeals, the *supersedeas* shall issue, directing a suspension of all further proceedings upon the judgment, as though all had joined in the appeal.

"Sec. 64. When an appeal bond shall be executed by one of several parties from the judgment of a justice of the peace, the clerk of the circuit court shall issue a summons against the other parties, notifying them of the appeal in the said circuit court, and requiring them to appear and abide by and perform the judgment of the court in the premises; which summons shall be served as other process issued in appeal cases; and in case such summons shall be returned, that parties are not found, the cause shall at the first term of the court be continued; but at the second term shall be tried; and the court shall have power to give the same judgment in appeals taken under the provisions of this chapter as though all the parties to the judgment had joined in the appeal.

"Sec. 65. If, upon the trial of any appeal, the bond required to be given shall be adjudged informal, or otherwise insufficient, the party who shall have executed such bond shall in no wise be prejudiced by reason of such informality or insufficiency; *provided*, he will in a reasonable time, to be fixed by the court, execute and file a good and sufficient bond.

"Sec. 66. Upon the trial of all appeals before the circuit court, no exception shall be taken to the form or service of the summons issued by the justice of the peace, nor to any proceedings before him; but the court shall hear and determine the same in a summary way, according to the justice of the case, without pleading in writing.

"Sec. 67. If it shall appear, however, that the justice had no jurisdiction of the subject-matter of the suit, the same shall be dismissed at the cost of the plaintiff.

"Sec. 68. The plaintiff in the justice's court shall be plaintiff in the circuit court, on the trial of the appeal, and the rights of the parties shall be the same as in original actions.

"Sec. 69. Parties on the trials of appeals in the circuit court shall have the benefit of the provisions of the thirty-ninth, fortieth and forty-first sections of this chapter, as fully as in trials before justices of the peace.

"Sec. 70. The security in any appeal bond shall be liable thereon for the amount of the original judgment, and all costs thereon, in case the said appeal be dismissed, and shall be liable also on said bond for whatever judgment may be rendered by the circuit court, in case the original judgment be affirmed by said circuit court, either in whole or in part."

II. OF CERTIORARI.[1]

A writ of certiorari is a writ issuing from a superior court, directed to one of inferior jurisdiction, commanding the latter to certify and return to the former, the record in the particular case.

Rev. Stat. 325, Sec. 72. "The judges of the circuit and probate courts shall have power within their respective jurisdictions, and it shall be their duty, upon application made as hereinafter mentioned, to grant writs of *certiorari*, to remove causes from before justices of the peace, into the circuit court, who shall indorse an order for the same, upon the petition of the party praying such writ; and on producing the same to the clerk of the circuit court, he shall issue said writ in conformity to the provisions of this chapter.

"Sec. 73. No writ of *certiorari* shall issue after the expiration of six months from the time of the rendition of judgment.

"Sec. 74. Before any writ of *certiorari* shall issue, the party applying therefor shall give bond, with security, in the same manner and with the same conditions, and when the same shall be defective, may be perfected as bonds, in cases of appeals from justices of the peace. The writ of *certiorari* shall require the justice to certify to the circuit court a transcript of the judgment and other proceedings had before him; and in no case shall the justice be required to send up a minute or memorandum of the evidence given before him; but upon the return of said writ, such proceedings shall be had thereon, as in cases of appeals.

"Sec. 75. The petition on application for writs of *certiorari* shall set forth, and show upon the oath of the applicant, that the judgment before the justice of the peace was not the result of negligence in the party praying such writ; that the judgment, in his opinion, is unjust and erroneous, setting forth wherein the injustice and error consists, and that it was not in the power of the party to take and appeal in the ordinary way, setting forth the particular circumstances which prevented him from so doing.

"Sec. 76. The justice of the peace, constable and other persons concerned, shall, as soon as the writ of *certiorari* shall be served, stay all further proceedings in that case, until the further order of the circuit court.

"Sec. 77. If the judgment of the justice shall be reversed by the circuit court, in whole or in part, such reversal shall not vitiate any sale on execution, which shall have been effected before the issuing of the

(1) *Certiorari*, to be certified of; to be informed of; 1 Bouv. L. D. 215.

writ of *certiorari;* but in such cases, the circuit court shall have power to assess the damages which shall have accrued in consequence of such sale, and to cause judgment to be entered or a deduction made therefor; and in all cases of a partial reversal of judgment, either in case of appeals or *certiorari*, the court shall have power to apportion the costs between the parties according to justice."

A party who has not been guilty of negligence by omitting to take an appeal from the judgment of a justice of the peace in proper time, is entitled to take the cause to the circuit court by *certiorari*.[1]

The petition must set forth that the judgment complained of was not the result of negligence on the part of the petitioner, and that, in his opinion, it is unjust; setting forth wherein the injustice consists. It must also allege that it was not in the power of the party to take an appeal in the ordinary way, and set forth particularly the circumstances that prevented him from so doing.[2]

The court will take into consideration the condition of a party where he shows in his petition circumstances that prevented his using dilligence: as, that he was a physician, and was necessarily attending upon patients dangerouly ill, &c. &c.; or, that he was sick at the time the judgment was rendered against him, and unable to attend court.[3]

Where a suit is taken up by *certiorari*, the trial is to be *de novo*, as in cases of appeal, and no formal return is required to the writ; and if the writ is served and returned, and its mandate is not complied with, an attachment may be issued against the justice.[4]

The dismissal of an appeal, or *certiorari*, is equivalent to an affirmance of the judgment, so as to entitle the party to claim a forfeiture of the bond, and have his action therefor.

The condition of a *certiorari* bond, should be as broad as the statute; but a general motion to dismiss, will not reach a defect in the bond: the objection should be specially taken.[5]

It is held that the circuit courts have power to award a writ of *certiorari* to all inferior tribunals, wherever it is shown that they have exceeded the limits of their jurisdiction, or in cases where they have proceeded illegally, and no appeal is allowed, and no other mode of reviewing their proceedings is directly provided.[6]

(1) 13 Ill. 144.
(2) 1 Scam. 264, 566; 4 Gil. 363; 14 Ill. 35.
(3) 13 Ill. 144; 14 Id. 35; 2 Gil. 65.
(4) 12 Ill. 143.
(5) 14 Ill. 35.
(6) 13 Ill. 660; 14 Ill. 381.

CHAPTER XIII.

OF EXECUTION AND GARNISHMENT.

I. OF THE EXECUTION, ITS OFFICE AND NATURE.

An execution is a writ which authorizes the officer to whom it is directed, to carry into effect the final judgment of a court or other jurisdiction. A distinction is made between an execution which is used to make the money due on a judgment out of the property of the defendant, and which is called a *final* execution; and one which tends to an end, but is not absolutely final, as a *capias ad satisfaciendum*,[1] by virtue of which the body of the defendant is taken, to the intent that the plaintiff shall be satisfied his debt, &c., the imprisonment not being absolute, but until he shall satisfy the plaintiff's debt.[2] Hence, the former is properly styled an execution against the goods and chattels, and the latter an execution against the body.

II. OF EXECUTIONS AGAINST THE GOODS AND CHATTELS.

No execution can be issued by a justice of the peace, until after the expiration of twenty days from the date of the judgment on which such execution is issued, unless the party applying for the same, or the agent of such party, shall make oath that he believes that the debt of such party will be lost, unless execution be issued forthwith. If such oath

(1) Commonly called a "ca. sa.," being an abbreviation of the term.
(2) See 1 Bouv. L. D., title "Execution."

be made, then the execution can be issued immediately and levied; but no sale of any property, under such execution, can take place within twenty days from the date of the judgment; nor can the issuing of such execution deprive either party of the right to appeal.[1]

Form of Oath, for Execution to issue forthwith.

You do swear that you believe that the debt upon which judgment has this day been rendered in your favor, against C. D., for ——— dollars and ——— cents, will be lost unless execution be issued forthwith.

Rev. Stat. 323, Sec. 54. "All executions issued by a justice of the peace, shall be directed to any constable of the proper county, and made returnable to the justice issuing the same, within seventy days from the date; such executions shall be levied only on personal property, and shall be in the following form as near as may be, viz:

STATE OF ILLINOIS, }
—— COUNTY. }

The People of the State of Illinois, to any Constable of said County, GREETING:—

We command you, that of the goods and chattles of A. B., in your county, you make the sum of ——— dollars and ——— cents, debt, and ——— dollars and ——— cents, cost, which C. D. lately recovered before me, in a certain plea against the said A. B., and hereof make return to me, within seventy days from this date.

Given under my hand and seal this ——— day of ———, 18—.

JOHN DOE, *J. P.*

"Sec. 55. When it shall appear, by the return of any execution issued as aforesaid, that the defendant has not personal property within the county sufficient to satisfy the debt, and it is desired by the plaintiff to have execution issued to some other county, in which it is alleged that the defendant has personal property, the justice shall issue execution, directed to any constable of the county where such property shall be said to be, to which execution shall be attached an official certificate of the clerk of the county commissioners' court of the county in which the same shall be issued, setting forth under the seal of said court, that such justice so issuing, was at the time of issuing of said execution, a justice of the peace in and for said county; and no constable shall be bound to execute any such process, unless so authenticated."

(1) Rev. Stat. 322, Sec. 53.

Form of Execution to a Foreign County.

STATE OF ILLINOIS, } ss.
Lake COUNTY, }

The People of the State of Illinois, to any Constable of Cook *County*, GREETING :—

Whereas, an execution has been issued, and directed to any constable of the county of *Cook*, on a judgment recovered before the undersigned, a justice of the peace of said county, in favor of A. B., and against C. D., for ——— dollars and ——— cents, for the plaintiff's demand, and ——— dollars and ——— cents, costs, and the same has been returned by a constable of said county, "no property found," (*or as the case may be*); and, whereas, it is alleged that the said C. D. has personal property in the county of *Cook*,

Therefore, we command you, that of the goods and chattles of the said C. D., in your county, you make the sum of, (*insert the amount not collected,*) and make return to the said justice, at his office, in ———, in said county, within seventy days from the date hereof.

Given under my hand and seal, this ——— day of ———, 18—.

LEVI MARBLE, *J. P.* [SEAL.]

Rev. Stat. 326, Sec. 78. "The personal property of every defendant in a judgment before a justice of the peace, shall be bound for the payment of such judgment from the delivery of the execution issued thereon to the constable, and the real property of such defendant shall be bound as aforesaid, from the date of the filing of a transcript of the judgment in the clerk's office, as provided in this chapter.

"Sec. 79. Every constable to whom an execution shall be delivered, shall endorse on the back of the same an exact memorandum of the day and hour when the same shall have come to his hands, and shall immediately proceed to levy the same; indorsing also on the back of the execution the date of such levy, and making an exact inventory of the property on which the same shall have been levied, and shall appoint a day and hour for the sale of said property, giving ten days' previous notice of such sale, by advertisement in writing, to be posted up at three of the most public places in the county; and on the day so appointed, the said constable shall sell the property so levied on, or so much thereof as may be necessary to pay the debt, interest, and costs, to the highest bidder."

When the docket and papers of any justice of the peace shall be transferred to any other justice of the peace, as provided for by the

statute,[1] such justice receiving the same, may proceed to the completion of all unfinished business, the issuing of execution upon judgments remaining unsatisfied upon such docket, and collect the same, and have the same power in respect to such docket and papers, as if the same pertained to proceedings originally instituted before him.[2]

Form of Execution by a Justice to whom the Docket and papers of another Justice have been delivered over.

STATE OF ILLINOIS, } ss.
—— COUNTY. }

The People of the State of Illinois to any Constable of said County, GREETING:—

We command you, that of the goods and chattels of C. D., in your county, you make the sum of ——— dollars and ——— cents, costs, which A. B., on the ——— day of ———, 18—, recovered before L. M., then a justice of the peace of said county, in a certain plea against the said C. D., as appears by the docket of said justice, heretofore delivered over to me, together with the papers of said justice; and now remaining with *Henry Ames*, then the nearest justice of the peace of said county, upon the resignation (*or death, or removal from the district in which he was elected,*) of said L. M. And do you make a return thereof to the undersigned, within seventy days from this date.

Given under my hand and seal, this ——— day of ———, 18—.

HENRY AMES, *J. P.* (SEAL.)

The rules which apply to the levying, &c. of executions, and relate more particularly to the duties of constables, will be found in PART FOURTH.

III. OF EXECUTIONS AGAINST THE BODY.

Rev. Stat, 328, Sec. 91. "In cases of judgment for debt, whenever the plaintiff, or his authorized agent, shall make oath before the justice in whose office such judgment may be, that he or she verily believes the defendant or defendants to be able to pay such judgment, and withholds the money, or secretes his, her, or their property from the officer, so that the debt cannot be levied, it shall be lawful for the plaintiff to demand, and for the justice to issue execution against the

(1) See Rev. Stat. 331, Sec. 112. (2) Rev. Stat. 331, Sec. 110.

body of such defendant or defendants." And it is also enacted,

Rev. Stat. 282, Sec. 1: "Whenever any debtor shall refuse to surrender his or her estate, lands, tenements, goods or chattels, for the satisfaction of any execution which may be issued against the property of any such debtor, it shall and may be lawful for the plaintiff in such execution, or his or her attorney, or agent, to make affidavit of such fact before any justice of the peace of the county; and upon filing such affidavit with the clerk of the court from which the execution issued, or with the justice of the peace who issued such execution, it shall be lawful for such clerk, or justice of the peace, as the case may be, to issue a *ca. sa.* against the body of such defendant in execution."

As far as relates to justices of the peace, the only substantial difference between the two foregoing sections of the statute is, that one requires the filing of an affidavit, and the other merely the oath of the party, to obtain an execution against the body. The following may be the form of such oath:

Form of Oath to obtain Execution against the Body.

You do swear that you verily believe C. D. to be able to pay a certain judgment rendered in your favor, against the said C. D., on the ——— day of ———, 18—, for —— dollars and —— cents, and withholds the money, (*or secretes his property from the officer, so that the same cannot be levied, as the case may be.*)

Form of Execution against the Body, or "Ca. Sa."

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The People of the State of Illinois, to any Constable of said County,

GREETING:

Whereas, A. B. lately recovered before the undersigned, a justice of the peace of said county, the sum of —— dollars and —— cents, debt, and —— dollars and —— cents, costs, against C. D., as appears by the docket of said justice, (*or if the docket containing the judgment has been delivered over to another justice, then say:* of L. M., a justice of the peace of said county, heretofore delivered over, together with his papers, to and now remaining with AMOS WRIGHT, then the nearest justice of the peace of the said county, upon the resignation, —*or if for any other cause, insert it,*—of said L. M.) And, whereas,

an execution, issued upon said judgment against the goods and chattels of the said C. D., has lately been returned by E. F., a constable of said county, "no property found;" and, whereas, the said A. B. has this day made oath before the undersigned that he verily believes the said C. D. is able to pay the said judgment, and withholds the money, (*or that he fraudulently secreted his property from said constable, so that the judgment aforesaid could not be levied,*)

Now, therefore, you are hereby commanded to take the body of the said C. D., if he shall be found in your county, and convey him to the common jail of said county, there to remain until he shall pay and satisfy said A. B., the judgment aforesaid; and do you make return hereof as the law directs.

Given under my hand and seal, this ——— day of ———, 18—.

AMOS WRIGHT, *J. P.* [SEAL.]

Judgment, - $50.00
Costs, - - $2.50
Collect interest from ———, 18—.

Form of Affidavit far "Ca. Sa."

STATE OF ILLINOIS, }
—— COUNTY, } ss.

A. B. being duly sworn, doth depose and say that, on the —— day of ——, 18—, a judgment was rendered, before L. M., a justice of the peace of the county aforesaid, for the sum of —— dollars and —— cents, in favor of the said A. B. and against C. D., and for the sum of —— dollars and —— cents for costs of suit; that an execution was issued upon said judgment against the goods and chattles of the said C. D., and delivered to one J. K., a constable of said county, to levy, and that the said C. D. refused to surrender his goods and chattels upon said execution, for the satisfaction thereof.

A. B.

Subscribed and sworn to before me this ——— day of ———, 18—.
E. F., *J. P.*

The form of *ca. sa.* before given, may be used in cases of affidavit filed, by varying the same according to the facts.

A justice of the peace cannot issue an execution against the body of

a defendant before an execution against the property has been returned unsatisfied, except in actions of trover and trespass.[1]

II. OF GARNISHMENT.

Rev. Stat. 307, Sec. 38. "Whenever a judgment shall be rendered by any court of record, or any justice of the peace in this State, and an execution against the defendant or defendants in said judgment shall be returned by the proper officer, "no property found," on the affidavit of the plaintiff, or other credible person, being made before the clerk of said court, or justice of the peace, that said defendant or defendants have no property within the knowledge of such affiant, in his or their possession, liable to execution; and that such affiant hath just reason to believe that another person, or persons, is or are indebted to such defendant or defendants, or hath, or have any effects or estate of such defendent or defendants, in his or their hands; it shall be lawful for said court, or justice of the peace, to cause the person or persons supposed to be indebted to, or supposed to have any of the effects or estate of the said defendant or defendants, to be summoned forthwith to appear before said court, or justice, as a garnishee or garnishees; and said court or justice of the peace, shall examine and proceed against such garnishee or garnishees, in the same manner as is required by law against garnishees in original attachments."

Form of Affidavit for Garnishee Process on Judgment.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

A—— B——, }
vs. } Before L. M., Justice of the Peace.
C—— D——, }

A. B., the plaintiff in the above entitled suit, being sworn, on oath says that he lately recovered a judgment in said suit before L. M., a justice of the peace of said county, against said C. D., for the sum of —— dollars, debt, and —— dollars, costs of suit; that an execution has been lately issued on said judgment, and returned by a constable of said county, "no property found;" that the said C. D. has no property within deponent's knowledge in his possession liable to execu-

(1) 13 Ill. 22.

tion; that deponent has just reason to believe, and does believe, that one E. F. is indebted to the said C. D., (*or that E. F. hath effects of the said C. D. in his hands.*)

Subscribed and sworn to before me, this ——— day of ———, 18—. L. M., Justice of the Peace. } A. B.

Form of Garnishee Summons.

STATE OF ILLINOIS, —— COUNTY, } ss.

The People of the State of Illinois to any Constable of said county, GREETING:

Whereas, A. B. hath this day made oath before the undersigned, a justice of the peace of said county, that he lately recovered a judgment before L. M., a justice of the peace of said county, against the said C. D., for the sum of —— dollars, debt, and for —— dollars, costs of suit; that an execution has been lately issued on said judgment and returned by a constable of said county, "no property found;" that said C. D. has no property within deponent's knowledge in his possession, liable to execution; that deponent has just reason to believe, and does believe, that one E. F. is indebted to the said C. D., (*or that E. F. hath effects of the said C. D. in his hands.*)

Now, therefore, we command you that you summon the said C. D. to appear forthwith, as garnishee, before the undersigned, at his office in ——, in said county, to answer what may be then and there objected against him.

Given under the hand and seal of the said ———, justice of the peace, this —— day of ——, 18—.

L. M., *J. P.* [SEAL.]

When the person summoned as garnishee appears, the justice will require that he be sworn touching his indebtedness to the defendant, or judgment debtor in question, or as to his having any effects or estate in his hands belonging to said defendant. The following may be the form of such oath:

Form of Oath to be administered to Garnishee.

You do swear that you will true answers make to such questions as

may be put to you touching your indebtedness to C. D., or as to your having in your hands any effects of the said C. D.

Rev. Stat. 307, Sec. 39. "No proceedings against a garnishee or garnishees, shall be quashed or set aside, or said garnishee or garnishees discharged, on account of any insufficiency of the original affidavit or summons, if the plaintiff or plaintiffs, or other credible person for him, shall cause a legal and sufficient affidavit to be filed, or the summons to be amended in such time and manner as the courts or justices of the peace shall, respectively, in their discretion direct; and, in that event, the cause shall proceed as if such proceedings had originally been sufficient."

A garnishee is liable for all that may be in his hands, or owing by him to the principal debtor, upon a fair settlement between them from the service of the garnishment.[1]

The answer of a garnishee, until it is contradicted or disproved, must be considered as true.

It must clearly appear that he is chargeable, or he will be discharged.[2]

Surplus money made on execution, in the hands of an officer, belonging to the defendant, may be garnisheed in the hands of an officer.[3]

Where property had been placed in the hands of a garnishee to indemnify him for becoming the security of such defendant, it was held to be a pledge of the property, and gave the garnishee a right to retain it until his liability as security was extinguished.[4]

A defendant being notified that a judgment against him belongs to a person other than the plaintiff on the record, he is as much bound by the notice as if the record stated the judgment to be for the use of such person.[5]

A garnishee may inquire into the legality and regularity of all the previous proceedings against a defendant in attachment, in order to determine whether they were authorised or not.[6]

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(1) 1 Gil. 584. (2) Ibid.; 12 Ill. 358. (3) 12 Ill. 358. (4) 1 Gil. 86.
(5) 12 Ill. 170. (6) 12 Ill. 358.

PART SECOND.

OF PROCEEDINGS BEFORE JUSTICES OF THE PEACE IN CRIMINAL CASES.

CHAPTER I.

OF THE POWERS OF JUSTICES OF THE PEACE, RELATIVE TO THE ENFORCEMENT OF THE LAWS, FOR THE PREVENTION AND PUNISHMENT OF OFFENSES, AND PRESERVATION AND OBSERVANCE OF THE PEACE.

Rev. Stat. 190, Sec. 201. "The judges of the supreme and circuit courts in their respective circuits, and justices of the peace in their respective counties, shall jointly and severally be conservators of the peace within their respective jurisdictions, as herein designated, and shall have full power to enforce, or cause to be enforced, all laws that now exist, or that shall hereafter be made, for the prevention and punishment of offenses, or for the preservation and observance of the peace. They shall have power to cause to be brought before them, or any of them, all persons who shall break the peace, and commit them to jail, or admit them to bail, as the case may require; and to cause to come before them, or any of them, all persons who shall threaten to break the peace, or shall use threats against any person within this State, concerning his or her body, or threaten to injure his or her property, or the property of any person whatever; and, also, all such persons as are not of good fame; and the said judge or justice of the peace, being satisfied, by the oath of one or more witnesses, of his or her bad character, or that he or she had used threats as aforesaid, shall cause such person or persons to give good security for the peace, or for their good behavior towards all the people of this State, and particularly towards the individual threatened. If any person against whom such

proceedings are had, shall fail to give a recognizance, with sufficient security, it shall be the duty of the judge or justice of the peace before whom he or she shall be brought, to commit such person or persons to the jail of the proper county, until such security be given, or until the next term of the circuit court. Such judge or justice of the peace shall also take recognizance for the appearance of all witnesses at such courts. All recognizance to be taken in pursuance of this section, shall be returnable to the next circuit court, to be holden in the proper county, where all such recognizance shall be renewed or dismissed, as the said circuit court shall, upon examination of the witnesses, deem to be just and right. And where the person or persons committed are in jail at the sitting of such circuit court, the court shall examine the witnesses, and either continue the imprisonment, bail the prisoner, or discharge him or her, as to the said court shall appear to be right, having due regard to the safety of the citizens of this State."

CHAPTER II.

OF PERSONS CAPABLE OF COMMITTING CRIMES, OF ACCESSORIES, AND WHO MAY BE WITNESSES IN CRIMINAL CASES.

I. OF PERSONS CAPABLE OF COMMITTING CRIMES.
II. OF ACCESSORIES TO CRIMES.
III. WHO MAY BE WITNESSES IN CRIMINAL CASES.

I. OF PERSONS CAPABLE OF COMMITTING CRIMES.

Criminal Code, Sec. 1. "A crime or misdemeanor consists in a violation of a public law, in the commission of which there shall be an union or joint operation of act and intention or criminal negligence.

"Sec. 2. Intention is manifested by the circumstances connected with the perpetration of the offense, and the sound mind and discretion of the person accused.

"Sec. 3. A person shall be considered of sound mind, who is neither an idiot nor lunatic, nor affected with insanity, and who hath arrived at the age of fourteen years, or before that age, if such person know the distinction between good and evil.

"Sec. 4. An infant under the age of ten years, shall not be found guilty of any crime or misdemeanor.

"Sec. 5. A lunatic or insane person, without lucid intervals, shall not be found guilty of any crime or misdemeanor with which he may be charged; *provided*, the act so charged as criminal shall have been committed in the condition of insanity.

"Sec. 6. An idiot shall not be found guilty or punished for any crime or misdemeanor with which he or she may be charged.

"Sec. 7. Any person counseling, advising or encouraging an infant under the age of ten years, lunatic or idiot, to commit any offense,

shall be prosecuted for such offense, when committed, as principal; and, if found guilty, shall suffer the same punishment that would have been inflicted on such person counseling, advising or encouraging as aforesaid, had he or she committed the offense directly, without the intervention of such infant, lunatic or idiot.

"Sec. 8. A married woman, acting under the threats, command or coercion of her husband, shall not be found guilty of any crime or misdemeanor not punishable with death; *provided*, it appear, from all the facts and circumstances of the case, that violent threats, command or coercion were used; and in such case, the husband shall be prosecuted as principal, and receive the punishment which would otherwise have been inflicted on the wife, if she had been found guilty.

"Sec. 9. Drunkenness shall not be an excuse for any crime or misdemeanor, unless such drunkenness be occasioned by the fraud, contrivance or force of some other person or persons, for the purpose of causing the perpetration of an offense; in which case, the person or persons so causing said drunkenness, for such malignant purpose, shall be considered principal or principals, and suffer the same punishment as would have been inflicted on the person or persons committing the offense, if he, she or they had been possessed of sound reason and discretion.

"Sec. 10. Acts committed by misfortune or accident, shall not be deemed criminal, where it satisfactorily appears that there was no evil design or intention, or culpable negligence.

"Sec. 11. A person committing a crime or misdemeanor not punishable with death, under threats or menaces which sufficiently show that his or her life or member was in danger, or that he or she had reasonable cause to believe, and did believe, that his or her life or member was in danger, shall not be found guilty; and such threats or menaces being proved and established, the person or persons compelling by such threats and menaces the commission of the offense, shall be considered as principal or principals, and suffer the same punishment as if he or she had perpetrated the offense.

"Sec. 12. A person that becomes lunatic or insane, after the commission of a crime or misdemeanor, ought not to be tried for the offense during the continuance of the lunacy or insanity. If, after verdict of guilty, and before judgment pronounced, such person become lunatic or insane, then no judgment shall be given while such lunacy or insanity shall continue. And if, after judgment and before execution of the sentence, such person become lunatic or insane, then, in case the pun-

ishment be capital, the execution thereof shall be stayed until the recovery of said person from the insanity or lunacy. In all of these cases it shall be the duty of the court to empannel a jury to try the question whether the accused be at the time of empanneling, insane or lunatic.

II. OF ACCESSORIES TO CRIMES.

"Sec. 13. An accessory, is he or she who stands by and aids, abets or assists; or who, not being present aiding, abetting or assisting, hath advised and encouraged the perpetration of the crime. He or she who thus aids, abets or assists, advises or encourages, shall be deemed and considered as principal, and punished accordingly.

"Sec. 14. An accessory, after the fact, is a person who, after full knowledge that a crime has been committed, conceals it from the magistrate, or harbors and protects the person charged with or found guilty of the crime. Any person being found guilty of being an accessory after the fact, shall be imprisoned for any term not exceeding two years, and fined in a sum not exceeding five hundred dollars, in the discretion of the court, to be regulated by the circumstances of the case and the enormity of the crime.

III. WHO MAY BE WITNESSES IN CRIMINAL CASES.

"Sec. 15. The party or parties injured, shall, in all cases, be competent witnesses, unless he, she or they shall be rendered incompetent by reason of his, her or their infamy, or other legal incompetency other than that of interest; the credibility of all such witnesses shall be left to the jury as in other cases.

"Sec. 16. No black or mulatto person, or Indian, shall be permitted to give evidence in favor of or against any white person whatsoever. Every person who shall have one-fourth part or more of negro blood, shall be deemed a mulatto; and every person who shall have one-half Indian blood, shall be deemed an Indian.

"Sec. 16. Approvers shall not be allowed to give testimony.

"Sec. 18. The solemn affirmation of witnesses shall be deemed sufficient. A false and corrupt affirmation shall subject the witness to all the penalties and punishment provided for those who commit willful and corrupt perjury."

CHAPTER III.

OF PROCEEDINGS WHERE A CRIMINAL OFFENSE HAS BEEN COMMITTED.

I. DUTY OF THE JUSTICE, ON COMPLAINT THAT A CRIMINAL OFFENSE HAS BEEN COMMITTED.

Crim. Code, Sec. 202. "Where any felonious offense shall be committed, public notice thereof shall be immediately given in all public places near where the same was committed, and fresh pursuit shall be forthwith made after every person guilty thereof, by sheriffs, coroners, constables, and all other persons who shall be by any one of them commanded or summoned for that purpose: every such officer, who shall not do his duty in the premises, shall be punished by fine, in a sum not exceeding one hundred dollars, or imprisonment not exceeding three months.

"Sec. 203. It shall be lawful for any of the aforenamed judges or justices of the the peace, upon oath or affirmation being made before him, that any person or persons have committed any criminal offense, in this

State, or that a criminal offense has been committed, and that the witness or witnesses, have just and reasonable grounds to suspect that such person or persons have committed the same, to issue his warrant under his hand, commanding the officer, or person charged with the execution thereof, to arrest the person or persons so charged, and bring him, her, or them before the officer issuing said warrant, or in case of his absence, before any other judge or justice of the peace; the said judge or justice of the peace, before whom any person or persons shall be brought, in pursuance of such warrant, or shall be brought without warrant, and charged with any criminal offense, before he shall commit such prisoner to jail, admit to bail or discharge him or her from custody, shall inquire into the truth or probability of the charge exhibited against such prisoner or prisoners, by the oath of all the witnesses attending; and shall, upon consideration of the facts and circumstances then proved, either commit such person or persons so charged to jail, admit him, her or them to bail, or discharge him, her or them from custody. No justice of the peace shall admit to bail any person or persons charged with treason, murder, or any offense punishable with death; *and provided*, that in all cases where the charge is for sodomy, rape, arson, burglary, robbery, forgery or counterfeiting, it shall be the duty of any justice of the peace, whenever any person or persons shall be brought before him for the same or either of them, to associate with himself some neighboring justice of the peace, previous to the examination of the witnesses; and they two shall have power to bail such prisoner or prisoners, or commit him, her or them to jail, in case no good and sufficient bail is offered, or discharge the prisoner or prisoners, according to the proof that is adduced and the law arising thereon. All recognizances taken in pursuance of this section, shall require the accused to appear at and on the first day of the next circuit court; or, if the court be then sitting, on some day of the term to be therein designated.

"Sec. 204. It shall be the duty of the judge or justice of the peace, who shall commit any offender to jail, as aforesaid, or admit him to bail, to bind by recognizance the prosecutor, and all such as do declare anything material to prove the offense charged, to appear before the next circuit court, on the first day thereof; or, if the said court shall be then sitting, on some day to be therein designated, (and in all cases, at the same time and place as the person or persons accused by said witnesses, shall be bound to appear,) to give evidence touching the offense so charged, and not depart the court without leave. If any person, upon being required to enter into recognizance, as aforesaid,

shall refuse, it shall be lawful for such judge or justice of the peace to commit him or her to jail, there to remain until he or she shall enter into such recognizance, or be otherwise discharged by due course of law.

"Sec. 205. All recognizances that have any relation to criminal matters, shall be taken to the people of this State, shall be signed by the person or persons entering into the same, be certified by the judge, justice of the peace, or other officer taking the same, and delivered to the clerk of the circuit court, on or before the day mentioned therein for the appearance of the witness or accused, therein bound. Recognizances taken in courts of record need not be signed or certified, as aforesaid. Recognizances for assaults, batteries and affrays, shall be for the appearance of the accused before the justice of the peace taking the same, or before some other justice of the county, on the day appointed by the justice, for the trial of the offender.

"Sec. 206. Where any person shall be committed to jail, on a criminal charge, for want of good and sufficient bail, except for treason, murder, or other offense punishable with death, or for not entering into a recognizance to appear and testify, a judge or any justice of the peace, may take such bail or recognizance, in vacation, and may discharge such prisoner from his or her imprisonment. It shall be the duty of the judge or justice committing such person to jail, to endorse on the warrant for commitment, in bailable cases, in what sum bail ought to be taken."

II. OF THE COMPLAINT.

Where a statute gives a justice jurisdiction over an offense, it impliedly gives him power to apprehend any person charged with such offense.[1]

The initiatory steps to be taken in order to procure the arrest and examination of persons charged with having committed offenses, is to make a *complaint* to any officer authorized by law to receive it, showing that a criminal offense has been committed.

Criminal prosecutions are carried on in the name of the people, and have for their principal object the security and safety of the people in general, and not merely private redress. But as offenses for the most

(1) 1 Chit. Crim. L. 34.

part more particularly affect a particular individual, it is not usual for any other person to interfere. In general, however, every man is of common right entitled to prefer an accusation against a party whom he suspects to be guilty.[1]

When a person competent to enter a complaint knows that another has committed an offense, he should see that measures are taken to bring the offender to justice. In point of morals this duty is quite plain, and it is especially so with regard to those more aggravated crimes which strike at the foundation of public tranquility, or endanger the lives and property of individuals.

No one can be said to have fully discharged his obligations to society, who, under such circumstances, should remain silent and inactive, and allow the culprit to escape. In England this duty is expressly enforced by statute, and the neglect of it, is in many cases rendered criminal, and visited with exemplary punishment. It is stated, moreover, to be an offense at common law, for one who knows that felony or treason has been committed willfully, to omit informing against the offender.

If a justice of the peace without complaint or information should issue a warrant and cause a person to be arrested, trespass would lie against him; for though he is accused when he issues a warrant on a false accusation, yet it is otherwise where he issues his warrant without accusation.[2]

The statute does not require, as will be seen by reference to section 203 in the preceding division of this chapter, that the complaint or information, in case where a felonious offense has been committed, should be in writing.

It is laid down, however, by several writers, that it is the duty of the magistrate, independent of any statutory provision, to take all charges, of whatsoever kind or complexion they may be, in writing.[3] This practice is recommended by a variety of considerations; among which are the following: It will ensure greater system and accuracy in the subsequent proceedings—enabling the justice, in case the complainant or any of the witnesses are prosecuted for their doings in the matter, to shew distinctly what they testify to—and further, if the justice himself is prosecuted, it will facilitate his defense, by enabling him to exhibit, at once, an information on oath authorizing the warrant and giving him jurisdiction.[4]

(1) 1 Chit. Crim. L. 1. (2) Breese, 165. (3) See Barb. Crim. L. 519, and authorities cited.
(4) See 2 Stark. Ev. 429, note *a*; Barb. Crim. L. 519.

When the complaint is reduced to writing, it may be in the following form:

Form of complaint, when any criminal offense has been committed.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The complaint and information of A. B. of said county made before E. F. Esquire, one of the justices of the peace in and for said county, on the ——— day of ——, 18—, who being duly sworn, on his oath says that (*here set forth the offense*).[1]

Subscribed and sworn to before me, this —— day of —— A.D. 18—. E. F. Justice of the Peace. } A. B.

Form of oath of complaint, where the complaint is not reduced to writing.

You do swear, that you will true answers make to such questions as may be put to you touching the present complaint against C. D. So help you God.

III. OF THE WARRANT.

If the justice determines that the case requires further proceedings, his next duty is to issue his warrant for the apprehension of the offender. The warrant to arrest persons with a view of obtaining sureties of the peace, will be noticed hereafter. It is proposed here to notice, in a general way, the more ordinary warrant to arrest persons charged with having committed crimes; though in most respects our observations will apply to both species of warrants.

In respect to the form and requisites of this species of warrant, the following particulars are deserving of attention:

1st. *That it should show the county where it was made, either in the body of the warrant, or in the margin.*[2]

(1) The manner of stating the various offenses will be the same as that recited in the warrant; reference can therefore be had to the forms of statements in Chapter IV. *post.*

(2) 2 Hawk. P. C. Chap. 13, § 23.

This is usually done by a statement in the margin at the commencement, thus:

STATE OF ILLINOIS, } ss.
Lake COUNTY, }

2d. *It ought to set forth the year and day wherein it was issued,* that in an action brought upon an arrest made by virtue of it, it may appear to have been prior to such arrest.[1]

3d. *It must be in the name of the people of the State of Illinois,* as required by the Constitution.[2]

4th. *It must be under the hand of the justice or magistrate who issues it.* This is expressly required by statute,[3] and by the common law.[4]

5th. *It may be under seal or not.* At common law it has been said a seal was necessary;[5] but such does not seem to be the case.[6] By our statute it is only necessary that it should be under the hand of the justice.[7]

6th. *It should not be general, to apprehend all persons suspected,* but should direct the officer to apprehend some particular individual; otherwise it will be void.[8]

7th. *The name of the person to be apprehended should be accurately stated, if known,* and must not be left in blank to be filled up afterwards.[9] If the name inserted be not the right one, or be fictitious, merely, the arrest cannot be justified, even though the person arrested be the one intended; unless, indeed, he is known as well by the name in the warrant as by his true name.[10] But if the name of the party be unknown, the warrant may be issued against him by the best description the nature of the case will allow: as, "the body of a man whose name is unknown, but whose person is well known, and who is employed as the driver of cattle, wears a white hat, and has lost his right eye."[11] Yet a warrant to apprehend "Hood, (omitting the Christian name,) of B., in the parish of F., by whatsoever name he may be called or known, the son of Samuel Hood, to answer," &c., was held defective, as omitting the Christian name, and assigning no

(1) 2 Hawk. P. C. Chap 13, § 22; 2 Hale's P. C. 111; 1 Chit. Crim. L. 38, 39.
(2) Const. Ill. Art. V. § 26. (3) Rev. Stat. 190, Sec. 203.
(4) 2 Hawk. P. C. Chap. 13, § 21; 1 Hale's P. C. 577.
(5) 4 Black. Com. 290; 2 Hawk. P. C. Chap. 13, § 21; 1 Hale's P. C. 577.
(6) Willes' R. 411; Bull N. P. C. 83; 1 Chit. Crim. L. 38.
(7) Rev. Stat. 190, Sec. 203.
(8) 4 Black Com. 291; 1 Hale's P. C. 580; 1 Chit. Crim. L. 41, 42.
(9) 1 Chit. Crim. L. 39; 2 Hale's P. C. 114; Fost. 312.
(10) 8 East. 328; 6 Cowen, 456; 7 Id. 332; 3 Wend. 350; 4 Id. 555; 9 Id. 320; 2 Taunt. 400.
(11) 1 Chit. Crim. L. 39, 40; 1 Hale's P. C. 577.

reason for the omission, nor giving any distinguishing particulars of the individual.[1]

8th. *The warrant should recite the accusation made by the complaint.* Although this is not required by statute, and at common law it was deemed rather discretionary than necessary, to set out the accusation in the warrant, yet the practice of doing so has been universally recommended.[2]

9th. *The warrant must be properly directed.* The statute requires that it shall be directed to all sheriffs, coroners, and constables within the State.[3] If a private person is authorized to execute the warrant, his name should appear in the warrant; that is, it should be directed to the officers before named, and to the individual who is to execute it, naming him.[4]

Return of the warrant. The warrant of a magistrate is not returnable at any particular time, and it continues in force until it is fully executed and obeyed.[5]

General form of warrant in the name of the people.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The people of the State of Illinois to all Sheriffs, Coroners, and Constables of said State:

Whereas A. B. hath this day made complaint on oath before L. M., a justice of the peace of the said county, that (*here set forth the offense.*)

We therefore command you forthwith to take the said C. D. and bring him before the said L. M., or in case of his absence, before any other justice of the peace of the said county, to be dealt with according to law. Hereof fail not at your peril. Witness the said L. M. at ———, in said county, the ——— day of ———, 18—.

L. M.
Justice of the peace.

Form of warrant directed to a private person.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The people of the State of Illinois to all Sheriffs, Coroners, and Constables of said county, and to John Doe:

Whereas A. B. hath this day made complaint on oath before L. M.,

(1) Rex *v.* Hood, I. M. & M. 281.
(2) See 1 Chit. Crim. L. 41; 2 Hale's P. C. 111; 1 Id. 580; Cro Jac. 81; 2 Willes, 158.
(3) Rev. Stat. 192, Sec. 207. (4) Id 192, Sec. 208. (5) Peake's R. 334.

a justice of the peace of the said county, that (*here set forth the offense.*)

We therefore command you forthwith to take the said C. D. and bring him before the said justice, or in case of his absence, before some other justice of the peace of the said county, to be dealt with according to law. Hereof fail not. In witness whereof the said justice hath hereunto set his hand at ———, in the county aforesaid, the ——— day of ———, 18—.

L. M.
Justice of the Peace.

Form of order thereon.

Ordered that *John Doe*, named in the within warrant, be hereby authorized to execute the same. (Dated)

L. M.
Justice of the Peace.

Warrant for Larceny.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The people of the State of Illinois, to all Sheriffs, Coroners, and Constables of said State:

Whereas A. B. hath this day made complaint on oath before L. M., a justice of the peace of the said county, that on this present day at ———, in said county, divers goods and chattels of him, the said A. B. of the value of fifty dollars, that is to say, one silver watch, six silver spoons, and one coat, were feloniously stolen, taken, and carried away, and that he has just cause to suspect, and doth suspect that C. D. did feloniously steal, take, and carry away the same. We therefore, command you forthwith to take the said C. D. and bring him before the said justice, or in case of his absence, before some other justice of the peace of said county, to be dealt with according to law. In witness whereof the said justice hath hereunto set his hand at ———, in said county, the ——— day of ———, 18—.

L. M.
Justice of the Peace.

Warrant for Burglary, when the name of the offender is unknown.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The people of the State of Illinois to all Sheriffs, Coroners, and Constables of said State:

Whereas A. B. hath this day made complaint on oath before L. M. a justice of the peace of said county, that in the night of the ——— day of ——— last, (*or instant,*) the dwelling house of him, the said A. B. situate in ———, in said county, was willfully and maliciously and forcibly broken and entered, with intent the goods and chattels of the said A. B. in said dwelling house then and there being, feloniously to steal, take and carry away: and one silver watch of the value of *twenty* dollars, (*state all the articles, with the value of each,*) of the goods and chattels of the said A. B. was feloniously and burglariously stolen, taken and carried away; and that he hath just cause to suspect, and doth suspect that a man whose name is unknown to the said A. B., but whose person is known to him, and who is employed as the driver of a four-horse team, has red hair, and has lost his right eye, did break and enter the said dwelling house, and commit the said felony and burglary.

We therefore, command you forthwith to take the said man, whose name is so unknown, and bring him before said justice, or, in case of his absence, before some other justice of said county, to be dealt with according to law. In witness whereof the said justice hath hereunto set his hand at ———, in said county, the ——— day of ———, 18—.

L. M.
Justice of the Peace.

Warrant to levy hue and cry, on a robbery having been committed.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The people of the State of Illinois to all Sheriffs, Coroners, and Constables of said State:

Whereas A. B. hath this day made complaint on oath before L. M., a justice of the peace of the said county, that on this present day of

———, 18—, at a place called ———, in said county, in the public highway there, two persons, to him the said A. B. unknown, in and upon him the said A. B., did make an assault, and him the said A. B. then and there feloniously did put in great fear and danger of his life, and seventy-five pieces of the coin of the United States, called dollars, of the goods and chattels of him the said A. B. from the person and against the will of him the said A. B. then and there forcibly and feloniously did steal, take and carry away; and that one of the persons to him the said A. B. unknown, is a tall, strong man, and seemeth to be about the age of *thirty-five* years, is pitted in the face with small pox, and hath a scar of a wound under his left eye, and had then on a dark brown riding coat, &c., and did ride on a bay gelding with a star on his forehead. And the other, &c. And that, after the said felony and robbery was committed, the said persons, to him the said A. B. unknown, did fly and withdraw themselves to places unknown, and are not yet apprehended. We therefore, command you forthwith to raise the power of the (*precincts* or *towns*) in your several counties, and to make diligent search for the persons above described, and to make fresh pursuit, and hue and cry after them from precinct to precinct, and from county to county, as well by horse as by footmen, and give due notice thereof, describing the persons and the offense aforesaid, unto every next Sheriff, Coroner and Constable on every side, until the said persons shall be apprehended: and all persons whom you or any of you shall, as well upon search and pursuit as otherwise, apprehend or cause to be apprehended, as justly suspected for having committed the said robbery and felony, that you do carry forthwith before some justice of the peace of the county where he or they shall be apprehended, to be by such justice (and some neighboring justice associated with him,) examined and dealt with according to law. And hereof fail you not respectively upon the peril that shall ensue thereon. Given under the hand of said justice at ———, in the county of ———, the ——— day of ———, 18—.

L. M.
Justice of the Peace.

Another form of warrant to levy hue and cry, on a robbery having been committed.

STATE OF ILLINOIS, }
———COUNTY. } ss.

The people of the State of Illinois to all Sheriffs, Coroners, and Constables of said State:

Whereas, A. B. hath this day made complaint on oath before L. M., one of the justices of the peace of said county, that on the ——— day of ———, 185–, at ——— in the county aforesaid, C. D., in and upon the said A. B. feloniously did make an assault, and one silver watch, the property of the said A. B., from his person, and against his will, by force did then and there feloniously and violently take and carry away; and after the said felony and robbery was committed, the said C. D. did fly and withdraw himself to places unknown, and is not yet apprehended. We, therefore, command you and every of you to search within your several counties for the said C. D., and also make hue and cry after him from precinct to precinct, and from county to county, and that as well by horsemen as footmen, and if you shall find him, the said C. D., that then you carry him before some one of the justices within the county where he shall be taken, to be dealt with according to law. Hereof fail you not respectively at your peril. Given under the hand of the said justice at ———, in the county aforesaid, this ——— day of ———, 185–.

L. M.,
Justice of the Peace.

IV. OF THE ARREST.

An arrest in criminal cases is the apprehension or restraining of one's person, in order to be forthcoming to answer an alleged or suspected crime. To this arrest all persons whatsoever, are, without distinction, equally liable in all criminal cases; but no man is to be arrested unless charged with such a crime as will at least justify holding him to bail when taken.[1]

The subject of arrests pertains more particularly to the duties of constables, and will therefore be treated upon more at length in that part of this work which relates to the powers and duties of constables.

(1) 4 Bl. Com. 290.

V. OF THE EXAMINATION.

It is apprehended that but few suggestions upon the subject of the examination need here be given. The language of the statute is, no doubt, sufficiently explicit upon this subject to supersede the necessity of any lengthy illustration in reference to the duties of the justice in this respect, and a mere recurrence to the statute, an extract from which has already been given, may suffice.[1] The justice before whom any person may be brought in pursuance of a warrant, or may be brought without a warrant, and charged with any criminal offense, is required, before he shall commit such prisoner to jail, admit to bail, or discharge from custody, to inquire into the *truth* or *probability* of the charge exhibited against such person, by the oath of all the witnesses attending; and upon the consideration of the facts and circumstances then proved, he will either commit such person so charged to jail, admit him to bail, or discharge him from custody.[2]

It seems, then, that the examination assumes the nature of a trial of issue of fact before the justice, without a jury, and may be conducted in the same manner, as nearly as the nature of the case will admit; the prisoner having the same right to introduce witnesses as if on trial. When the charge is for sodomy, rape, arson, burglary, robbery, forgery, or counterfeiting, it is the duty of the justice to associate with himself some neighboring justice of the peace, previous to the examination of the witnesses, who together will have power to bail the prisoner, commit to jail, or discharge him, according to the proof adduced, and the law arising thereon.

Commitment for further Examination.

STATE OF ILLINOIS, }
——— COUNTY, } ss.

To the Keeper of the Common Jail of the said County:

Receive into your custody, and safely keep for further examination, C. D., who is charged before me with having stolen, taken and carried away a horse, the property of one A. B.

Given under the hand and seal of the said justice, this ——— day of ———, 18—.

L. M.,
Justice of the Peace.

(1) See *ante*, p. 163.

(2) Rev. Stat. 190, Sec. 208.

The same, in another form.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

To any Constable of the said County, and the Keeper of the Common Jail of the said County:

Whereas, C. D. is now brought before L. M., a justice of the peace of the said county, upon a charge under oath of having passed, as true and genuine, ten counterfeit pieces of the silver coin of the United States, current in this State, called half dollars, with intent to defraud A. B. These are, therefore, in the name of the people of the State of Illinois, to command you, the said constable, to convey the said C. D. to the common jail of said county, and deliver him to the keeper thereof; and you, the said keeper, are hereby required to receive and safely keep the said C. D. in your custody, in said jail, for further examination, and until he shall be discharged by due course of law.

Given under the hand and seal of the said justice, this ——— day of ———, 18—.

L. M.,
Justice of the Peace.

Order to bring up a Prisoner for Examination.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

To the Keeper of the Common Jail of the said County:

You are hereby commanded to bring C. D., a prisoner in your custody, to my office, in ———, in said county, for further examination.

Given under my hand and seal this ——— day of ———, 18—.

L. M.,
Justice of the Peace.

Summons for a Witness to give Evidence.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

To any Constable of the said County:

Whereas, complaint has been made by A. B., before L. M., a jus-

tice of the peace of said county, that (*set forth the offense as in the warrant,*) and an information given that G. H. is a material and necessary witness to be examined concerning the same: these are, therefore, in the name of the people of the State of Illinois, to require you to summon the said G. H. to appear before the said justice, at his office at ———, in the said county, forthwith, (*or on the ——— day of ——— instant, at ——— o'clock, in the —— noon,*) to testify the truth, according to his knowledge, concerning the premises.

Given under the hand and seal of the said justice, this ——— day of ———, 18—.

L. M.,
Justice of the Peace.

Summons for a Witness, where two Justices are required to be associated to take the Examination.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

To any Constable of said County:

Whereas, complaint has been made by A. B., before L. M., a justice of the peace of said county, that (*here set forth the offense as in the warrant,*) and information given that G. H., S. R., K. L., and M. N. are material and necessary witnesses to be examined concerning the same: these are, therefore, in the name of the people of the State of Illinois, to command and require you to summon the said G. H., S. R., K. L. and M. N. to appear before the said justice, (*the name of the neighboring justice may be inserted,*) and some neighboring justice to be by him associated with himself, at the office of the said ——, in ———, in said county, forthwith, (*or on the ——— day of ———, instant, at ——— o'clock, in the —— noon,*) to testify the truth according to their knowledge, concerning the premises.

Given under the hand and seal of the said justice, the ——— day of ———, 18—.

L. M.,
Justice of the Peace.

The like, when issued by two Justices.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

To any Constable of said County:

Whereas, complaint has been made by A. B., before L. M., a justice

of the peace of said county, that (*here set forth the offense as in the warrant,*) and information given that G. H. is a material witness, and necessary to be examined concerning the same. These are, therefore, to command you, in the name of the people of the State of Illinois, to summon the said G. H. to appear before the said L. M., and O. P., a neighboring justice associated with him, at the office of the said L. M., forthwith, (*or on the ——— day of ——— 18—, at —— o'clock, in the —— noon,*) to testify the truth according to his knowledge, concerning the premises.

Given under the hands and seals of the said justices, the ——— day of ———, 18—.

L. M.,
O. P.,
Justices of the Peace.

Warrant for a Witness in case of Felony.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

To any Constable of said County:

Whereas, oath hath been made before L. M., a justice of the peace of the said county, by A. B., that a horse of the said A. B. was lately stolen, taken and carried away, at ———, in the county aforesaid, and that he has good cause to believe that G. H. is a material witness to prove by whom the said larceny was committed. These are, therefore, in the name of the people of the State of Illinois, to require you to cause the said G. H. forthwith to come before the said justice, to give such information and evidence as he knoweth concerning said felony.

Given under the hand and seal of the said justice, this ——— day of ———, 18—.

L. M.,
Justice of the Peace.

Warrant against a Witness who has refused to attend on Summons.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

To any Constable of said County:

These are in the name of the people of the State of Illinois, to command you, upon sight hereof, to take G. H. and bring him before the

subscriber, a justice of the peace of the said county, to answer all such matters and things as, on behalf of the said people, are on oath objected against him, by A. B., for that he, the said G. H., being a material witness to prove a certain felony lately committed, and, having been duly summoned to give evidence touching the same, hath neglected to appear in pursuance of said summons.

Given under the hand and seal of the said justice, this ——— day of ———, 18—.

L. M.,
Justice of the Peace.

Commitment of a Witness for refusing to give evidence.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

To any Constable of the said County, and the Keeper of the Common Jail of the said County:

These are in the name of the people of the State of Illinois, to command you, the said constable, forthwith to convey and deliver into the custody of the said keeper, the body of G. H., this day brought before the subscriber, one of the justices of the peace of said county, for that he, the said G. H. having knowledge that a certain felony and larceny was committed in the county aforesaid, that is to say, that a certain horse, the property of the said A. B., was feloniously stolen, taken and carried away by C. D., on the ——— day of ——— last, touching which the said G. H. can give material evidence, has refused to be examined on oath respecting the same; and you, the said keeper, are hereby required to receive the said G. H. into your custody, in the said jail, and him there safely keep, until he shall submit to be examined touching the said felony, or shall be discharged by due course of law.

Given under the hand and seal of the said justice, this ——— day of ———, 18—.

L. M.,
Justice of the Peace.

Oath of Complainant or Witness on the Examination.

You do swear, that the evidence you shall give between the people of the State of Illinois, and C. D., touching the charge exhibited against him, now in hearing, shall be the truth, the whole truth, and nothing but the truth: so help you God.

Form of Affirmation.

You do solemnly, sincerely, and truly declare and affirm, that the evidence that you shall give between the people of the State of Illinois and C. D., touching the charge exhibited against him, now in hearing, shall be the truth, the whole truth, and nothing but the truth: and this you do under the pains and penalties that may ensue thereon.

VI. OF PROCEEDINGS SUBSEQUENT TO THE EXAMINATION.

1. *Of the Discharge.*

The examination of a prisoner, when brought before a justice of the peace, charged with having committed a criminal offense, was formerly an *ex parte* inquiry, and the prisoner was not allowed the benefit of counsel, or the privilege of introducing exculpatory evidence. And if an express charge of felony on oath, against the prisoner, was made, though his guilt appeared doubtful, yet the justice could not wholly discharge him, but must have bailed or committed him. And if a person was brought before a justice, charged with having committed a felony, or upon suspicion thereof, though it appeared to the justice that the prisoner was not guilty, it seems to have been the duty of the justice to commit him to prison, or at least to join with some other in the bailment of him, to the end the party may be discharged by a lawful trial. This rule, however, has been modified, and the justice is not required to commit any one unless a *prima facie* case is made out against him by witnesses entitled to a reasonable degree of credit.[1]

Under our statute, as we have before seen,[2] the justice must discharge the prisoner, unless from the facts and circumstances proved, there shall be a probability of the truth of the charge exhibited against him.[3]

2. *Of Bail and Recognizance.*

After the examination, should the justice determine that there is a probability of the truth of the charge exhibited against the prisoner, he will admit him to bail in such sum as he shall think the case demands, and take his recognizance with good and sufficient security for his ap-

(1) 1 Barn. & Cres. 50. (2) Ante p. 163. (3) Rev. Stat. 191, Sec. 203.

pearance at and on the first day of the next circuit court, or if the court be then sitting, on some day of the term, to be therein designated,[1] unless the offense charged be for treason, murder, or any other offense punishable with death.[2]

All recognizances that have any relation to criminal matters must be taken to the people of the State of Illinois, and signed by the person or persons entering into the same, certified by the justice of the peace taking the same, and delivered to the clerk of the circuit court, on or before the day therein mentioned for the appearance of the accused.[3]

Recognizance of a Prisoner.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

Be it remembered, that on the ——— day of ———, 185–, C. D. of ———, in the county aforesaid, and E. F. and G. H., of ———, in the county aforesaid, personally came before L. M., a justice of the peace of the said county, (*if taken by two justices, then say:* "before us, L. M. and R. S., two of the justices of the peace of the said county,") and severally and respectively acknowledged themselves to owe to the people of the State of Illinois, that is to say, the said C. D. the sum of *two hundred* dollars, and the said E. F. and G. H. each the sum of *two hundred* dollars, to be made and levied of their respective goods and chattels, lands and tenements, to the use of the said people, if default shall be made in the following condition:

The condition of this recognizance is such that if the said C. D. shall personally appear at the next term of the circuit court, to be held in and for the said county of ———, on the first day thereof, to answer to an indictment to be preferred against him for (*here set forth the offense briefly,*) and to do and receive what shall be by the court then and there enjoined upon him, and shall not depart the court without leave, then this recognizance to be void, otherwise to remain in full force.

Taken, subscribed, and acknowledged the day and year first above written, before L. M., Justice of the Peace. } C. D. E. F. G. H.

(1) Rev. Stat. 191, Sec. 203. (2) Ibid. (3) Rev. Stat. 191, Sec. 205.

Form of Recognizance of two Prisoners.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

Be it remembered, that on the — day of —— 18—, C. D., and J. K., of ——, in the county aforesaid, and E. F. and G. H., of ——, in the county aforesaid, personally came before L. M., a justice (*if taken by two justices, then say:* "before us, L. M., and R. S., two justices") of the peace of the said county, and severally acknowledged themselves to owe to the people of the State of Illinois, that is to say, the said C. D. and J. K., the sum of *three hundred* dollars each, and the said E. F. and G. H. the sum of *three hundred* dollars, to be respectively levied of their several goods and chattels, lands and tenements, to the use of the said people, if default shall be made in the condition following:

The condition of this recognizance is such, that if the above bounden C. D. and J. K. shall personally be and appear at the next term of the circuit court, to be held in and for the said county of ———, on the first day thereof, then and there to answer to an indictment to be preferred against them, for (*here state the offense briefly,*) and to do and receive what shall by the court be then and there enjoined upon them, and shall not depart the court without leave, then this recognizance to be void, or else to remain in full force.

Taken, subscribed, and acknowledged,	C. D.
the day and year above written, before	J. K.
L. M.,	E. F.
Justice of the Peace.	G. H.

Form of Recognizance by an Infant or Married Woman.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

Be it remembered, that on the —— day of ———, 185–, E. F. and G. H., of the county aforesaid, personally came before L. M., a justice of the peace of the said county, and severally and respectively acknowledged themselves to owe the people of the State of Illinois the sum of ——— dollars, to be levied of their respective goods and chattels, lands and tenements, to the use of the said people, if default shall be made in the condition following:

The condition of this recognizance is such that if I. J., who is an infant, (*or* "married woman,") shall personally appear, (*as in preceding forms.*)

3. *Of Commitment.*

If no bail be offered by the person charged, or if such as may be offered be considered by the justice to be insufficient, it will be his duty to commit such person to jail, there to remain until he shall be discharged by due course of law.

The warrant of commitment in such cases is technically called a mittimus, which is a precept in writing under the hand and seal of the justice, or other competent officer, directed to the jailer or keeper of a prison, commanding him to receive and safely keep, a person charged with an offense therein named, until he shall be delivered by due course of law.[1] Under our statute it is not essential, however, to the validity of a warrant of commitment, that it should be under the seal of the justice; being under his hand, it will be as valid as if a seal were affixed.[2]

Form of Mittimus by one Justice for an Offence not bailable.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The People of the State of Illinois, to any Constable of the said County, and to the Keeper of the Common Jail of said County:

Whereas C. D. has been arrested, and this day brought before L. M., one of the justices of the peace of the said county, charged on the oath of A. B. with [having feloniously, wilfully and of malice aforethought, killed and murdered G. H. at ———, in the county aforesaid, who was on the ——— day of ——— instant, there found dead;] and having inquired into the truth and probability of the charge exhibited against him, by the oath of all witnesses attending; and upon consideration of the facts and circumstances proved, the said justice did adjudge that the said offense had been committed, and did further adjudge the said C. D. to be guilty of having committed the said felony and murder. We therefore command you the said constable forthwith to convey the said C. D. to the common jail of the said county, and him deliver to the keeper thereof; and you the said keeper are hereby required to receive the said C. D. into your custody in the said jail, and him there safely keep until he shall be discharged

(1) 2 Bouv. L. D. Title "Mittimus." (2) Rev. Stat. 192, Sec. 210.

by due course of law. Witness the said L. M. at ———, in the county of ———, the ——— day of ———, 18—.

L. M.,
Justice of the Peace.

The names and residences of the principal witnesses must in all cases be written on the warrant of commitment.[1]

Form of Mittimus by one Justice for a bailable case.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The People of the State of Illinois to any Constable of the said County, and to the Keeper of the Common Jail of said County:

Whereas C. D. has been arrested and this day brought before L. M., one of the justices of the peace of the said county, charged on the oath of A. B. with [suspicion of feloniously stealing, taking, and carrying away at ———, in the county aforesaid, on the ——— day of ———, instant, one sorrel horse of the value of fifty dollars, the property of the said A. B., which was then and there stolen,] and having inquired into the truth and probability of the charge exhibited against him by the oath of all witnesses attending, and upon consideration of facts and circumstances, the said justice did adjudge that the said offense had been committed, and that there was probable cause to believe the said C. D. to be guilty thereof, and required him to enter into a recognizance with good and sufficient sureties in the sum of *two hundred and fifty dollars*, for his personal appearance at the next term of the circuit court to be held in and for the county of ———, on the first day thereof, with which requisition he has failed to comply.

We therefore command you the said constable forthwith to carry the said C. D. to the common jail of the said county, and deliver him to the keeper thereof; and you the said keeper are hereby required to receive the said C. D. into your custody in the said jail, and him there safely keep for the want of sureties until he shall be discharged by due course of law. Witness the said L. M., at ———, in the county of ———, the ——— day of ———, 18—.

L. M.,
Justice of the Peace.

(1) Rev. Stat. 193, Sec. 212.

Form of Indorsement on the foregoing.

"Bail ought to be taken in the sum of $———."

L. M., Justice of Peace.

Form of Mittimus by two Justices.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The People of the State of Illinois, to any Constable of the said County, and to the Keeper of the Common Jail of said County:

Whereas C. D. has been arrested and brought before L. M., one of the justices of the peace of the said county, charged on the oath of A. B. with [having on the ——— day of ———, 18—, feloniously and falsely made, forged, and counterfeited a certain promissory note, purporting to be the promissory note of A. B. to the said C. D., for the payment of fifty dollars,] and the said justice having associated with him, K. L., a neighboring justice of the peace of the said county, and they, having taken the examination of the witnesses, and considered the proofs adduced and the law arising thereon, did adjudge that the said offense had been committed, and that there was probable cause to believe the said C. D. to be guilty of the charge exhibited against him, and required him to enter into a recognizance with good and sufficient sureties in the sum of ——— dollars, for his personal appearance at the next term of the circuit court to be held in and for the county of ———, on the first day thereof, with which requisition the said C. D. has failed to comply.

We therefore command you the said constable, forthwith to convey the said C. D. to the common jail of the said county, and deliver him to the keeper thereof; and you the said keeper are hereby required to receive the said C. D. into your custody in the said jail, and him there safely keep for the want of sureties until he shall be discharged by due course of law. Witness the said L. M. and K. L., at ———, in the county of ——, the —— day of ———, 18—.

L. M., Justice of Peace.
K. L., Justice of Peace.

Form of Indorsement on the above.

"Bail ought to be taken in the sum of $———."

L. M., Justice of Peace.

Form of Mittimus where Prisoner confessed the Offence.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The People of the State of Illinois to any Constable of said County, and to the Keeper of the Common Jail of the said County:

These are to command you the said constable forthwith to convey and deliver into the custody of the keeper of the common jail of the said county, the body of C. D., this day brought before L. M., one of the justices of the peace in and for the said county, and charged upon the oath of A. B. with [having on the ——— day of ———, 18—, at ———, in the county aforesaid, feloniously stolen, taken and carried away one gold watch, of the value of fifty dollars, the property of the said A. B.,] which the said C. D. has confessed upon his examination before the said justice of the peace, and having been required by the said justice to enter into a recognizance with sufficient sureties for his appearance the first day of the next term of the circuit court to be held in and for the county of ———, with which requisition the said C. D. has failed to comply: and you the said keeper are hereby required to receive the said C. D. into your custody in the said jail, and him there safely keep, for the want of sureties, until he shall be discharged by due course of law. Witness the said justice at ———, in the county of ———, the —— day of ——, 18—.

L. M.,
Justice of the Peace.

Form of Indorsement on the above.

"Bail ought to be taken in the sum of $———."

L. M.,
Justice of the Peace.

Mittimus by a Justice for an Offence in his presence.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The People of the State of Illinois to any Constable of said County, and to the Keeper of the Common Jail of the said County:

These are to command you the said constable forthwith to convey and deliver into the custody of the keeper of the common jail of the

said county, the body of C. D., charged by L. M., one of the justices of the peace of the said county, upon the view of the said justice, with having on this present day at ———, in the said county, with an abandoned heart, and without provocation, feloniously, with a deadly weapon, to wit, a hatchet, made an assault upon A. B., with intent to inflict upon the person of the said A. B., a bodily injury, he, the said C. D. having been required to enter into a recognizance with sufficient sureties to be and appear at the next term of the circuit court to be held in and for the county of ———, on the first day thereof, and having neglected to comply with such requisition; and you the said keeper are hereby required to receive the said C. D. into your custody in the said jail, and him there safely keep for want of sureties until he shall be discharged by due course of law. Witness the said L. M. at ———, in the county aforesaid, the ——— day of ———, 18—.

L. M.,
Justice of the Peace.

Form of Indorsement on the above.

"Bail ought to be taken in the sum of $———."

L. M.,
Justice of the Peace.

4. *Of Recognizance of Witnesses.*

Rev. Stat. 191, Sec. 204. "It shall be the duty of the judge or justice of the peace who shall commit any offender to jail as aforesaid, or admit him to bail, to bind by recognizance, the prosecutor, and all such as do declare anything material to prove the offence charged, to appear before the next circuit court on the first day thereof, or if the said court shall be then sitting, on some day to be therein designated, (and in all cases at the same time and place as the person or persons accused by said witnesses shall be bound to appear,) to give evidence touching the offence so charged, and not depart the court without leave. If any person, upon being required to enter into recognizance as aforesaid, shall refuse, it shall be lawful for such judge or justice of the peace, to commit him or her to jail, there to remain until he or she shall enter into such recognizance, or be otherwise discharged by due course of law."

Form of Recognizance of a Witness.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

Be it remembered that on the ——— day of ———, 18—, A. B. of ———, in the county aforesaid, comes before L. M., a justice of the peace of the said county, and acknowledges himself to owe the people of the State of Illinois the sum of ——— dollars, to be made and levied of his goods and chattels, lands and tenements, to the use of the said people, if default shall be made in the condition following:

The condition of this recognizance is such, that if the said A. B. shall personally be and appear at the next term of the circuit court to be held in and for the said county of ———, on the first day thereof, to give evidence on behalf of the said people against C. D. for [feloniously stealing, taking and carrying away a silver watch, the property of A. B.,] as well to the grand jury as to the petit jury, and do not depart the court without leave, then this recognizance to be void, otherwise to remain in full force and effect.

Taken, subscribed and acknowledged the day and year first above written, before L. M., Justice of the Peace. } A. B.

Form of Recognizance by several Witnesses.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

Be it remembered, that on the ——— day of ———, 18—, A. B., E. F. and G. H., all in the county aforesaid, came before L. M., a justice of the peace of said county, and each of them separately acknowledges himself severally and individually to owe to the people of the State of Illinois the sum of ——— dollars, to be made and levied of his goods and chattels, lands and tenements, to the use of the said people, if default shall be made in the condition following:

The condition of this recognizance is such, that if the said A. B., E. F. and G. H. shall severally appear at the next term of the circuit court, on the first day thereof, to be held in and for the said county of ——, to give evidence in behalf of the said people, against C. D., for (*here state the offense briefly,*) as well to the grand jury as to the petit

jury, and do not depart the court without leave, then this recognizance to be void, otherwise to remain in full force.

Taken, subscribed and acknowledged, the day and year first above written, before L. M., *J. P.* — A. B., E. F., G. H.

For a Recognizance of a Witness with Sureties.

STATE OF ILLINOIS, —— COUNTY, } ss.

Be it remembered, that on the —— day of ——, 18—, A. B., of ——, in the county aforesaid, and E. F. and G. H. of the same place, personally came before L. M., a justice of the peace of the said county, and severally and respectively acknowledged themselves to owe to the people of the State of Illinois, that is to say, the said A. B., the sum of —— dollars, and the said E. F. and G. H., each the sum of —— dollars, to be levied of their respective goods and chattels, lands and tenements, to the use of the said people, if default shall be made in the condition following:

The condition of this recognizance is such, that if the said A. B. shall personally appear on the first day of the next term of the circuit court, (*conclude as in the preceding forms, page* 186, *by varying to suit the case.*)

Form of Recognizance by Sureties, by an Infant or Married Woman.

STATE OF ILLINOIS, —— COUNTY, } ss.

Be it remembered, that on the —— day of ———, 18—, E. F. and G. H., of the county aforesaid, personally came before L. M., one of the justices of the peace of the said county, and severally and respectively acknowledged themselves to owe to the people of the State of Illinois, each the sum of —— dollars, to be levied of their goods and chattels, lands and tenements, to the use of the said people, if default shall be made in the condition following:

The condition of this recognizance is such, that if I. J., who is an infant, (*or* "married woman,") shall personally appear on the first day of the next circuit court, (*conclude as in the preceding forms, page* 186, *by varying to suit the case.*)

Commitment of a Witness for refusing to enter into a Recognizance.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The People of the State of Illinois to any Constable of the said County, and to the Keeper of the Common Jail of said County:

We command you, the said constable, forthwith to convey and deliver into the custody of the said keeper, the body of G. H., it appearing by the examination of the said G. H., taken on oath before L. M., one of the justices of the peace of the said county, that he is a material witness against C. D., on a charge made on oath against the said C. D., for (*here set forth the offense truly,*) it having been adjudged by the said justice, that the said offense has been committed, and that there is probable cause to believe the said C. D. to be guilty thereof: and the said G. H. having been required to enter into a recognizance in the sum of ——— dollars, for his personal appearance at the next term of the circuit court, to be held in and for the county of ———, on the first day thereof, to give evidence, in behalf of the people, against the said C. D. for the offense aforesaid, with which requisition the said G. H. has refused to comply; and you, the said keeper of the said jail, are hereby required to receive the said G. H. into your custody in the said jail, and him there safely keep, until he shall enter such recognizance, or be otherwise discharged according to law.

Witness the said justice at ———, in the county of ———, the ——— day of ———, 18—.

L. M.,
Justice of the Peace.

Form of Commitment of Witness for want of Sureties.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The People of the State of Illinois to any Constable of the said County, and to the Keeper of the Common Jail of said County:

We command you, the said constable, forthwith to convey and deliver into the custody of the keeper of the common jail of the said county, the body of G. H., it appearing by the examination of the said G. H., taken on oath before L. M., one of the justices of the peace of the said county, that he is a material witness against C. D., on a charge made on oath against him, for (*here set forth the offense briefly,*) it having

been adjudged by the said justice that the said offense has been committed, and that there is probable cause to believe the said C. D. to be guilty thereof, and the said justice being satisfied by due proof, (*or* "by admissions of the said G. H.,") that there is good reason to believe that the said G. H. would not fulfil the condition of a recognizance, unless sureties be required, and the said G. H., being required by the said justice to enter into a recognizance, with one good and sufficient surety, in the sum of —— dollars, for his personal appearance at the next term of the circuit court, to be held in and for the said county of ——, on the first day thereof, to give evidence on behalf the said people against the said C. D., for the offense aforesaid, with which requisition the said G. H. has failed to comply; and you, the said keeper, are hereby required to receive the said G. H. into your custody, in the said jail, and him there safely keep, until he shall enter into such recognizance, with such surety as aforesaid, or be otherwise discharged by due course of law.

Witness the said L. M., at ——, in the county of ——, the —— day of ——, 18—.

L. M.,
Justice of the Peace.

Form of Commitment of an Accomplice to give Evidence.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The People of the State of Illinois to any Constable of the said County, and to the Keeper of the Common Jail of said County:

We command you, the said constable, forthwith to convey and deliver into the custody of the said keeper, the body of G. H., charged before L. M., one of the justices of the peace of the said county, on his own confession, in being an accomplice with C. D., in [feloniously stealing, taking, and driving away one yoke of oxen, of the value of forty dollars, the property of A. B.,] he, the said G. H., being by the said justice admitted as a witness against the said C. D., on the part and behalf of the people, and on being required so to do, has not offered security for his appearance at the next term of the circuit court, to be held in and for the said county of ——, on the first day thereof; and you, the said keeper, are hereby required to receive the said G. H. into your custody, in the said jail, and him there safely keep for the want of sureties, until he shall be discharged by due course of law.

Witness the said L. M., at ——, in the county of ——, the —— day of ——, 18—.

L. M.,
Justice of the Peace.

5. *Of Bail after Commitment.*

When any person shall be committed to jail on a criminal charge, for want of good and sufficient bail, except for treason, murder, or other offense punishable with death, or for not entering into recognizance to appear and testify, any judge or any two justices of the peace may take such bail or recognizance in vacation, and may discharge such prisoner from his or her imprisonment.[1]

Form of Recognizance of a Prisoner after Commitment.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

Be it remembered, that on the ——— day of ———, 185–, C. D. of ———, in the county aforesaid, and E. F. and G. H. of the same place, personally came before L. M. and J. K., two of the justices of the peace of said county, and severally and respectively acknowledge themselves to owe to the people of the State of Illinois, that is to say, the said C. D. the sum of ——— dollars, and the said E. F. and G. H. each, the sum of ——— dollars, separately, to be made and levied of their respective goods and chattels, lands and tenements, to the use of the said people, if default shall be made in the condition following:

The condition of this recognizance is such, that if the said C. D., who has been committed to the common jail of the said county, for want of sureties, shall personally be and appear at the next term of the circuit court, to be held in and for the said county of ———, on the first day thereof, to answer to an indictment to be preferred against him for (*here state the offence briefly,*) and to do and receive what shall, by the court, be then and there enjoined upon him, and shall not depart the court without leave, then this recognizance to be void, otherwise to remain in full force.

Taken, subscribed and acknowledged the day and year first above written, before L. M., *J. P.* J. K., *J. P.*

C. D.
E. F.
G. H.

(1) Rev. Stat. 191, Sec. 206.

Liberate or Warrant to discharge a Prisoner, upon his finding Sureties after Commitment.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The People of the State of Illinois, to the Keeper of the Common Jail of the said County:

These are to require you to discharge from imprisonment C. D., now in your custody, on the warrant of commitment under the hand of E. F., one of the justices of the peace of the said county, dated the —— day of ———, 185–, for [having feloniously stolen, taken and carried away one gold watch, the property of A. B.,] if detained for no other cause, he having entered into a recognizance before L. M. and J. K., two of the justices of the peace of the said county. Witness the said L. M. and J. K., at ———, in the said county, the ——— day of ———, 185–.

L. M., *J. P.*
J. K., *J. P.*

Another form for the above.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The People of the State of Illinois to the Keeper of the Common Jail of the said County:

Discharge from imprisonment C. D., if detained in your custody for no other cause than what is mentioned in the warrant for his commitment under the hand of E. F., justice, (*or* "under the hands of O. P. and R. S., two of the justices") of the peace of the said county, dated the —— day of ———, 185–. Witness the said L. M., and J. K., two of the justices of the peace of the said county, the —— day of ———, 185–.

L. M., *J. P.*
J. K., *J. P.*

Form of Recognizance of a Witness after Commitment.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

Be it remembered, that on the —— day of ———, 185–, E. F., of ———, in the county aforesaid, comes before L. M. and J. K., two of the justices of the peace of the said county, and acknowledges himself to owe to the people of the State of Illinois, the sum of —— dollars, to be made and levied of his goods and chattels, lands and tenements, to the use of the said people, if default shall be made in the condition following:

Whereas, on the ——— day of ———, 185–, C. D. was brought before L. M., one of the justices of the peace of the said county, charged on the oath of A. B. with [having feloniously stolen, taken and led away, one sorrel horse, of the value of sixty dollars, the property of the said A. B.,] and upon the examination of the said C. D. before the said justice on that day, the said E. F. was produced and sworn, whose evidence the said justice deemed material to prove the offense so charged, and required him to enter into a recognizance to appear at the next term of the circuit court, to be held in and for the said county, on the first day thereof, and not depart without leave, which he refused to do, and was therefore committed to the common jail of the said county. Now, therefore, the condition of this recognizance is such that if the above bounden E. F. shall personally be and appear at the next term of the circuit court, to be held in and for the said county of ———, on the first day thereof, to give evidence in behalf of the people, against the said C. D., touching the said offense so charged, as well to the grand jury as to the petit jury, and do not depart the court without leave, then this recognizance to be void, otherwise to remain in full force.

E. F.

Taken, subscribed and acknowledged, the day and year first above written, before L. M., *J. P.*
J. K., *J. P.*

CHAPTER IV.

FORMS OF STATEMENTS OF OFFENSES IN WARRANTS.

I. OFFENSES AGAINST THE PERSONS OF INDIVIDUALS.

For murder committed by shooting with a gun. Crim. Code, Sec. 22.

(Commence as before, page 168;) that, on the ——— day of ———, instant, (*or* "last,") at ———, in the county aforesaid, C. D. did feloniously, willfully, and of his malice aforethought, fire a gun, loaded with powder and ball, at G. H., and gave to him one mortal wound, of which he instantly died. (Conclude as before, page 168.)

For murder, by stabbing. Crim. Code, Sec. 22.

(Commence as before, page 168;) that, on the ——— day of ———, instant, (*or* "last,") at ———, in the county aforesaid, C. D. did feloniously, willfully, and of his malice aforethought, with a knife,

stab one G. H., and give him several mortal wounds, of which said mortal wounds, the said G. H. languished a short time, and then died. (Conclude as before, page 168.)

For murder, by striking. Crim. Code, Sec. 22.

(Commence as before, page 168;) that, on the ——— day of ———, &c., at ———, in the county aforesaid, C. D. did feloniously, willfully, and of his malice aforethought, with an iron poker, strike one G. H., and give him one mortal wound, of which said mortal wound, the said G. H. languished a short time, and then died. (Conclude as before, page 168.)

For suspicion of murder. Crim. Code, Sec. 22.

(Commence as before, page 168;) that, on this present day, at ———, in the county aforesaid, one G. H. was feloniously, willfully, and of malice aforethought, killed and murdered, and that he the said A. B., hath just cause to suspect, and doth suspect, that C. D. did commit the said felony and murder. (Conclude as before, page 168.)

The like in another form.

(Commence as before, page 168;) that, on the ——— day of ———, instant, at ———, in the county aforesaid, one G. H. was found dead, and that he the said A. B. hath just cause to suspect, and doth suspect that the said G. H. was on that day, feloniously, willfully, and of malice aforethought, killed and murdered, and that C. D. did commit the said felony and murder. (Conclude as before, page 168.)

For murder by poison.

(Commence as before, page 168;) that, on, &c., at, &c., C. D. did feloniously, wickedly, and of his malice aforethought, administer, (*or* "cause and procure to be administered,") unto G. H. a large quantity of deadly poison, called arsenic, with intent to kill and murder the said G. H., which poison was actually taken by the said G. H., by means whereof the said G. H. became sick, and greatly distempered in his body, of which sickness, until the ——— day of

———, at the place in the county aforesaid, he did languish, and, languishing did live, and afterwards, on the day and at the place aforesaid, he the said G. H., of the poison and sickness and distemper occasioned thereby, died. (Conclude as before, page 168.)

For suspicion of murder by poison.

(Commence as before, page 168;) that, on, &c., at, &c., one G. H. died, and that he, the said A. B., hath just cause to suspect, and doth suspect, that, on the said ——— day of ———, at ———, in the county aforesaid, C. D. did feloniously, willfully, and of his malice aforethought, administer to the said G. H., a certain deadly poison, called arsenic, by reason whereof the said G. H. languished a short time, and then died. (Conclude as before, page 168.)

Form against accessory before the fact, as principal.

(Commence as before, page 168;) that, on, &c., at, &c., L. M., did feloniously, willfully, and of his malice aforethought, assault one G. H., and feloniously, willfully, and of his malice aforethought, with his hands and feet, did strike, beat, kick, and give to him the said G. H., several mortal wounds, of which said mortal wounds, the said G. H. instantly died: and that C. D. was present, aiding, abetting and assisting the said L. M. in the said murder. (Conclude as before, page 168.)

For suspicion of murder against accessory before the fact.

(Commence as before, page 168;) that, on, &c., at, &c., one G. H. was murdered, and that he the said A. B., hath just cause to suspect, and doth suspect, that L. M. did commit the said murder: and that C. D. was then and there present, and did aid, abet, and assist the said L. M. in the said murder. (Conclude as before, page 168.)

Against an accessory after the fact of murder.

(Commence as before, page 168;) that, on, &c., at, &c., L. M. did feloniously, willfully, and of his malice aforethought, make an assault upon G. H., and the said L. M. with both hands, about the neck and throat of him the said G. H., then and there feloniously,

willfully, and of his malice aforethought, did choke and strangle, of which said choking and strangling, he the said G. H. instantly died: and that C. D. well knowing the said L. M. to have done and committed the said felony and murder, afterwards, on the ——— day of ———, in the county aforesaid, did conceal the said felony and murder from the magistrates of said county. (Conclude as before, page 168.)

Against an accessory after the fact of murder, second form.

(Commence as before, page 168;) that on, &c., at &c., L. M. did feloniously, willfully, and of his malice aforethought, cast and throw a stone in and upon G. H., and did strike and wound the said G. H., giving the said G. H., by the casting and throwing of the stone, a mortal wound, of which mortal wound the said G. H. instantly died: that on, &c., at, &c., the said L. M. was charged with the said felony and murder, before ——, one of the justices of the said county, and a warrant issued for the arrest of the said L. M.: and that C. D. having full knowledge that the said L. M. had done and committed the said felony and murder, afterwards, to wit, on, &c., at, &c., in the county aforesaid, him, the said L. M., feloniously did harbor and protect, with intent that the said L. M. might avoid an arrest. (Conclude as before, page 168.)

For manslaughter. Crim. Code, Sec. 25.

(Commence as before, page 168;) that on this present day, at ——, in the county aforesaid, C. D. did feloniously, and willfully, with a certain stick, strike one G. H., and give him one mortal wound, of which mortal wound the said G. H. languished a short time and then died. (Conclude as before, page 168.)

For suspicion of manslaughter.

(Commence as before, page 168;) that on, &c., at, &c., in the county aforesaid, one G. H. was feloniously and willfully killed, and that the said A. B. hath just cause to suspect, and doth suspect, that C. D. did commit the said felony. (Conclude as before, page 168.)

For a mother concealing death of bastard child. Crim. Code, Sec. 41.

(Commence as before, page 168;) that C. D., a single woman, on the —— day of ——, 18—, at ——, in the county aforesaid, being

pregnant with a male child, was then and there delivered of the said child alive, which said male child then and there instantly died, and which said male child, by the laws of this State, was a bastard: and that the said C. D. did then and there endeavor privately to conceal the death of said child, so that it might not come to light whether it was murdered or not, contrary to the form of the statute in such case made and provided. (Conclude as before, page 168.)

For dueling. Crim. Code, Sec. 43.

(Commence as before, page 168;) that on, &c., at, &c., C. D. did willfully and maliciously engage in and fight a duel with one L. M., with deadly instruments, the probable consequence of fighting with which might be the death of either of them, the said C. D. and L. M., in which duel, fought as aforesaid, the said C. D. did kill the said L. M., contrary to the form of the statute in such case made and provided. (Conclude as before, page 168.)

Another form for dueling.

(Commence as before, page 168;) that on, &c., at, &c., C. D. and L. M. did, by agreement, engage in and fight a duel with each other, with deadly weapons, the probable consequence of fighting with which might have been the death of either party, in which duel, fought as aforesaid, the said C. D. did inflict a wound in and upon the said L. M., whereof the said L. M. died within one year thereafter, to wit, on the —— day of ——, 18—, contrary to the form of the statute in such case made and provided. (Conclude as before, page 168.)

For challenging a person to fight a duel. Crim. Code, Sec. 44.

(Commence as before, page 168;) that C. D., on the —— day of ——, 18—, in the county aforesaid, unlawfully did challenge G. H. to fight a duel with and against him, the said C. D., with deadly weapons, the probable issue of which might result in the death of either of said parties, contrary to the form of the statute in such case made and provided. (Conclude as before, page 168.)

For accepting a challenge to fight a duel. Crim. Code, Sec. 44.

(Commence as before, page 168;) that on, &c., at, &c., C. D. did accept a challenge to fight a duel with one G. H., and did then and

there consent to fight therein with him, the said G. H., with deadly weapons, the probable issue of which might result in the death of either of said parties, contrary to the form of the statute in such case made and provided. (Conclude as before, page 168.)

For delivering a challenge. Crim. Code, Sec. 45.

(Commence as before, page 168;) that on, &c., at, &c., C. D. did, willfully and knowingly, deliver a written challenge, from and on the part and by the desire of G. H., to L. M., to fight a duel with said L. M., with deadly instruments, the probable consequence of fighting with which might be the death of either party, contrary to the form of the statute in such case made and provided. (Conclude as before, page 168.)

For being present at the fighting of a duel, as a second. Crim. Code, Sec. 45.

(Commence as before, page 168;) that on, &c., at, &c., L. M. did, by agreement, fight a duel with G. H., with deadly weapons, the probable consequence of fighting with which might have been the death of either of the said parties: and that C. D. was present at the fighting of the said duel, as the second of the said L. M., contrary to the form of the statute in such case made and provided. (Conclude as before, page 168.)

For an attempt to murder by poisoning. Crim. Code, Sec. 46.

(Commence as before, page 168;) that on, &c., at, &c., C. D., intending to cause the death of G. H., did, willfully and maliciously, administer to him, the said G. H., a certain poison, called arsenic, which was actually taken by the said G. H., but whereof death did not ensue. (Conclude as before, page 168.)

For administering poison to procure the miscarriage of a woman with child. Crim. Code, Sec. 46.

(Commence as before, page 168;) that on, &c., at, &c., C. D. did administer to G. H., a woman then being with child, a large quantity of a certain noxious and destructive substance, called savin, with intent

thereby to procure the miscarriage and premature birth of the said child, with which the said G. H. was then and there pregnant, contrary to the form of the statute in such case made and provided. (Conclude as before, page 168.)

For mayhem. Crim. Code, Sec. 47.

(Commence as before, page 168;) that on, &c., at, &c., C. D. did unlawfully, with a certain ax, strike and cut the right hand of the said A. B., and thereby render the same useless. (Conclude as before, page 168.

Another form for mayhem.

(Commence as before, page 168;) that on, &c., at, &c., C. D., voluntarily, and of purpose, with a certain dirk-knife, unlawfully put out the left eye of the said A. B. (Conclude as before, page 168.)

For a rape. Crim. Code, Sec. 48.

(Commence as before, page 168;) that on, &c., at, &c., C. D., in and upon the said A. B., violently and feloniously did make an assault, and her, the said A. B., against her will, then and there forcibly did ravish and carnally know. (Conclude as before, page 168.)

For having carnal knowledge of a female child under ten years of age. Crim. Code, Sec. 48.

(Commence as before, page 168;) that on, &c., at, &c., C. D., a male person, above the age of fourteen years, in and upon one G. H., a female child, under the age of ten years, feloniously did make an assault, and her, the said G. H., then and there, wickedly, unlawfully, and feloniously did carnally know. (Conclude as before, page 168.)

For sodomy. Crim. Code, Sec. 50.

(Commence as before, page 168;) that on, &c., at, &c., C. D., in and upon one G. H., feloniously did make an assault, and then and there feloniously, wickedly, and against the order of nature, had a *venereal* affair with the said G. H.: and then and there feloniously, wickedly,

and against the order of nature, with the said G. H., did commit and perpetrate the detestable and abominable crime of buggery. (Conclude as before, page 168.)

Another form for sodomy.

(Commence as before, page 168;) that on, &c., at, &c., C. D., with a certain cow then and there being, feloniously, wickedly, and against the order of nature, had a *venereal* affair, and then and there feloniously, wickedly, and against the order of nature, carnally knew the said cow, and then and there feloniously, wickedly, and against the order of nature, with the said cow, did commit and perpetrate the detestable and abominable crime of buggery. (Conclude as before, page 168.)

For an assault with intent to commit murder. Crim. Code, Sec. 52.

(Commence as before, page 168;) that on, &c., at, &c., C. D. in and upon the said A. B., did unlawfully, willfully, and feloniously make an assault with a drawn sword, with intent him, the said A. B., feloniously, willfully, and of his malice aforethought, to kill and murder. (Conclude as before, page 168.)

For an assault with intent to commit rape. Crim. Code, Sec. 52.

(Commence as before, page 168;) that on, &c., at, &c., C. D., in and upon A. B., unlawfully did make an assault, with intent her, the said A. B., against her will, forcibly to ravish and carnally know. (Conclude as before, page 168.)

For an assault with intent to commit robbery. Crim. Code, Sec. 52.

(Commence as before, page 168;) that on, &c., at, &c., C. D., in and upon the said A. B., did feloniously and violently make an assault, with intent the moneys of the said A. B., from the person and against the will of the said A. B., forcibly to steal, and take and carry away. (Conclude as before, page 168.)

For an assault with a deadly weapon, with intent to inflict a bodily injury. Crim. Code, Sec. 52.

(Commence as before, page 168;) that on, &c., at, &c., C. D., with an abandoned heart and without provocation, did feloniously, with

a deadly weapon, to wit, an ax, make an assault on the said, B. A. with an intent upon the person of the said A. B., a bodily injury. (Conclude as before, page 168.)

For false imprisonment. Crim. Code, Sec. 54.

(Commence as before, page 168;) that on, &c., at, &c., C. D. unlawfully and forcibly assaulted the said A. B., and him, the said A. B., without sufficient legal authority, and against his will, did detain for a long time, to wit, for the space of three days, then next following. (Conclude as before, page 168.)

For kidnapping. Crim. Code, Sec. 56.

(Commence as before, page 168;) that on, &c., at, &c., C. D. did feloniously and forcibly steal and take E. F., and carry him to the State of Louisiana, contrary to the form of the statute in such case made and provided, without having established a claim to the said E. F., according to the law of the United States. (Conclude as before, page 168.)

Another form for kidnapping.

(Commence as before, page 168;) that on, &c., at, &c., C. D. did feloniously, and without lawful authority, forcibly arrest E. F., with a design to take him out of this State, without having established a claim according to the laws of the United States, contrary to the form of the statute in such case made and provided. (Conclude as before, page 168.)

For kidnapping free negroes. Crim. Code, Sec. 57.

(Commence as before, page 168;) that on, &c., at, &c., C. D., by false promises and misrepresentations, did persuade E. F., a negro, not being a slave, to go to the State of Kentucky, for the purpose and with the intent to sell such negro into slavery, contrary to the form of the statute in such case made and provided. (Conclude as before, page 168.)

II. CRIMES AND OFFENCES AGAINST HABITATIONS AND OTHER BUILDINGS.

For arson. Crim. Code, Sec. 58.

(Commence as before, page 168;) that on, &c., at, &c., C. D. did willfully and maliciously set fire to and burn the dwelling house of said A. B., situated in ——, in the county aforesaid. (Conclude as before, page 168.)

Another form for arson.

(Commence as before, page 168;) that on, &c., at, &c., C. D. did willfully and maliciously set fire to and burn the school house, situate in township number thirty-three north, in range three east of the third principal meridian, in the county aforesaid, contrary to the form of the statute in such case made and provided. (Conclude as before, page 168.)

For suspicion of arson.

(Commence as before, page 168;) that on, &c., at, &c., the barn of the said A. B., situate in the county aforesaid, was willfully and maliciously set fire to, and that he, the said A. B., has just cause to suspect and does suspect, that C. D. did, willfully and maliciously, set fire to and burn the said barn. (Conclude as before, page 168.)

For setting fire to a storehouse, &c., with intent to burn the same. Crim. Code, Sec. 59.

(Commence as before, page 168;) that on, &c., at, &c., C. D. did willfully and maliciously set fire to the storehouse of A. B., situate in ——, in the county aforesaid, with intent to burn the same, but which storehouse was not thereby burned: contrary to the form of the statute in such case made and provided. (Conclude as before, page 168.)

For burglary and larceny.

(Commence as before, page 168;) that in the night of the ——— day of ———, instant, C. D. did, willfully and maliciously, and forcibly break and enter the dwelling house of A. B., with intent the goods and chattels of the said A. B., then and there feloniously and burglariously to steal, take and carry away: and in the said dwelling house, one silver

watch of the value of twenty-five dollars, of the goods and chattels of the said A. B., then and there did feloniously and burglariously steal, take and carry away. (Conclude as before, page 168.)

For suspicion of burglary and larceny.

(Commence as before, page 168;) that in the night of the ——— day of ——, instant, the warehouse of him, the said A. B., situate in ——, in the county aforesaid, was willfully and maliciously entered, without force, by a window then and there being open, with intent the goods and chattels of G. H., then and there being, feloniously and burglariously to steal, take and carry away: and one box of dry goods, of the value of one hundred and fifty dollars, of the goods and chattels of him, the said G. H., was feloniously and burglariously stolen, taken and carried away from thence: and that he, the said A. B., hath just cause to suspect, and doth suspect, that C. D. did commit the said felony and burglary. (Conclude as before, page 168.)

For burglary. Crim. Code, Sec. 60.

(Commence as before, page 168;) that, in the night of the ——— day of ———, instant, C. D. did willfully, maliciously, and forcibly break and enter the shop of the said A. B., situate in ———, in the county aforesaid, with intent the goods and chattels of him, the said A. B., then and there being, feloniously and burglariously to steal, take and carry away, contrary to the form of the statute in such case made and provided. (Conclude as before, page 168.)

For suspicion of burglary.

(Commence as before, page 168;) that, in the night of the ——— day of ———, instant, the mill of the said A. B., situate in ———, in the county aforesaid, was willfully, and maliciously, and forcibly broken and entered, with intent the goods and chattels of G. H., then and there being, feloniously and burglariously, to steal, take, and carry away, contrary to the form of the statute in such case made and provided: and that the said A. B. hath just cause to suspect, and doth suspect, that C. D. did commit the said felony and burglary. (Conclude as before, page 168.)

III. CRIMES AND OFFENCES RELATIVE TO PROPERTY.

For robbery. Crim. Code, Sec. 61.

(Commence as before, page 168;) that, on, &c., at, &c., in the county aforesaid, C. D., in and upon the said A. B., did feloniously make an assault, and him the said A. B., in bodily fear and danger of his life, then and there feloniously did put; and one gold watch, of the value of seventy-five dollars, of the goods and chattels of him the said A. B., from the person and against the will of the said A. B., then and there feloniously and violently did steal, take, and carry away. (Conclude as before, page 168.)

Another form for robbery.

(Commence as before, page 168;) that, on, &c., at, &c., in the county aforesaid, C. D., in and upon the said A. B., feloniously did make an assault, and one leathern purse, with ten current silver dollars therein, the property of the said A. B., from his person and against his will, by force, did then and there feloniously and violently steal, take, and carry away. (Conclude as before, page 168.)

For larceny. Crim. Code, Sec. 62.

(Commence as before, page 168;) that, on, &c., at, &c., in the county aforesaid, C. D., did feloniously steal, take, and carry away, three pairs of shoes of the value of five dollars, of the goods and chattels of the said A. B. (Conclude as before, page 168.)

For suspicion of larceny.

(Commence as before, page 168;) that, on, &c., at, &c., in the county aforesaid, divers goods and chattels of the said A. B., to wit: one coat, one vest, of the value of ten dollars, and six silver spoons, of the value of thirty dollars, were feloniously stolen, taken and carried away, and that he hath just cause to suspect, and doth suspect, that C. D. did feloniously steal, take, and carry away the same. (Conclude as before, page 168.)

For suspicion of stealing a horse.

(Commence as before, page 168;) that, on, &c., at, &c., in the county aforesaid, a sorrel horse, of the value of fifty dollars, the property of the said A. B., was feloniously stolen, taken, and led away, (*or if oxen, cows, sheep, &c.*, "driven away,") and that the said A. B. hath just cause to suspect, and doth suspect, that C. D. did feloniously steal, take, and lead away the same. (Conclude as before, page 168.)

For suspicion of larceny in stealing writings relating to real estate.

(Commence as before, page 168;) that, on, &c., at, &c., in the county aforesaid, a certain written (*or* "partly written and partly printed") paper, to wit: a deed, being evidence of the title of the said A. B., to certain real estate, known and described as follows: viz., (*describe the real estate,*) in which real estate the said A. B. then and there had, and still has, a present interest, was feloniously stolen, taken, and carried away; and the said A. B. has just cause to suspect, and doth suspect, that C. D. did feloniously steal, take, and carry away the same. (Conclude as before, page 168.)

For suspicion of larceny in stealing a promissory note.

(Commence as before, page 168;) that, on, &c., at, &c., in the county aforesaid, one promissory note for the payment of fifty dollars, made by E. F., and payable to the said A. B., was feloniously stolen, taken, and carried away; and that the said A. B. has just cause to suspect, and does suspect, that C. D. did feloniously steal, take, and carry away the same. (Conclude as before, page 168.)

For picking pockets or otherwise privately stealing from the person. Crim. Code, Sec. 62.

(Commence as before, page 168;) that, on, &c., at, &c., in the county aforesaid, C. D., from the person of the said A. B., one pocket handkerchief, of the value of one dollar, one silver watch, of the value of fifteen dollars, of the goods and chattels of the said A. B., subtilely, privately, craftily, and without the knowledge of the said A. B., then and there feloniously did steal, take, and carry away. (Conclude as before, page 168.)

For larceny in stealing from a house in the daytime. Crim. Code, Sec. 62.

(Commence as before, page 168;) that, on, &c., at, &c., in the county aforesaid, in the daytime, divers goods and chattels of the said A. B., of the value of twenty-five dollars, to wit: (*describe the property,*) in the house of the said A. B., then and there being, were feloniously stolen, taken, and carried away; and that the said A. B. has just cause to suspect, and does suspect, that C. D. did feloniously steal, take, and carry away the same. (Conclude as before, page 168.)

For receiving stolen goods. Crim. Code, Sec. 65.

(Commence as before, page 168;) that, on, &c., at, &c., in the county aforesaid, C. D., for his own gain, did feloniously buy of one G. H., one piece of broadcloth, of the value of fifty dollars, of the goods and chattels of the said A. B., by the said G. H. then lately before feloniously stolen, he, the said C. D., well knowing the said piece of broadcloth to have been feloniously stolen. (Conclude as before, page 168.)

For suspicion of receiving stolen goods.

(Commence as before, page 168;) that, on, &c., at, &c., in the county aforesaid, divers goods and chattels of the said A. B., of the value of fifty dollars, that is to say, (*describe the property,*) were feloniously stolen by an ill-disposed person, to the said A. B. unknown, (*or* "by one G. H.") and that he the said A. B. has just cause to suspect, and does suspect, that C. D. at ———, in the county aforesaid, to prevent the said A. B. from again possessing his property, has received the said goods and chattels, of the said ill-disposed person, (*or* "of the said G. H.") he the said C. D. well knowing the goods and chattels to have been feloniously stolen. (Conclude as before, page 168.)

For marking or branding a horse, &c., with intent to steal him. Crim. Code, Sec. 65.

(Commence as before, page 168;) that, on, &c., at, &c., in the county aforesaid, C. D. did feloniously mark, (*or* "brand,") a certain

bay mare, the property of the said A. B., with intent thereby feloniously to steal, take, and lead away the same, contrary to the form of the statute in such case made and provided. (Conclude as before, page 168.)

For altering or defacing marks or brands. Crim. Code, Sec. 65.

(Commence as before, page 168;) that, on, &c., at, &c., in the county aforesaid, the mark (*or* "brand") of one cow, the property of the said A. B., was feloniously altered, (*or* "defaced,") with intent thereby the said cow feloniously to steal, take, and drive away, (*or* "to prevent the identification of the said cow by the said A. B.,") and that the said A. B. has just cause to suspect, and does suspect, that C. D. did feloniously alter (*or* "deface") the said mark, (*or* "brand,") contrary to the form of the statute in such case made and provided. (Conclude as before, page 168.)

For officers embezzling money, &c. Crim. Code, Sec. 66.

(Commence as before, page 168;) that, on, &c., at, &c., in the county aforesaid, C. D. was treasurer of the said county, and was entrusted with, and had charge and custody of, certain money belonging to, and being the property of the said county, that is to say, one thousand dollars of the current coin of the United States, and then and there feloniously did embezzle, steal, and secrete the said money, so in his charge and custody as aforesaid, contrary to the form of the statute in such case made and provided. (Conclude as before, page 168.)

For officers failing and refusing to pay over money, &c. Crim. Code, Sec. 67.

(Commence as before, page 168;) that, on the ——— day o. ———, 18—, C. D. was collector of the county of ———, entrusted by law to collect the revenue belonging to the said county, and there and then, had collected and received one thousand dollars, current money of the United States, for, and on account of the revenue of the said county; and the said C. D., not regarding his duty as such collector, but afterward, on the ——— day of ———, 18—, at ———, in the county aforesaid, demand for the payment of the

said money having been duly made by the treasurer of the said county, fraudulently and unlawfully failed and refused to pay over the said money to the said treasurer, contrary to the form of the statute in such case made and provided. (Conclude as before, page 168.)

For fraudulently and maliciously destroying papers, &c. Crim. Code, Sec. 68.

(Commence as before, page 168;) that, on, &c., at, &c., in the county aforesaid, C. D. did feloniously and maliciously burn a bond for securing the payment of the sum of one hundred dollars, executed by G. H. to the said A. B., the property of said A. B., with intent to defraud, prejudice, and injure the said A. B., contrary to the form of the statute in such case made and provided. (Conclude as before, page 168.)

For removing landmarks. Crim. Code, Sec. 69.

(Commence as before, page 168;) that, on, &c., at, &c., in the county aforesaid, C. D. did knowingly, maliciously, and fraudulently cut, fell, and remove a certain tree, being a boundary tree of the land of the said A. B., situate in the said county, to the wrong of the said A. B., contrary to the form of the statute in such case made and provided. (Conclude as before, page 168.)

For embezzlement by a clerk, servant, &c. Crim. Code, Sec. 70.

(Commence as before, page 168;) that C. D. was the clerk of the said A. B. on the ——— day of ———, 18—, in the county aforesaid, and that the said A. B. did then and there entrust to the said C. D., (*describe the property,*) the goods and chattels of him the said A. B., and that the said C. D. did then and there withdraw himself from the said A. B., and went away with the said goods and chattels, with intent feloniously to steal, take, and carry away the same, and to defraud the said A. B. thereof, contrary to the form of the statute in such case made and provided. (Conclude as before, page 168.)

Another form for embezzlement by clerk, servant, &c.

(Commence as before, page 168;) that, on, &c., at, &c., in the county aforesaid, C. D. then and there being in the service and

employment of the said A. B., and being so employed, the said A. B. then and there entrusted and delivered to him one hundred pieces of silver coin called dollars, and the said C. D. afterwards, and whilst he was in the service of the said A. B., on the day and year and in the county aforesaid, did feloniously embezzle and convert the said money to his own use, with intent feloniously to steal, take, and carry away the same, contrary to the trust and confidence reposed in him by the said A. B.; contrary to the form of the statute in such case made and provided. (Conclude as before, page 168.)

IV. FORGERY AND COUNTERFEITING.

For forging a Will. Crim Code, Sec. 73.

(Commence as before, page 168;) that, on, &c., at, &c., in the county aforesaid, C. D. did feloniously and falsely forge and counterfeit a certain will, purporting to be the last will and testament of G. H., deceased, with intent to damage and defraud the said A. B. (Conclude as before, page 168.)

For suspicion of forging a deed of lands. Crim. Code, Sec. 73.

(Commence as before, page 168;) that, on, &c., at, &c., in the county aforesaid, a certain deed, purporting to be a deed executed by the said A. B. to the said C. D., and by which the right and interest of the said A. B. to certain lands situate in the said county, purport to be transferred and conveyed by the said A. B. to the said C. D., has been feloniously and falsely forged and counterfeited; and that the said A. B. has just cause to suspect, and does suspect, that the said C. D. did feloniously forge and counterfeit the said deed, with intent to damage and defraud the said A. B. (Conclude as before, page 168.)

For forging a promissory note. Crim. Code, Sec. 73.

(Commence as before, page 168;) that, on, &c., at, &c., in the county aforesaid, C. D. did feloniously and falsely make, forge, and counterfeit a certain promissory note, purporting to be the promissory

note of the said A. B. to the said C. D., for the payment of the sum of fifty dollars, with intent to damage and defraud the said A. B. (Conclude as before, page 168.)

For suspicion of forging a promissory note.

(Commence as before, page 168;) that a certain promissory note purporting to be a promissory note from the said A. B. to C. D., for the payment of the sum of fifty dollars, has lately at ———, in the county aforesaid, been feloniously and falsely made, (*or* "altered,") forged and counterfeited; and that the said A. B. has just cause to suspect, and does suspect, that the said C. D. did feloniously commit the said forgery, with intent to damage and defraud the said A. B. (Conclude as before, page 168.)

For suspicion of forging a receipt. Crim. Code, Sec. 73.

(Commence as before, page 168;) that a certain receipt purporting to have been made and signed by the said A. B., and that the said A. B. had received from C. D. the sum of fifty dollars, has lately at ———, in the county aforesaid, been feloniously and falsely made, (*or* "altered,") forged, and counterfeited; and that the said A. B. has just and reasonable grounds to suspect, and does suspect, that the said C. D. did feloniously commit the said forgery, with intent to damage and defraud the said A. B. (Conclude as before, page 168.)

For suspicion of forging bank notes.

(Commence as before, page 168;) that, lately at ———, in the county aforesaid, three promissory notes purporting to have been made and issued by the president, directors, and company of the bank of Auburn, a corporation duly authorized for that purpose by the laws of the State of New York, for the payment of five dollars each, were feloniously and falsely made, (*or* "altered,") forged, and counterfeited; and that the said A. B. has just and reasonable grounds to suspect, and does suspect, that C. D. did feloniously and falsely make, (*or* alter,") forge and counterfeit the said promissory notes, with intent to damage and defraud the said president, directors, and company of the bank of Auburn. (Conclude as before, page 168.)

For uttering a forged bank note.

(Commence as before, page 168;) that, on, &c., at, &c., in the county aforesaid, C. D. did feloniously utter, publish, and pass to the said A. B., as true and genuine, a certain false, forged, and counterfeited promissory note, purporting to have been issued by the president, directors, and company of the bank of Missouri, a corporation duly authorized for that purpose by the laws of the State of Missouri, for the payment of the sum of twenty dollars, knowing the same to be false, forged, and counterfeited, with intent to prejudice, damage, and defraud the said A. B. (Conclude as before, page 168.)

For uttering an altered bank note.

(Commence as before, page 168;) that, on, &c., at, &c., in the county aforesaid, C. D. did feloniously utter, publish, and pass as true and genuine, a certain false, altered, and counterfeited promissory note, purporting to be a promissory note issued by the State bank of Indiana, a corporation duly authorized for that purpose by the laws of the State of Indiana, for the payment of the sum of ten dollars, which had been altered from a promissory note of the State bank of Indiana, for the payment of the sum of one dollar, to make the sum resemble a note for the payment of the sum of ten dollars, he the said C. D. knowing the same to be altered and counterfeited, with intent to prejudice, damage, and defraud the said State bank of Indiana. (Conclude as before, page 168.)

For uttering a forged county order.

(Commence as before, page 168;) that on, &c., at, &c., in the county aforesaid, C. D. did feloniously utter, publish and pass, as true and genuine, a certain county order, purporting to be drawn by M. M., the clerk of the county commissioners' court of the county of ———, upon the treasurer of said county, and payable to G. H., with intent to damage and defraud the said county of ———. (Conclude as before, page 168.)

For counterfeiting coin. Crim. Code, Sec. 74.

(Commence as before, page 168;) that on, &c., at, &c., in the county aforesaid, C. D. did feloniously counterfeit three pieces of the

silver coin current in this State, by the laws and usages thereof, called Spanish milled dollars. (Conclude as before, page 168.)

For suspicion of counterfeiting coin.

(Commence as before, page 168;) that on the —— day of ———, instant, ten counterfeit pieces of gold coin of the kingdom of Great Britain, current in this State, called guineas, were found concealed in the barn of C. D., situate in the county aforesaid; and that he, the said A. B., hath just cause and reasonable grounds to suspect, and doth suspect, that the said C. D. did feloniously counterfeit the same. (Conclude as before, page 168.)

For passing or giving in payment counterfeit coin. Crim. Code, Sec. 74.

(Commence as before, page 168;) that on, &c., at, &c., in the county aforesaid, C. D. did feloniously pass or give in payment to the said A. B., as true and genuine, one counterfeit piece of the gold coin of the United States, current in this State, called an eagle, knowing the same to be counterfeit, with intent to defraud the said A. B. (Conclude as before, page 168.)

For offering to pay or give in payment counterfeit coin.

(Commence as before, page 168;) that on, &c., at, &c., in the county aforesaid, C. D. did offer to pass or give in payment, as true and genuine, to the said A. B., five counterfeit pieces of the gold coin of the United States, current in this State, called half-eagles, knowing the same to be counterfeit, with intent to defraud the said A. B. (Conclude as before, page 168.)

For having in possession counterfeit coin, with intent to utter. Crim. Code, Sec. 75.

(Commence as before, page 168;) that on, &c., at, &c., in the county aforesaid, C. D. feloniously had in his possession five counterfeit pieces of the silver coin current in this State, called Mexican dollars, knowing the same to be counterfeit, with intent to defraud the

said A. B., by uttering or passing the same to him, as true and genuine. (Conclude as before, page 168.)

For having in possession forged bank bills, with intent to pass them. Crim. Code, Sec. 75.

(Commence as before, page 168;) that on this present day, at, &c., in the county aforesaid, C. D. feloniously had in his possession, certain forged promissory notes, commonly called bank bills, purporting to have been issued by the president, directors, and company of the bank of ———, a corporation duly authorized for that purpose by the laws of the State of ———, for the payment of ten dollars, well knowing the same to be forged, with intent to utter or pass the same as true and genuine, with intent to defraud the said bank of ———. (Conclude as before, page 168).

For having in possession fictitious notes, with intent to utter. Crim. Code, Sec. 77.

(Commence as before, page 168;) that on this present day, at ——, in the county aforesaid, C. D. feloniously had in his possession certain fictitious bills or notes, purporting to be bills or notes of the —— bank, of ——, in the state of ——, for the payment of five dollars each, when, in fact, there is no such bank in existence, he, the said C. D., knowing the said bills or notes to be fictitious, with intent to pass, utter and publish the same as true, with intent to defraud the said A. B. (Conclude as before, page 168.)

For having in possession apparatus for counterfeiting coin. Crim. Code, Sec, 78.

(Commence as before, page 168;) that on, &c., at, &c., in the county aforesaid, C. D. knowingly had in his possession a certain tool and instrument designed for, and made use of in counterfeiting the coin current in this State, called a die, with intent to use and employ the same, or to cause and permit the same to be used and employed in coining and making the false coin, as aforesaid. (Conclude as before, page 168.)

For having in possession apparatus for counterfeiting bank bills.

(Commence as before, page 168;) that on this present day, at ——, in the county aforesaid, C. D. knowingly had in his possession a certain plate, engraven, devised, and designed for, and made use of in counterfeiting bills or notes, in the similitude of the bills or notes which have been issued by the bank of ———, the same being a bank or banking company, established by law, in the State of ———, with intent to use and employ the same, or cause and permit the same to be used and employed in making such counterfeit bills or notes of the said bank of ———. (Conclude as before, page 168.)

V. CRIMES AND OFFENSES AGAINST PUBLIC JUSTICE.

For perjury. Crim. Code, Sec. 82.

(Commence as before, page 168;) that on, &c., at, &c., in the county aforesaid, a certain cause, in which G. H. was plaintiff and the said A. B. defendant, was tried before ———, a justice of the peace of the said county of ———, and that, upon the trial of the said cause, C. D. appeared as a witness for and on behalf of said G. H., and was then and there duly sworn (*or* "affirmed") by the said ——, who had full power and authority to administer the oath, (*or* "affirmation,") that the evidence he should give relating to the matter in difference between the said parties, should be the truth, the whole truth, and nothing but the truth; and that, upon the trial of said cause, it became a material question, whether the said G. H. had sold to the said A. B. ten bushels of wheat; and that, thereupon, the said C. D. being so sworn, as aforesaid, did then and there, to wit, on the trial of said cause, before the said ———, justice, as aforesaid, falsely, willfully, and corruptly depose, swear, (*or* "affirm,") and give in evidence, amongst other things, in substance as follows, to wit, that on or about the —— day of ——, 18—, the said G. H. did sell to the said A. B. ten bushels of wheat, whereas, in truth and in fact, the said G. H. did not, on or about the ——— day of ———, 18—, or at any other time, sell to the said

A. B. ten bushels of wheat, or any other quantity of wheat. (Conclude as before, page 168.)

For subornation of perjury.

(Commence as before, page 168;) that on, &c., at, &c., in the county aforesaid, a certain cause, in which G. H. was plaintiff, and A. B. was defendant, was depending before ——, a justice of the peace of the said county of ——, and whilst the same was depending, to wit, on the —— day of ——, in the year aforesaid, in the county aforesaid, C. D., wickedly contriving and intending to prevent the due course of law and justice, and to aggravate the said A. B., the defendent in the said cause, and to subject him to the payment of a large sum of money and heavy costs, did, wickedly and corruptly, subject, suborn, and procure one E. F., to be and appear as a witness at the trial of the said cause, for and in behalf of the said G. H., the plaintiff, and upon the trial of the said cause, falsely, wickedly, and corruptly, to swear and give in evidence to and before the said ——, justice of the peace, as aforesaid, certain matters, material and relevant to the matters in issue in said cause, in substance as follows, to wit, that on or about the —— day of ——, 18—, the said G. H. sold and delivered to the said A. B., a horse, for the consideration of forty dollars, which the said A. B. promised to pay in one month from the time of delivery of the horse, and that the said consideration was not paid at the time of delivery; whereas, in truth and in fact, the said A. B. at the time of delivery did pay to the said G. H. the sum of forty dollars, the full consideration for the said horse, and did not promise to pay the same in one month from the time of the delivery thereof: and afterwards, to wit, on the —— day of ——, 18—, before the said ——, justice of the peace, as aforesaid, in the county aforesaid, the said cause was tried, and upon the trial, the said E. F., in consequence and by means, encouragement, and effect of the said wicked and corrupt subornation and procurement of the said C. D., did then and there appear as a witness for and on behalf of the said G. H., the plaintiff, and was then and there duly sworn before the said ——, then being a justice of the peace, as aforesaid, and having sufficient and competent power and authority to administer an oath, that the evidence which he should give, touching the matters in question between the said parties, should be the truth, the whole truth, and nothing but the truth; and the said E. F., being so sworn, as aforesaid, at the said trial, upon his oath falsely, willfully,

and corruptly did depose and swear, among other things, in substance as follows, to wit, that on or about the —— day of ——, 18—, the said G. H. sold and delivered to the said A. B., a horse, for the consideration of forty dollars, which the said A. B. promised to pay in one month from the time of delivery of the horse, and that the said consideration was not paid at the time of delivery; whereas, in truth and in fact, the said A. B., at the time of delivery, did pay to the said G. H. the sum of forty dollars, the full consideration for said horse, and did not promise to pay the same in one month from the time of the delivery thereof; and whereas, in truth and in fact, the said C. D., at the time he so solicited, suborned and procured the said E. F., falsely, wickedly and corruptly to swear as aforesaid, well knew that the said A. B., at the time of the delivery, did pay to the said G. H., the sum of forty dollars, the full consideration for said horse, and did not promise to pay the same in one month from the time of the delivery. (Conclude as before, page 168.)

For acknowledging a deed in the name of another. Crim. Code, Sec. 91.

(Commence as before, page 168;) that on, &c., at, &c., in the county aforesaid, C. D. did feloniously, and without due authority so to do, personate the said A. B., and did then and there feloniously acknowledge, in the name of the said A. B., before P. R., a justice of the peace for said county, a certain deed of land, situate in the said county, from the said A. B. to one G. H. (Conclude as before, page 168.)

For resisting an officer in the discharge of his duty. Crim. Code, Sec. 92.

(Commence as before, page 168;) that on, &c., at, &c., in the county aforesaid, C. D. did knowingly and willfully obstruct, resist and oppose the said A. B., who was then and there a constable of the said county, in attempting to serve an execution upon the goods and chattels of G. H., which execution was issued by ——, a justice of the peace of the said county, and delivered to the said A. B., constable, as aforesaid, to be by him executed, upon a judgment rendered by the said justice of the peace, against the said G. H., in favor of E. F. (Conclude as before, page 168.)

For rescuing a person from custody on civil process. Crim. Code, Sec. 98.

(Commence as before, page 168;) that on, &c., at, &c., in the county aforesaid, ——, a justice of the peace of said county, issued a capias against G. H., and delivered the same to A. B., one of the constables of said county, wherein he was commanded to bring the body of the said G. H. forthwith before the said justice of the peace, unless special bail be entered, then to command him to appear before the said justice, on a certain day therein specified, to answer the complaint of E. F., for a failure to pay him a certain demand, not exceeding one hundred dollars; that afterwards, on the same day, in the county aforesaid, the said A. B., constable as aforesaid, arrested the said G. H., on the said capias, and had him in custody; and that afterwards, on the day and year last aforesaid, in the county aforesaid, C. D. out of the custody of the said A. B., constable, as aforesaid, did unlawfully and forcibly rescue the said G. H. (Conclude as before, page 168.)

For a rescue after conviction. Crim. Code, Sec. 93.

(Commence as before, page 168;) that G. H., at the last March term of the circuit court, held in and for the county of ——, was tried upon an indictment then preferred against him for larceny, to wit, for feloniously stealing, taking, and carrying away one silver watch, the property of E. F., and found guilty of the matters in said indictment charged upon him, by the jury empannelled to try the same, and who by their verdict said, the said G. H. should be confined in the penitentiary for the term of two years; and it was thereupon adjudged by the said circuit court, that the said G. H., for the said offense, should be imprisoned in the penitentiary, at Alton, for the said term of two years; and was, thereupon, on the —— day of ——, 18—, delivered to ——, Esquire, sheriff of the said county of ——, in execution of said judgment; and that, afterwards, to wit, on the —— day of ——, 18—, in the county aforesaid, and whilst the said G. H. was in the custody of the said sheriff, for the cause aforesaid, C. D. in and upon the said ——, Esquire, sheriff, as aforesaid, did make an assault, and him, the said G. H., unlawfully and forcibly, from the custody of the said sheriff did rescue, and put at large, to go whithersoever he would. (Conclude as before, page 168.)

Another form for rescue after conviction.

(Commence as before, page 168;) that on, &c., at, &c., in the county aforesaid, G. H., who had been convicted of the crime of burglary, and sentenced to imprisonment in the penitentiary, in Alton, was in the custody of ——, Esquire, sheriff of said county, and whilst the said G. H. was in custody, as aforesaid, afterwards, to wit, on the —— day of ——, 18—, in the county aforesaid, C. D., out of the custody of the said sheriff, unlawfully and forcibly the said G. H. did rescue and put at large, to go where he would. (Conclude as before, page 168.)

For a rescue before conviction. Crim. Code, Sec. 94.

(Commence as before, page 168;) that G. H., on the —— day of ——, 18—, had been arrested by A. B., one of the constables of the said county, and was then in the legal custody of the said A. B., as such constable, in the county aforesaid, on a charge for an assault and battery, committed by the said G. H. upon E. F.; and C. D., well knowing the said G. H. so to be arrested, afterwards, to wit, on the said —— day of ——, 18—, in the county aforesaid, the said G. H., unlawfully and forcibly did rescue and put at large. (Conclude as before, page 168.)

For assisting a prisoner confined in jail to escape. Crim. Code, Sec. 99.

(Commence as before, page 168;) that on, &c., at, &c., in the county aforesaid, C. D. did unlawfully aid and assist one G. H., who was lawfully committed to and detained in the common jail of the said county, situate in the town of ——, for an offense against this State, that is to say, for feloniously stealing, taking, and carrying away a certain horse, the property of the said A. B., to make his escape from the said jail, although the said G. H. did not actually escape. (Conclude as before, page 168.)

For conveying a disguise to a person in jail to facilitate his escape.

(Commence as before, page 168;) that on, &c., at, &c., in the county aforesaid, C. D. did feloniously convey a certain disguise, to wit,

a woman's apparel, to G. H., who was lawfully committed to and detained in the common jail of the said county, in ——, for a certain felony by him committed, that is to say, for feloniously passing, as true and genuine, ten counterfeit pieces of the silver coin of the United States, current in this State, called half dollars, knowing the same to be counterfeit, with intent to defraud one E. F.; with intent thereby to facilitate the escape of the said G. H. (Conclude as before, page 168.)

For the voluntary escape of a prisoner before conviction, against an officer. Crim. Code, Sec. 101.

(Commence as before, page 168;) that on, &c., at, &c., in the county aforesaid, C. D., being keeper of the common jail of the said county, and then and there having in his legal custody, in said jail, one G. H., on a charge of having committed a felony, to wit, for feloniously stealing, taking and carrying away ten hats, the property of one J. F., did voluntarily suffer and permit the said G. H. to escape and go at large, whithersoever he would. (Conclude as before, page 168.)

For an officer refusing to arrest a person charged with a criminal offense. Crim. Code, Sec. 102.

(Commence as before, page 168;) that on, &c., at, &c., in the county aforesaid, G. H. was charged upon oath before ——, a justice of the peace of said county, with having committed a criminal offense, to wit, for passing four counterfeit bank bills, purporting to have been issued by ——, a corporation for that purpose duly authorized by the laws of the State of ——, for the payment of five dollars each, knowing the same to have been counterfeited, with intent to defraud one A. B., for which offense the said ——, then and there issued a warrant, directed to all sheriffs, coroners and constables of said State, requiring them to take the said G. H., and bring him before the said ——, which said warrant was afterwards, to wit, on the —— day of ——, 18—, in the county aforesaid, delivered to C. D., then one of the constables of the said county of ——, to be by him executed, and that the said C. D. then and there willfully refused to arrest the said G. H. (Conclude as before, page 168.)

For compounding a criminal offense. Crim. Code, Sec. 103.

(Commence as before, page 168;) that, on, &c., at, &c., in the county aforesaid, E., the wife of G. H., feloniously stole, took, and carried away one silver spoon, of the goods and chattels of C. D.; and that the said C. D. knowing the said felony to have been committed, afterwards, to wit, on the ——— day of ———, 18—, in the county aforesaid, contriving and intending unlawfully and unjustly to prevent the due course of law and justice in this behalf, and to cause and procure the said E., for the felony aforesaid, to escape with impunity, unlawfully, and for the sake of gain, did compound the said felony with the said G. H., the husband of the said E., and did then and there exact and receive of the said G. H., ten dollars, as a reward for compounding said felony, and desisting from all further prosecution against the said E. (Conclude as before, page 168.)

For embracery, by persuading a juror to give his verdict in favor of the defendant. Crim. Code, Sec. 106.

(Commence as before, page 168;) that, on, &c., at, &c., in the county aforesaid, C. D. knowing that a jury of the said county of ———, was then duly returned impanneled, and sworn to try a certain issue joined in the circuit court then held according to law, at ———, in and for the county of ——— aforesaid, between E. F. plaintiff, and G. H. defendant, in a plea of trespass on the case upon promises, and then also knowing that a trial was to be had upon the said issue, on the ——— day of ———, 18—, in the year aforesaid, before said circuit court then and there held for the county aforesaid, the said C. D., devising wickedly and unlawfully to hinder the due and lawful trial of the said issue, by the jurors aforesaid, returned impanneled, and sworn as aforesaid, to try the said issue on the ——— day of ———, in the year aforesaid, at ———, in the county aforesaid, unlawfully, wickedly, and unjustly on behalf of the said G. H., the defendant in said cause, did solicit and persuade one S. R., one of the jurors of the said jury returned impanneled, and sworn according to law for the trial of said issue, to appear, and attend in favor of the said G. H., the said defendant, and then and there did say and utter to the said S. R., one of the jurors as aforesaid, divers words and discourses, by way of commendation, on behalf of him the said G. H.,

the said defendant, and disparagement of the said E. F., the plaintiff, to influence the said S. R., one of the jurors as aforesaid, to give a verdict for the said G. H., the defendant. (Conclude as before, page 168.)

For common Barratry. Crim. Code, Sec. 107.

(Commence as before, page 168;) that C. D., of the county of ———, on the ——— day of ———, 18—, and on divers other days and times, as well before as afterwards, was and yet is a common barrator, and that he the said C. D., on the said ——— day of ———, 18—, and on divers other days and times, in the county aforesaid, divers quarrels, strifes, suits, and controversies, among the honest and quiet citizens of this State, then and there did wickedly and willfully stir up and excite, with a view to stir up strife and contention. (Conclude as before, page 168.)

For maintenance. Crim. Code, Sec. 108.

(Commence as before, page 168;) that C. D., on, &c., at, &c., in the county aforesaid, did officiously intermeddle in a certain suit, that in no wise belonged to, or concerned the said C. D., which was then depending in the circuit court in the county of ———, between E. F., plaintiff, and G. H., defendant, in a plea of debt by maintaining and assisting the said E. F., the plaintiff, with money to prosecute his said suit, with a view to promote litigation. (Conclude as before, page 168.)

For extortion, against a justice for taking greater fees than are legally due. Crim. Code, Sec. 109.

(Commence as before, page 158;) that, on, &c., at, &c., in the county aforesaid, C. D., then an acting justice of the peace in and for the said county, in a certain suit then lately tried and determined before the said C. D. as such justice, wherein A. B. was plaintiff, and G. H., defendant, and wherein judgment was rendered against the said G. H., C. D. did by color of his said office, willfully and corruptly extort, receive, and take of and from the said G. H., the defendant, the sum of fifty cents, under pretense that the sum was due to him as his fee for issuing the summons in said case; whereas in truth and

in fact, the sum of eighteen cents and three fourths only, was legally due from the said G. H. to the said C. D., as such justice of the peace, for his said service in issuing said summons. (Conclude as before, page 168.)

For extortion, against a constable for exacting money as a fee not legally due.

(Commence as before, page 168;) that, on, &c., at, &c., in the county aforesaid, C. D. being then and there one of the constables of the said county, did take and arrest A. B., by color of a certain warrant commonly called a bench warrant, which he, the said C. D., then and there alleged to be in his possession, and afterwards and whilst the said A. B. so remained in his custody, the said C. D., to wit, on the day and in the county aforesaid, did willfully, corruptly, and extortively, and by color of his said office, extort, receive, and take of and from the said A. B., the sum of three dollars, as, and for a fee due to him the said C. D., as such constable, as he alleged; whereas in truth and in fact no fee was due to the said C. D. from the said A. B., in that behalf. (Conclude as before, page 168.)

For extortion, against a constable for exacting a greater fee than is legally due.

(Commence as before, page 168;) that, on, &c., at, &c., in the county aforesaid, C. D. being one of the constables of the said county, had in his possession an execution issued by ———, a justice of the peace in and for the said county, in favor of E. F. against G. H., by which execution the said C. D. as constable as aforesaid, was commanded to make of the goods and chattels of the said G. H., the sum of twenty dollars debt, and two dollars costs; and afterwards, to wit, on the day and in the county aforesaid, the said C. D. by color of his said office, did willfully, corruptly, and extortively demand, take, and receive of, and from the said G. H., as a fee for his services in collecting the amount due on the said execution, the sum of five dollars; whereas in truth and in fact the sum of two dollars only, was legally due from the said G. H. to the said C. D., as such constable, as aforesaid, in that behalf. (Conclude as before, page 168.)

VI. OFFENSES AGAINST THE PUBLIC PEACE AND TRANQUILITY.

For disturbing the public peace. Crim. Code, Sec. 112.

(Commence as before, page 168;) that C. D. and E. F., (*if more than two, say,* "together with divers other persons, to the said A. B. unknown,") at ———, in the county aforesaid, at a late and unusual hour of the night of the —— day of ———, 18—, unlawfully and willfully did assemble and meet together, and being so assembled and met together, did then and there unlawfully and willfully, by loud and unusual noises, disturb the peace and quiet of the family of the said A. B. (Concludeas before, page 168.)

For disturbing the peace, and not dispersing on being commanded. Crim. Code, Sec. 113.

(Commence as before, page 168;) that C. D. and E. F. (*if more than two, say,* "and divers other persons to the said A. B. unknown,") on the —— day of ——, 18—, at ——, in the county aforesaid, did unlawfully assemble and meet together for the purpose of disturbing the public peace; and that afterwards, to wit, on the same day and at the place aforesaid, ———, one of the justices of the peace of the said county, desired and commanded all persons then and there assembled, immediately to disperse, and notwithstanding the said desire and command of the said ———, justice of the peace as aforesaid, the said C. D. and E. F., (and said divers other persons,) did then and there unlawfully, riotously and tumultuously, and to the disturbance of the public peace, remain and continue together for the space of one hour after such desire and command made by the said ———, justice of the peace as aforesaid. (Conclude as before, page 168.)

For an unlawful assembly. Crim. Code, Sec. 115.

(Commence as before, page 168;) that, on, &c., at, &c., in the county aforesaid, C. D. and E. F. unlawfully did assemble together, to pull down, remove, and destroy a certain dwelling house, in the possession of the said A. B., and having so assembled for the purpose aforesaid, did separate without doing or advancing towards it. (Conclude as before, page 168.)

For a rout. Crim. Code, Sec. 116.

(Commence as before, page 168;) that, on, &c., at, &c., in the county aforesaid, C. D. and E. F., upon a common cause of quarrel, unlawfully and riotously did assemble together, to break, pull down, and remove the fences upon the land then and there in the peaceable possession of the said A. B., and then and there unlawfully and riotously did advance to break, pull down, and remove said fences. (Conclude as before, page 168.)

For a riot. Crim. Code, Sec. 117.

(Commence as before, page 168;) that, on this present day, at ———, in the county aforesaid, C. D. and E. F. did unlawfully and riotously assemble together, to disturb the peace, and being so assembled together, in and upon the said A. B. with force and violence did make an assault, and him the said A. B. then and there did beat, wound, and ill treat. (Conclude as before, page 168.)

Another form for a Riot.

(Commence as before, page 168;) that on, &c., at, &c., in the county aforesaid, C. D. and E. F. (*if more than two, say,* "together with divers other persons to the said A. B. unknown,") unlawfully and riotously did assemble together to disturb the peace, and being so assembled together, a certain building and out house, in the possession and lawful occupation of the said A. B., then and there, with force and violence, did break, pull down, remove and destroy. (Conclude as before, page 168.)

Another form for a Riot.

(Commence as before, page 168;) that on the ——— day of ——— last, at ———, in the county aforesaid, C. D. and E. F. did unlawfully and riotously assemble together to disturb the peace, and being so assembled together, the dwelling house of the said A. B., there situate, then and there, with force and violence, did break and enter, and then and there with force and violence, put, cast, and throw divers goods and chattels of the said A. B., to wit, (*here set out the goods,*) then being in the said dwelling house, from and out of the same. (Conclude as before, page 168.)

VII. OFFENSES AGAINST THE PUBLIC MORALITY, HEALTH AND POLICE.

For bigamy, against the husband. Crim. Code, Sec. 121.

(Commence as before, page 168;) that on, &c., at, &c., in the county aforesaid, C. D., being then married, and then the husband of E. D., feloniously did marry and take to wife, L. M., the said E. D., his former wife, being then alive. (Conclude as before, page 168.)

For bigamy, against the wife.

(Commence as before, page 168;) that on, &c., at, &c., in the county aforesaid, E. D., being then married, and then the wife of C. D., feloniously did marry and take to husband, L. M., the said C. D., her former husband, being then alive. (Conclude as before, page 168.)

For a single person marrying the wife of another. Crim. Code, Sec. 122.

(Commence as before, page 168;) that on, &c., at, &c., in the county aforesaid, C. D., being then unmarried, feloniously and knowingly did marry and take to wife, L. M., being then married, and then the wife of G. M. (Conclude as before, page 168.)

For incest. Crim. Code, Sec. 125.

(Commence as before, page 168;) that on the ——— day of ——— last, at ———, in the county aforesaid, C. D. did feloniously intermarry with G. D., then being sister of the said C. D. (Conclude as before, page 168.)

Against a father cohabiting with his daughter. Crim. Code, Sec. 126.

(Commence as before, page 168;) that on the ——— day of ——— last, at ———, in the county aforesaid, C. D. did rudely and licentiously cohabit with G. D., his daughter. (Conclude as before, page 168.)

For living in an open state of adultery. Crim. Code, Sec. 123.

(Commence as before, page 168;) that C. D., on the ——— day of ——— instant, and for a long time previous thereto, to wit, for

three months previous thereto, at ——, in the county aforesaid, did wrongfully, lewdly and lasciviously, in an open state of adultery, live with G. H., the wife of E. H., who was during all that time alive. (Conclude as before, page 168.)

For living in an open state of fornication. Crim. Code, Sec. 123.

(Commence as before, page 168;) that on the ——— day of —— instant, and for a long space of time previous thereto, to wit, for the space of two months previous thereto, at ——, in the county aforesaid, C. D. did wrongfully, lewdly and lasciviously, in an open state of fornication, live with a certain woman, named G. H. (Conclude as before, page 168.)

For keeping a disorderly house. Crim. Code, Sec. 127.

(Commence as before, page 168;) that on the ——— day of ——— last, and from thence to this present day, at ——— in the county aforesaid, C. D. did keep and maintain, and still keeps and maintains, a certain common ill governed and disorderly house for his own lucre and profit, where persons assemble by his encouragement and permission, and there remain gaming. (Conclude as before, page 168.)

For open lewdness. Crim. Code, Sec. 127.

(Commence as before, page 168;) that C. D., on the ——— day of ——— instant, at ———, in the county aforesaid, was guilty of open lewdness, by openly, grossly, lewdly and lasciviously, lying on a bed with one E. F., a single woman, for the space of four hours. (Conclude as before, page 168.)

For keeping a lewd house. Crim. Code, Sec. 127.

(Commence as before, page 168;) that on the ——— day of ——, 185–, and from thence until the present time, at ———, in the county aforesaid, C. D. unlawfully did, and still does, keep and maintain a certain common lewd house, and in said house certain evil disposed persons, as well as women of dishonest conversation, did cause and procure to frequent and come together, and in the said house un-

lawfully did permit the said men and women, as well in the night as in the day, to remain in the practice of fornication. (Conclude as before, page 168.)

For keeping an open tippling house on the Sabbath.

(Commence as before, page 168;) that C. D., on the ——— day of ——— instant, it being the first day of the week commonly called the Sabbath, at ———, in the county aforesaid, unlawfully and willfully did keep open a certain tippling house, and for his own lucre and gain, in the said house did procure and permit certain evil and ill disposed persons to remain drinking and tippling. (Conclude as before, page 168.)

For keeping a common gaming house. Crim. Code, Sec. 129.

(Commence as before, page 168;) that C. D., on the —— day of —— last, and on divers other days and times, as well before as afterwards, at ——, in the county aforesaid, a certain common gaming house there situate, for his gain and profit, unlawfully and injuriously did exercise, keep, have and maintain, and in the said common gaming house, on the said —— day of ——, and on the said other days and times, there unlawfully and injuriously did procure and permit divers persons to frequent and come together to play for money, at a certain unlawful game, called billiards. (Conclude as before, page 168.)

For obstructing the public highway. Crim. Code, Sec. 134.

(Commence as before, page 168;) that on the —— day of ——, 185–, and on divers other days and times, as well before as afterwards, at ——, in the county aforesaid, the public highway, then leading from ——, unto the town of ——, C. D. did obstruct and render inconvenient (*or* "dangerous") to pass, that is to say, divers large pieces of timber, then and there put and placed, and caused to be put and placed, and the same obstruction, from the said —— day of —— aforesaid, until the day of exhibiting this charge, in and upon the said public highway, to be and remain, has permitted, and still does permit. (Conclude as before, page 168.)

For obstructing a common street. Crim. Code, Sec. 134.

(Commence as before, page 168;) that on the ——— day of ——— 185–, and on divers other days and times as well before as afterwards, at ——— in the county aforesaid, the common street in the town of ———, called Washington street, C. D. did obstruct and render inconvenient to pass, that is to say, divers cartloads of filth and rubbish then and there did put and place, and cause to be put and placed, to the great inconvenience of the citizens of the said town and of the said State, so that they could not freely pass and repass along the said street, and from the said ——— day of ——— aforesaid, until the day of exhibiting this charge, has permitted, and still does permit, the said obstruction to be, lie and remain. (Conclude as before, page 168.)

For selling unwholesome provisions. Crim. Code, Sec. 135.

(Commence as before, page 168;) that on, &c., at &c., in the county aforesaid, C. D. did knowingly sell to the said A. B. a quantity of diseased and unwholesome provisions for meat, that is to say, one hundred pounds of the flesh of a diseased ox, knowing the said ox to have been diseased, and without making it known to the said A. B. (Conclude as before, page 168.)

Another form for selling unwholesome provisions.

(Commence as before, page 168;) that on, &c., at, &c., in the county aforesaid, C. D. did knowingly sell to the said A. B. a certain quantity of diseased and unwholesome provisions for meat, that is to say, one hundred pounds of diseased and unwholesome pork, knowing the same to be diseased and unwholesome, and without making it known to the said A. B. (Conclude as before, page 168.)

For defacing notices. Crim. Code, Sec. 137.

(Commence as before, page 168;) that on, &c., at, &c., in the county aforesaid, A. B., one of the constables of the said county, had in his hands an execution, issued by ———, a justice of the peace of said county, upon a judgment then lately entered by him in favor of E. F. plaintiff, against G. H. defendant, by which execution the said A. B., constable as aforesaid, was commanded to make of the goods

and chattels of the said G. H. the sum of thirty dollars debt, and two dollars costs, and for the purpose of making the same, the said A. B., constable as aforesaid, by virtue of said execution, afterwards, to wit, on the ——— day of ——— 185–, levied upon the goods and chattels of the said G. H., and afterwards, on the same day and in the county aforesaid, appointed the ——— day of ———, at — o'clock in the —— noon, as the time for the sale, by advertisement thereof in writing, posted up at three of the most public places in the said county, one of which advertisements was posted on the outer door of the house of ———, innkeeper in said county; that on the —— day of ——, 1851, C. D. did intentionally tear down and destroy the said advertisement so posted up, before the expiration of the time for which by law it was to remain so posted up. (Conclude as before, page 168.)

For having tools with which to break into a dwelling house, &c. Crim. Code, Sec. 139.

(Commence as before, page 168;) that on the night of the ——— day of ———, 185–, near the store occupied by A. B., containing valuable property, situate in the town of ———, in the said county, C. D. was found, having upon him and in his possession, a pick-lock, crow, and bit, with intent then and there feloniously to break and enter the said store. (Conclude as before, page 168.)

For having weapons with intent to assault, &c. Crim. Code, Sec. 139.

(Commence as before, page 168;) that on, &c., at, &c., in the county aforesaid, C. D. had in his possession and upon him a certain offensive weapon, to wit, a pistol, with intent to assault the person of the said A. B. (Conclude as before, page 168.)

For disinterring the dead. Crim. Code, Sec. 141.

(Commence as before, page 168;) that on, &c., at, &c., in the county aforesaid, C. D. did unlawfully and indecently open the grave where the body of G. H., deceased, had there lately been deposited, and the body of the said G. H., deceased, from the said grave did then and there remove for the purpose of dissection, without the knowledge and consent of the near relations of the said deceased. (Conclude as before, page 168.)

For voting more than once at an election. Crim. Code, Sec. 142.

(Commence as before, page 168;) that at a general election held on the first Monday of August last, (it being the —— day of August,) in and for the county of ———, in the several precincts (*or* "townships") of the said county, for the purpose of electing county officers, C. D., being an elector in said county, did appear at the place of holding said election in —— precinct (*or* "—— township,") and did then and there vote for, and mention by name E. F. as the person whom he intended to vote for to fill the office of sheriff of said county to be filled at said election, and cause his name and vote to be entered by the clerks of said election in said precinct *or* ("township") for the said E. F. for sheriff as aforesaid; and the said C. D. being a person regardless of the rights of the people, and of the freedom and purity of elections in this State, afterwards, on the said first Monday last, did appear at the place of holding said election in —— precinct (*or* "—— township") in said county, and did then and there again vote for, and mention by name the said E. F., as the person he intended to vote for to fill the office of sheriff, to be filled at said election, and cause his name and vote to be entered by the clerks of said election for the said E. F. for the office of sheriff as aforesaid, contrary to the form of the statute in such case made and provided. (Conclude as before, page 168.)

VIII. OFFENSES COMMITTED BY CHEATS, SWINDLERS, AND OTHER FRAUDULENT PERSONS.

For fraudulently conveying property, &c. Crim. Code, Sec. 151.

(Commence as before, page 168;) that on the ——— day of ——, 185–, at ———, in the county aforesaid, C. D. being the owner in fee of a certain tract of land situate, lying and being in the said county, bounded and described as follows, to wit, (*describe the land*) being then and there indebted to the said A. B. in a large sum of money, to wit, the sum of one hundred dollars, for the collection of which the said A. B. had then lately commenced a suit in the circuit court of ——— county against the said C. D., he, the said C. D., did unlawfully and fraudulently convey the said land to G. H., with intent to hinder, delay and defeat the said A. B. in the collection of his said debt. (Conclude as before, page 168.)

For swindling. Crim. Code, Sec. 152.

(Commence as before, page 168;) that on, &c., at, &c., in the county aforesaid, C. D., by a certain false representation, to wit, that he was worth the sum of five thousand dollars after the payment of every debt he owed, thereby obtained a credit of one month for the price of divers goods and chattels, to wit, five horses of the value of three hundred dollars, then and there sold and delivered to him by the said A. B., with intent then and there to defraud the said A. B. of the same; when in fact the said C. D. then and there, as he well knew, was entirely insolvent and unable to pay for said horses, and by the said false representations, and obtaining the credit aforesaid, the said C. D. did defraud the said A. B. of the said goods and chattels. (Conclude as before, page 168.)

For obtaining goods, &c., by false pretenses. Crim. Code, Sec. 153.

(Commence as before, page 168;) that on, &c., at, &c., in the county aforesaid, C. D., knowingly and designedly, by a certain false pretense, to wit, by falsely pretending that G. H. had in his hands a large sum of money, belonging to him, he, the said C. D., did obtain from the said A. B., divers goods and chattels, to wit, ten cows and six oxen, by giving in payment for the same his order upon the said G. H., whereby he required the said G. H. to pay to the said A. B. the sum of one hundred and fifty dollars, one week after the date thereof, with intent thereby to cheat and defraud the said A. B.; when, in fact, the said G. H. had no money in his hands belonging to the said C. D., and did not, and would not pay the said order when it became due, or at any other time. (Conclude as before, page 168.)

For fraudulently selling land a second time. Crim. Code, Sec. 154.

(Commence as before, page 168;) that on, &c., at, &c., in the county aforesaid, C. D. did enter into an agreement in writing with G. H., to sell and convey to the said G. H., for the consideration of five hundred dollars, to be paid three months after the date of the said agreement, all that certain piece or parcel of land, situate in said county, and bounded as follows, to wit, (*here describe the land*); and that afterwards, to wit, on the —— day of ——, 18—, and while the said agreement was in force, in the county aforesaid, for the consideration of five hundred dollars, he, the said C. D. did, knowingly and fraudulently, dispose of and convey the

same land to the said A. B., contrary to the form of the statute in such case made and provided. (Conclude as before, page 168.)

For selling by false weights, &c. Crim. Code, Sec. 155.

(Commence as before, page 168;) that on the —— day of ——, 18—, and from thence until the time of making this charge, C. D. was a grocer, engaged in buying and selling divers goods, wares and merchandise, and did keep in his shop false weights, for weighing goods, wares and merchandise, by him sold, which caused them to appear of greater weight, to wit, of a greater weight by one ounce in every pound of goods weighed, than the real and true weight thereof; and during that time did then and there knowingly sell to divers citizens of this State, divers goods, wares and merchandise, weighed with said false weights. (Conclude as before, page 168.)

For destroying a bridge, &c. Crim. Code, Sec. 156.

(Commence as before, page 168;) that on the —— day of ——, 18—, C. D. did, willfully and maliciously, and for mischief, cut down a certain common bridge, then being over the —— river, commonly called the —— bridge, lying and being in the county of ——; contrary to the form of the statute in such case made and provided. (Conclude as before, page 168.)

Another form for destroying property.

(Commence as before, page 168;) that on, &c., at, &c., in the county aforesaid, three stacks of hay, of the value of twenty dollars, the property of the said A. B., willfully and maliciously, and for mischief, did set fire to, burn and destroy; contrary to the form of the statute in such case made and provided. (Conclude as before, page 168.)

IX. FRAUDULENT AND MALICIOUS MISCHIEF.

For suspicion of girdling fruit trees. Crim. Code, Sec. 156.

(Commence as before, page 168;) that on the —— day of ——, 18—, a large number of fruit trees, to wit, twenty apple trees, stand-

ing and growing upon the lands of the said A. B., situate at ——, in the county aforesaid, were for mischief, willfully and maliciously girdled; and that he, the said A. B. has just and reasonable ground to suspect, and does suspect, that C. D. did, willfully and maliciously, and for mischief, girdle the same. (Conclude as before, page 168.)

For maliciously killing an ox, &c. Crim. Code, Sec. 156.

(Commence as before, page 168;) that on the —— day of ——, 18—, at ——, in the county aforesaid, C. D. did, unlawfully, willfully and maliciously, and for mischief, kill a certain ox, belonging to the said A. B. (Conclude as before, page 168.)

For suspicion of maliciously disfiguring a horse.

(Commence as before, page 168;) that on the —— day of ——, 18—, at ——, in the county aforesaid, a certain horse of him, the said A. B., was for mischief, wantonly and maliciously disfigured, that is to say, the ears, mane and hairs of the tail of the said horse, were cut off; and that he, the said A. B. has just and reasonable grounds to suspect, and does suspect, that C. D. did, unlawfully, wantonly and maliciously, disfigure the said horse. (Conclude as before, page 168.)

For setting on fire prairie, &c. Crim. Code, Sec. 158.

(Commence as before, page 168;) that on the —— day of ——, 18—, C. D. did, willfully and intentionally, set fire to the prairie in ——— precinct, (*or* "——— township,") in the county of ——, in an inhabited part of this State; contrary to the form of the statute in such case made and provided. (Conclude as before, page 168.)

CHAPTER V.

OF PROCEEDINGS IN RELATION TO THE OBSERVANCE AND SURETY OF THE PEACE AND GOOD BEHAVIOR.

The duty of a justice of the peace, under this head, consists in compelling persons threatening to commit certain crimes, to give sureties to keep the peace, or, in default thereof, committing them to prison.[1]

Surety of the peace consists in being bound with one or more sureties, in a recognizance or obligation to the people, entered on record, and taken in some court, or by some judicial officer; whereby the parties acknowledge themselves to be indebted to the people in the sum required, with a condition to be void and of no effect, if the party complained of shall appear in court on such a day, and not depart the same without leave, and in the mean time to keep the peace towards the people of the State, and particularly towards the person requiring such security.[2]

It is provided by statute,[3] as we have already seen,[4] that justices of the peace, in their respective counties, shall jointly and severally be conservators of the peace, within their respective jurisdictions, and have power to cause to be brought before them, or any of them, all persons who shall break the peace, and commit them to jail, or admit them to bail, as the case may require, and to cause to come before them, all persons who shall threaten to break the peace, or shall use threats against any person within this State, concerning his or her body, or threaten to injure his or her property, or the property of any person whatever; and also all such persons as are not of good fame; and the said justice of the peace, being satisfied by the oath of one or more witnesses, of his or her bad character, or that he or she has used threats, as

(1) Barb. Crim. L. 509.
(2) 4 Bl. Com. 253.
(3) Rev. Stat. 190, Sec. 201.
(4) *Ante*, p. 157.

aforesaid, must cause such person or persons to give good security for the peace, or for their good behavior towards all the people of this State, and particularly towards the individual threatened; and if any person against whom such proceedings are had, shall fail to give a recognizance with sufficient security, it will be the duty of the justice of the peace, before whom he or she shall be brought, to commit such person or persons to the jail of the proper county, until such security be given, or until the next term of the circuit court. The justice must also take recognizance for the appearance of all witnesses at such courts. All recognizances taken in pursuance of the foregoing provisions, must be returnable to the next circuit court, to be holden in the proper county, where all such recognizances will be renewed or dismissed, as the said circuit court may, upon examination of the witnesses, deem to be just and right.

Form of Warrant for the Peace.

STATE OF ILLINOIS, }
——— COUNTY, } ss.

The People of the State of Illinois to any Constable of said County:

Whereas A. B. of ———, in the said county, hath this day personally appeared before L. M., Esquire, one of the justices of the peace, in and for the said county, and made oath that he is afraid C. D. will beat, [wound, maim, or kill] him, for that the said C. D. hath lately assaulted him with a large knife, and threatened to plunge it through his heart, and to kill him at any rate, and hath demanded security for the peace against the said C. D., and the said justice of the peace being satisfied by the oath of the said A. B., that the said C. D. has used threats as aforesaid, and that there is just cause to fear the execution thereof by him:

We therefore command you, that immediately upon the receipt hereof, you bring the said C. D. before the said justice, at his office in ———, in said county, to give good and sufficient security, as well for his personal appearance at the next term of the circuit court to be held in and for said county, on the first day thereof, as also for his keeping the peace in the mean time towards all the people in this State, and particularly towards the said A. B.

Witness the said L. M., Esquire, at ———, in the said county, the ——— day of ———, 18—.

L. M.,
Justice of the Peace.

Form of Warrant for good behavior.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The People of the State of Illinois to any Constable of said County:

Whereas A. B. hath this day personally appeared before L. M., Esquire, one of the justices of the peace in and for the said county, and made oath that he is afraid that C. D., of ———, in said county, will burn his house, (*or* "kill his cattle," *or other injury threatened to the property, according to the facts,*) for that the said C. D. has lately threatened to burn his house, (*or* "kill his cattle, &c.") and hath demanded security for the good behavior against the said C. D.; and the said justice of the peace being satisfied by the oath of the said A. B., that the said C. D. has used threats, as aforesaid, and that there is just cause to fear the execution thereof by him:

We therefore command you, that immediately upon receipt hereof, you bring the said C. D. before the said justice in ———, in said county, to give good and sufficient security, as well for his personal appearance, at the next term of the circuit court to be held in said county, on the first day thereof, as also for his being of good behavior in the meantime, towards all the people of this State, and particularly towards the said C. D.

Witness the said L. M., Esquire, at ———, in the said county, the ——— day of ———, 18—.

L. M.,
Justice of the Peace.

Form of Warrant for peace or good behavior, on oath of two or more witnesses.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The People of the State of Illinois to any Constable of said County:

Whereas A. B., hath this day personally appeared before L. M., Esquire, one of the justices of the peace in and for the said county, and made oath that he is afraid that the said C. D. will beat him, [wound, maim, kill, or do him some bodily hurt,] for that the said C. D. hath lately threatened to beat him, [wound, maim, kill, or do him some bodily hurt,] and hath demanded surety for the peace, (*or* "for the good behavior") against the said C. D.; (*or* "that he is

afraid that the said C. D. will burn his house, (*or* "kill his cattle,") for that the said C. D. hath lately threatened to burn his house, (*or* "kill his cattle,") and hath demanded security for the good behavior against the said C. D.) And the said justice of the peace being satisfied, by the oaths of the said A. B. and of G. H. and I. J., that the said C. D. has used threats as aforesaid, and that there is just cause to fear the execution thereof:

We therefore command you, that immediately upon the receipt hereof, you bring the said C. D. before the said justice, at his office in the town of ———, in the said county, or before some other justice of the peace of the said county, to give good and sufficient security, as well for his personal appearance at the next term of the circuit court, to be held in said county, on the first day thereof, as also, for his keeping the peace, (*or* "for his being of good behavior") in the mean time, towards all the people in the State, and particularly towards the said A. B.

Witness the said L. M., Esquire, at ———, in the said county, the ——— day of ———, 18—.

L. M.,
Justice of the Peace.

Form of Warrant for good behavior against a person not of good fame.

STATE OF ILLINOIS, }
——— COUNTY, } ss.

The People of the State of Illinois to any Constable of said County:

Whereas we are given to understand, by the information and testimony of A. B. and G. H., under oath, this day taken before L. M., Esquire, one of the justices of the peace in and for the said county, that C. D. of ———, in the said county, is not of good fame, but an evil doer, (*or* "a rioter, barrator, &c.," *or any one of these or the like causes,*) and a common disturber of the peace, and have demanded that the said C. D. be required to give security for his good behavior; and the said justice of the peace being satisfied by the oath of the said A. B. and G. H. of the bad character of the said C. D., and that he is not a person of good fame:

Therefore, we command you, that immediately upon receipt hereof,

you bring the said C. D. before the said justice, at his office in the town of ———, in the said county, to give good and sufficient security, as well for his personal appearance at the next circuit court to be held in and for the said county, on the first day thereof, as also, for his being in good behavior in the mean time, towards all the people of this State, according to the form of the statute in such case made and provided.

Witness the said L. M., Esquire, at ———, in the said county, the ——— day of ———, 18—.

L. M.,
Justice of the Peace.

Form of Recognizance for the peace or good behavior.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

Be it remembered that on this day of , 18—, C. D. of ———, and in the said county, and E. F. and I. J. of ———, in the said county, personally come before me, L. M., Esquire, one of the justices of the peace in said county, and severally and respectively acknowledge themselves to owe to the people of the State of Illinois, to wit, the said C. D. the sum of ——— dollars, and the said E. F. the sum of ——— dollars, and the said I. J. the sum of ——— dollars, to be respectively made and levied of their several goods and chattels, lands and tenements, to the use of the said people, if default shall be made in the condition following :

The condition of this recognizance is such, that if the said C. D. shall personally be and appear at the next circuit court to be held in and for the said county of ———, on the first day thereof, to do and receive what shall then and there be enjoined on him by the court, and in the mean time, shall keep the peace (*or* "be of good behavior") towards all the people of this State, and particularly towards A. B., then this recognizance to be void, else to remain in full force.

Taken, subscribed and acknowledged, the day and year first above written, before me, L. M., Justice of the Peace.

C. D.
E. F.
I. J.

Form of Mittimus for want of Sureties.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The People of the State of Illinois to any Constable of the said County, and to the Keeper of the Common Jail of said County:

Whereas, A. B. lately appeared before L. M., Esquire, one of the justices of the peace of the said county, and made oath that he is afraid that C. D., of ———, in said county, will [beat, wound, and kill him, for that the said C. D. hath lately assaulted him with a large knife, and threatened to plunge it through his heart and to kill him, at any rate,] (*or* "burn his house, for that the said C. D. hath lately threatened to burn his house, and has actually attempted to set fire to the same," *or*, *if for any other cause, here set it forth,*) and the said justice of the peace, being satisfied by the oath of the said A. B., (*if there are two witnesses, then say,* "oaths of the said A. B. and E. F.,") that the said C. D. has used threats, as aforesaid, has caused the said C. D. this day to be brought before him, and required him, the said C. D., to give good and sufficient security, as well for his personal appearance at the next term of the circuit court, to be held in and for the said county, on the first day thereof, as, also, in the mean time, for his keeping the peace (*or* "being of good behavior") towards all the people of this State, and particularly towards the said A. B.; and, whereas he, the said C. D., hath refused, and doth now refuse, before the said justice of the peace, to find such security:

We, therefore, command you, the said constable, forthwith to convey the said C. D. to the common jail of the said county, and him deliver to the keeper thereof; and you, the said keeper, are hereby required to receive the said C. D. into your custody, in the said jail, for the want of sureties, and him there safely keep until he shall be discharged by due course of law.

Witness the said L. M., Esquire, at ——, in the said county, the —— day of ——, 18—.

L. M.,
Justice of the Peace.

Form of Liberate, to discharge one committed for want of Sureties.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The People of the State of Illinois to the Keeper of the Common Jail of said County:

Whereas, C. D., who is now in the common jail, in your custody, at the suit of A. B., of ——, in said county, for not giving good and sufficient security, as well for his personal appearance at the next term of the circuit court, held in the said county, on the first day thereof, as, also, for his keeping the peace, (*or*, "being of good behavior,") in the mean time, towards all the people of this State, and particularly towards the said A. B., hath given before L. M., Esquire, one of the justices of the peace in the said county, good and sufficient securities that he will personally appear at the next circuit court, to be held in and for the said county, on the first day thereof, and will well and truly keep the peace, (*or*, "be of good behavior,") in the mean time, towards all the people of this State, and particularly towards the said A. B.:

We, therefore, command you, that if the said C. D. do remain in the said jail, for the said cause, and none other, then you forbear to detain him any longer, but that you deliver him thence, and suffer him to go at large, and that upon the penalty that will fall thereon.

Given under the hand and seal of the said justice, at ——, in the said county, the —— day of ——, 18—.

L. M., *J. P.* [SEAL.]

CHAPTER VI.

OF FUGITIVES FROM JUSTICE.

Rev. Stat. 262, Sec. 4. "Whenever any person within this State shall be charged, upon the oath or affirmation of any credible witness, before any judge or justice of the peace, with the commission of any murder, rape, robbery, burglary, arson, larceny, forgery or counterfeiting, in any other State or territory of the United States, and that the said person hath fled from justice, it shall be lawful for the said judge or justice to issue his warrant for the apprehension of said person. If, upon examination, it shall appear to the satisfaction of such judge or justice, that the said person is guilty of the offense alleged against him, it shall be the duty of the said judge or justice to commit him to the jail of the county; or, if the offense is bailable, according to the laws of this State, to take bail for his appearance at the next circuit court, to be holden in that county. It shall be the duty of the said judge or justice to reduce the examination of the prisoner, and those who bring him, to writing, and to return the same to the next circuit court of the county where such examination is had, as in other cases; and shall also send a copy of the examination and proceedings to the executive of this State, so soon thereafter as may be. If, in the opinion of the executive of this State, the examination so furnished, contains sufficient evidence to warrant the finding of an indictment against such person, he shall forthwith notify the executive of the State or territory, where the crime is alleged to have been committed, of the proceedings which have been had against such person, and that he will deliver such person on demand, without requiring a copy of an indictment to accompany such demand; when such demand shall be made, the executive of this State shall forthwith issue his warrant, under the seal of the State, to the

sheriff of the county where the said person is committed or bailed, commanding him to surrender him to such messenger as shall be therein named, to be conveyed out of this State. If the said person shall be out on bail, it shall be lawful for the sheriff to arrest him forthwith, anywhere within the State, and to surrender him agreeably to said warrant."

"SEC. 7. In all cases where complaint shall be made, as aforesaid, against any fugitive from justice, it shall be the duty of the judge or justice to take good and sufficient security for the payment of all costs which may accrue from the arrest and detention of such fugitive; which security shall be by bond, to the clerk of the circuit court, conditioned for the payment of costs as above; which bond, together with a statement of the costs which may have accrued on the examination, shall be returned to the office of the clerk of the circuit court; and, upon the determination of the proceedings against such fugitive within that county, the clerk shall issue a fee bill, as in other cases, to be served on the persons named in the bond, or any of them; which fee bill shall be served and returned by the sheriff, for which he shall be allowed the same fees as are given him for serving notices. If the fees be not paid on or before the first day of the next circuit court, to be holden in and for that county, nor any cause then shown why they should not be paid, the clerk may issue an execution for the same, against those parties on whom the fee bill has been served; and when the said fees are collected, shall pay over the same to the persons respectively entitled thereto. The clerk shall be entitled to fifty cents for his trouble in each case, besides the usual taxed fees which are allowed in other cases for like services: Nothing herein contained shall prevent the clerk from instituting suits on said bonds, in the ordinary mode of judicial proceedings, if he shall deem it proper."

Form of Oath to be administered to Witnesses.

You do swear that you will true answers make to such questions as may be asked you touching the present complaint against C. D. So help you God.

Form of Bond for Costs.

Know all men by these presents, that we, A. B., E. F., and G. H., of ——, in the county of ——, and State of Illinois, are held and firmly bound unto *Augustus B. Coates*, clerk of the Circuit Court of

Lake County, in said State of Illinois, and to his successors in office, in the penal sum of —— dollars, to be paid to the said clerk as aforesaid, or his successors in office, to which payment well and truly to be made, we jointly and severally bind ourselves, our heirs, executors and administrators firmly, by these presents. Sealed with our seals, dated this —— day of ——, in the year of our Lord, one thousand eight hundred and fifty ——.

Whereas the said A. B. has this day made complaint, on oath, against C. D., before L. M., Esquire, a justice of the peace of the said county of *Lake*, that the said C. D., on the —— day of ——, 18—, at ——, in the county of ——, and State of *Wisconsin* (*set out the offense,*) and that the said C. D. hath fled from justice, and has prayed that a warrant issue for the apprehension of the said C. D.

Now, therefore, the condition of the obligation is such, that if the said A. B. shall well and truly pay all costs, which may accrue from the arrest and detention of the said C. D., then the obligation to be void, otherwise to be and remain in full force and effect.

Executed and delivered in the presence of L. M., *J. P.* [SEAL.] [SEAL.] [SEAL.]

Form of Warrant.

STATE OF ILLINOIS, —— COUNTY, } ss.

The People of the State of Illinois to any Constable of said County:

Whereas, A. B. hath this day made complaint on oath, (*or* "affirmation") before L. M., Esquire, one of the justices of the peace of said county, that C. D., on the —— day of ——, 18—, at ——, in the county of ——, and State of *Wisconsin*, (*here set out the offense,*) and that the said C. D. hath fled from justice:

We therefore command you forthwith to take said C. D., and bring him before the said L. M., Esquire, to be dealt with according to law. Hereof fail not at your peril.

Witness, the said L. M., Esquire, at ——, in the said county, the —— day of ——, 18—.

L. M., *J. P.* [SEAL.]

Form of Examination of Witnesses.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The examination of A. B., G. H., and I. J., taken upon oath before me, L. M., Esquire, a justice of the peace of the said county of *Lake*, on the —— day of ——, 18—, in the presence and hearing of C. D., charged before me, by the said A. B. with, on the —— day of ——, 18—, at ——, in the county of ——, and State of *Wisconsin*, feloniously stealing, taking, &c., (*set out the offense as in the warrant,*) and with having fled from justice.

The said A. B., on the part of the prosecution, on his oath aforesaid, before me, the said justice, in the presence and hearing of said C. D., saith. (*Set forth the evidence of A. B.*)

The said G. H., on the part of the prosecution, on his oath aforesaid, before me, the said justice, in the presence and hearing of said C. D., saith. (*Here set forth the evidence of G. H.*)

The said I. J., on the part of the said C. D., on his oath aforesaid, before me, the said justice, in the presence and hearing of the said C. D., saith. (*Here set forth the evidence of I. J.*)

Taken before me the day and year first above mentioned.
L. M., *J. P.*

A. B.
G. H.
I. J.

Form of Examination of Prisoner.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The examination of C. D., taken before me, L. M., Esquire, a justice of the peace, of the said county, on the —— day of ——, 18—, the said C. D. being charged by A. B., with (*set out the offense and fleeing from justice, as in the examination of witnesses.*) He, the said C. D., upon his examination now taken before me, saith that. (*Here set out the prisoner's statement.*)

Taken before me, the day and year first above mentioned.
L. M., *J. P.*

Form of Certificate to be attached to the examination and proceedings in the foregoing case.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

I, the subscriber, a justice of the peace, in and for the county aforesaid, do hereby certify that the above is a true copy of the examination and proceedings had and taken before me.

L. M., *J. P.*

The forms of commitments, recognizances, &c., heretofore given, in cases of the examination of persons charged with a criminal offense, will answer in the foregoing case, with slight alterations, to conform to the facts.

CHAPTER VII.

OF SEARCH WARRANTS.

Rev. Stat. 192, Sec. 211. "It shall be lawful for any judge or justice of the peace, upon complaint made before him upon oath or affirmation, that a larceny has been committed, and that the person affirming or swearing does verily believe that the stolen goods or other property, are or is concealed in any dwelling house, out-house, garden, yard or other place or places, to issue a warrant under his hand, commanding every such dwelling house or place to be searched in the day time; and if any of the goods described in any such warrant, be found therein, then that the said goods be seized or brought before the judge or justice issuing said warrant. If, upon examination of witnesses before the judge or justice of the peace who issued said warrant, it shall be determined by such judge or justice, that the goods so brought before him have been stolen, it shall be the duty of such judge or justice, either to keep possession of, or to deliver, or cause to be delivered, such goods to the sheriff of the proper county, there to remain until the conviction of the thief, or the claimant's right be otherwise legally ascertained. If the thief shall not be indicted at the next circuit court after the goods shall be seized, and an action shall not be commenced against the person or persons in whose possession such goods shall have been found, for the recovery thereof, within one month after a circuit court shall have been held after such seizure, the said circuit court shall, at their next session, order such goods to be re-delivered to the person in whose possession they were found, which order shall be obeyed by the person in whose possession such goods may, at the time, be. In case the judge or justice of the peace shall, upon such examination as aforesaid, determine that such goods so seized had not been stolen, then the goods shall be immediately restored to the person from whose possession they were so taken."

Form of Search Warrant.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The People of the State of Illinois to the Sheriff or any Constable of said County:

Whereas A. B. hath this day made complaint on oath, before L. M., Esquire, one of the justices of the peace of the said county, that on the ——— day of ———, 18—, in the county aforesaid, divers goods and chattels of the said A. B., that is to say (*describe the stolen articles accurately,*) were feloniously stolen, taken, and carried away by some person or persons unknown, or by C. D., (*describe the place with certainty, according to the fact,*) situate in ——— in the said county:

We therefore command you, with necessary and proper assistance, to enter in the day time into the said dwelling house (the place above described,) and there diligently search for the said goods and chattels, and if the same, or any part thereof, shall be found upon such search, that you bring the goods and chattels so found before the said justice, to be disposed of according to law.

Witness the said L. M., Esquire, at ——— in the said county, the ——— day of ———, 18—.

L. M.,
Justice of the peace.

Form of Warrant for a Witness.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The People of the State of Illinois to the Sheriff, or to any Constable of said County:

Whereas complaint hath been made on oath before L. M., Esquire, a justice of the peace of the said county, by A. B., that (*here set out the larceny and the concealment of property as in the warrant,*) and that C. D. is a material and necessary witness to be examined concerning the stealing of the same, and it appearing that said goods and chattels have been brought before the said justice:

We therefore command and require you to cause the said C. D.

forthwith to come before the said justice, to give such information and evidence as he knoweth concerning the premises.

Witness the said L. M., Esquire, at ——— in the county aforesaid, this ——— day of ———, 18—.

L. M.,
Justice of the peace.

Form of Record.

STATE OF ILLINOIS, }
——— COUNTY, } ss.

Be it remembered, that on the ——— day of ———, 18—, A. B. appeared and made complaint on oath before L. M., Esquire, a justice of the peace of said county, that, on the ——— day of ———, 18—, at ———, in the said county, divers goods and chattels of the said A. B., that is to say, one gold watch and six silver tea spoons, (*describe the articles stolen,*) were feloniously stolen, taken, and carried away by some person or persons unknown, (*or* "by E. F.,") and that he verily believes that the said goods and chattels, or some part thereof, were concealed in the dwelling house then occupied by E. F., (*the place describe as in the warrant,*) situate in ———, in the said county; whereupon I the said justice issued a warrant to the sheriff or any constable of the said county, to enter and diligently search the said dwelling (*the place describe,*) in the day time, for the said goods and chattels, and if any of them should be found, to seize the same and bring them before me, to be disposed of according to law.

That afterwards, on the ——— day of ———, 18—, J. K., one of the constables of the said county, returned the said warrant, and therewith brought before me the goods and chattels therein described, whereupon I did immediately, (*or* "on the ——— day of ———, 18—,") proceed to the examination of all witnesses produced before me, touching the said complaint, and after considering the proofs adduced, I did adjudge and determine that the said goods and chattels had been stolen, (*or* "had not been stolen.")

And I did therefore deliver the said goods and chattels to the sheriff of the said county, there to remain until the conviction of the thief, or the claimant's right be otherwise ascertained, (*or if the justice keeps the goods, &c. then say,*)

And I did thereupon retain and keep possession of the said goods and chattels, so that they should remain with me until the conviction

of the thief, or the claimant's right be otherwise ascertained. (*If the justice determines that the goods, &c. were not stolen, then say,*)

And did thereupon immediately restore to the said E. F., the said goods and chattels, from whose possession they were so taken.

In witness whereof, I the said L. M., justice as aforesaid, have hereunto set my hand, this ——— day of 18—, at ———, in the county aforesaid.

L. M.,
Justice of the Peace.

CHAPTER VIII.

OF PROCEEDINGS IN RELATION TO VARIOUS MISDEMEANORS, BY ATTEMPTING TO INFLUENCE ELECTORS; OF SABBATH BREAKING, AND OF DISTURBING WORSHIPING ASSEMBLIES.

I. OF PENALTIES, AND MANNER OF PROCEEDING BY THE JUSTICE.
II. FORMS OF PROCEEDING IN CASE OF SABBATH BREAKING.
III. FORMS OF PROCEEDING IN CASE OF DISTURBING WORSHIPING ASSEMBLIES.

I. OF PENALTIES AND MANNER OF PROCEEDING BY THE JUSTICE.

Rev. Stat. 177, Sec. 143. "If any person shall by bribery, menace, treating, or other corrupt means or device whatsoever, either directly or indirectly attempt to influence any elector of this State in giving his vote at any election, every person so offending, and being thereof convicted, shall be fined not exceeding five hundred dollars, and shall thereafter be disqualified from voting at any election in this State for five years.

"Sec. 144. Any person who shall hereafter knowingly disturb the peace and good order of society by labor or amusement on the first day of the week, commonly called Sunday, (works of necessity and charity excepted,) shall be fined upon conviction thereof, in any sum not exceeding five dollars.

"Sec. 145. The preceding section shall not be construed to prevent watermen from landing their passengers, lading and unlading their cargoes, or ferrymen from carrying over the water travelers or persons moving with their families on the first day of the week; nor to prevent the due exercise of the rights of conscience by any person who may

think proper to keep any other day as a Sabbath, than the first day of the week.

"Sec. 146. Whoever shall be guilty of any noise, rout or amusement on the first day of the week, called Sunday, whereby the peace of any private family may be disturbed, such person so offending, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not exceeding twenty-five dollars.

"Sec. 147. Any person who shall, by menace, profane swearing, vulgar language, or any disorderly or immoral conduct, interrupt and disturb any congregation or collection of citizens assembled together for the purpose of worshiping Almighty God, or who shall sell, or attempt to sell, or otherwise dispose of ardent spirits or liquors, or any articles, which will tend to disturb any worshiping congregation or collection of people, within one mile of such place, unless the person so selling or disposing of said spirituous liquors or articles, shall be regularly licensed to keep a tavern or grocery, and shall sell the same at his said tavern or grocery, any person so offending shall be deemed guilty of a high misdemeanor, and upon conviction, shall be fined, in any sum not exceeding fifty dollars: *Provided*, That this section shall not be so construed as to affect any person who may sell whisky or any other ardent spirits at his own distillery, store or dwelling house.

"Sec. 148. Justices of the peace, respectively, in their several counties, shall have jurisdiction of the aforesaid offenses, and may, on view or upon information on oath, cause every such person, having offended as aforesaid, to be apprehended and brought before him to answer such charge.

"Sec. 149. Any person who shall be accused of either of the offenses specified in the five preceding sections, if he choose it, shall have the cause tried by a jury of six lawful jurors, and if he shall insist on a full jury, by twelve, who shall be summoned to try the cause; and if the jury shall find the accused guilty, they shall assess and state the amount of the fine, not more than in said sections specified; upon which the justice before whom the trial shall be had, or in case the person shall plead guilty, shall give judgment for fine and costs, and proceed to collect the same without delay; and when said fine shall be collected, the officer or person collecting the same shall be required to pay it over without delay to the treasurer of the proper county, taking his receipt therefor; and which receipt shall be filed with the clerk of the county commissioners' court; after which the said fine or fines which may be thus deposited shall be subject to the control of said court, and

appropriated to the education of any poor orphan child or children of the proper county.

"Sec. 150. The judgments rendered under the six preceding sections shall be subject to appeals as in cases of assault and battery and affrays, and shall be collected in the same manner."

II. FORMS OF PROCEEDING IN CASE OF SABBATH BREAKING.

Form of Warrant for offense in justice's presence.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The People of the State of Illinois to any Constable of said County:

Whereas, on the ——— day of ——— instant, at ——— in said county, C. D. did, in the presence of the subscriber, L. M., Esquire, one of the justices of the peace of said county, knowingly disturb the peace and good order of society by amusements on the first day of the week, commonly called Sunday, to wit, by (*here state the manner of the disturbance.*)

These are therefore to command you forthwith to take the said C. D. and bring him before the said justice to answer the said charge, and to be dealt with according to law.

Given under the hand and seal of the said justice, the ——— day of ———, 185–.

L. M., *J. P.* [SEAL.]

Form of Information.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The information and complaint of L. M., made before E. F., Esquire, one of the justices of the peace of the said county, the ——— day of ———, 185–, who upon oath, says, that on the ——— day of —— instant, being the first day of the week, called Sunday, C. D. did make a noise (*here state the facts*) whereby the peace of the family of the said L. M. was disturbed, contrary to the form of the statute in such case made and provided. He therefore prays that the said C. D. may be required to answer this complaint.

Exhibited before me, this ——— day of ———, 185–. E. F., Justice of the Peace. } L. M.

Form of Warrant on Information.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The People of the State of Illinois to any Constable of said County:

Whereas, L. M. has this day made and exhibited an information and complaint, upon oath, before E. F., Esquire, a justice of the peace of the said county, that on the —— day of ——, 18—, being the first day of the week, being Sunday, at ——, in said county, C. D. did make a noise, (*state the offense as in the complaint,*) whereby the peace of the family of the said L. M. was disturbed, contrary to the form of the statute in such case made and provided:

We, therefore, command you forthwith to take the said C. D. and bring him before the said justice, to answer the said charge, and further to be dealt with according to law.

Given under the hand and seal of the said justice, the —— day of ——, 18—.

E. F., *J. P.* [SEAL.]

Record of Conviction for offense in the view of the Justice.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

Be it remembered that on the —— day of ——, 18—, at ——, in the said county, C. D. did, in my view, (*set forth the offense, as in the information,*) and, thereupon, I caused the said C. D. to be arrested and brought before me, he still remaining in my view, and I proceeded, in the presence of the said C. D., (*if a jury was required, add,* "and of a jury, at the request of the said C. D., for that purpose empanneled and sworn,") to enquire into the truth of the said charge, and, after hearing the proofs and allegations of the parties, the said C. D., on the said —— day of ——, 18—, by me, the said justice, (*if a jury was sworn, say,* "by the verdict of the said jury,") was convicted of the offense aforesaid, and I, (*or* "the said jury,") assessed the fine which he should pay at the sum of —— dollars:

Therefore, it is adjudged and determined by me, the said justice, the said C. D., for the offense aforesaid, shall forfeit and pay the said sum of —— dollars, so assessed by me, (*or* "by the said jury,") and I did further adjudge and determine that the said C. D. should pay the sum of —— dollars, for the costs and charges of this prosecution.

In witness whereof I have hereunto set my hand and seal, this —— day of ——, 18—.

L. M., *J. P.* [SEAL.]

Record of Conviction on an Information.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

Be it remembered, that on the —— day of ——, 18—, L. M., came before me, E. F., Esquire, a justice of the peace of said county, and made and exhibited his complaint and information upon oath, and gave me to understand and be informed, that on the —— day of ——, instant, at ———, in the said county, C. D. did (*set forth the offense as in the complaint*); that thereupon I issued a warrant and caused the said C. D. to be apprehended and brought before me; that afterwards, on the ——— day of ———, 18—, I proceeded (*conclude as in the preceding form.*)

Warrant of Distress to levy Fine and Costs.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The People of the State of Illinois to any Constable of said County:

Whereas upon the information and complaint of L. M., lately exhibited upon oath before E. F., a justice of the peace of said county, against C. D., for that on the ——— day of ———, 18—, being the first day of the week, called Sunday, he did make a noise (*here state the facts as in the complaint*) whereby the peace of the family of the said L. M. was disturbed, and thereupon the said justice issued his warrant and caused the said C. D. to be apprehended and brought before him, and proceeded in the presence of the said C. D., (*if a jury was sworn, then add,* "and of a jury at the request of the said C. D. for that purpose empanneled and sworn,) to enquire into the truth of the said charge, and after hearing the proofs and allegations of the parties, the said C. D., on the ——— day of ———, 18—, by the said justice, (*or* "by the verdict of the said jury,") was convicted of the offense aforesaid, and the said justice (*or* "the said jury") assessed the fine which he should pay, at the sum of ——— dollars. And the said justice thereupon adjudged and determined that the said C. D., for the said offense, should forfeit and pay the said sum of

——— dollars, and the sum of ——— dollars for the costs and charges of said prosecution:

We therefore command you immediately to levy the said sum of ——— dollars for the fine aforesaid, and also the sum of ——— dollars for the costs and charges aforesaid, by distress and sale of the goods and chattels of the said C. D., giving twenty days' notice of the day of sale, by posting up written or printed advertisements in three of the most public places in the county. And do you return this precept with all convenient speed, with what you shall do by virtue hereof.

Given under the hand and seal of the said justice, the ——— day of ———, A. D. 18—.

E. F. *J. P.* [SEAL.]

III. FORMS OF PROCEEDING IN CASE OF DISTURBING WORSHIPING ASSEMBLIES.

Form of Complaint.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The complaint and information of E. F. of said county, made before C. D., Esquire, one of the justices of the peace in and for the said county, on the ——— day of ———, 18—, who being duly sworn by the said justice on his oath, says that on the ——— day of ———, in the year of our Lord one thousand eight hundred and ———, at ———, in the said county, L. M. of said county, did interrupt and disturb a collection of citizens, then and there in a (*describe the house or grove,*) assembled together for the purpose of worshiping Almighty God, by loud and profane swearing (*or as the case may be*), in the presence and hearing of said collection of citizens so assembled.

E. F.

Exhibited before me on the day and year first aforesaid.

C. D.,
Justice of the Peace.

Form where the disturbance is by selling liquor by a person licensed, but who does not sell at his tavern or grocery.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The complaint and information of E. F. of said county, made before C. D., Esquire, one of the justices of the peace in and for the said county, on the ——— day of ———, in the year of our Lord, &c., who being duly sworn by the said justice, upon his oath says that L. M., on the ——— day of, &c., at ———, in said county, and not at the store, distillery, dwelling house, tavern or grocery, of the said L. M., and within one mile of the place where a congregation of citizens were then and there actually assembled together in a (*describe the house or grove*) for the purpose of worshiping Almighty God, did sell ardent spirits to S. R., and to divers other persons, and thereby did then and there interrupt and disturb the said congregation so assembled.

Exhibited before me on the day and year first aforesaid. E. F.

C. D.,
Justice of the Peace.

Form where the disturbance is by selling liquor by a person not licensed.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The complaint and information of E. F. of said county made before C. D., Esquire, one of the justices of the peace in and for said county, on the ——— day of, &c., who being duly sworn, on his oath says that L. M. of said county, on the ——— day of, &c., at ———, in said county, and not at the store, distillery, or dwelling house of the said L. M., and without being regularly licensed to keep a tavern or grocery, and within one mile of the place where a congregation of citizens were then and there actually assembled together in a (*describe the house or grove*) for the purpose of worshiping Almighty God, did sell ardent spirits to G. H., and to divers other persons, and thereby did then and there interrupt and disturb the said congregation so assembled.

Exhibited before me on the day and year first aforesaid. E. F.

C. D.,
Justice of the Peace.

Form of Warrant.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The People of the State of Illinois to any Constable of said County:

Whereas, E. F. of said county, has this day made complaint, on oath, before J. K., Esquire, one of the justices of the peace in and for said county, that L. M., of said county, on (*set out the complaint.*)

These are, therefore, to command you forthwith to apprehend the said L. M., and bring him before the said justice, to answer the said complaint, and further to be dealt with according to law.

Given under the hand and seal of the said justice, the —— day of ——, 18—.

J. K., *J. P.* [SEAL.]

The various forms heretofore given in other cases, for subpœna, venire, &c., may be used here, by being varied to suit the occasion.

Record of Conviction.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

Be it remembered, that on the —— day of ——, in the year of, &c., E. F., of said county, came before me, J. K., Esquire, one of the justices of the peace in and for the said county, and made and exhibited his complaint, upon oath, and gave me to understand and be informed that on, &c., at, &c., (*recite the complaint to the end*); that, thereupon, I issued a warrant, and caused the said L. M. to be apprehended, and brought before me; that afterwards, on the —— day of, &c., I proceeded, in the presence of the said L. M., (*if there was a jury, say*, "and of a jury, at the request of the said L. M. for that purpose empanneled and sworn,") to enquire into the truth of the said charge, and after hearing the proofs and allegations of the parties, the said L. M., on the said day of, &c., by me, the said justice, (*or, if a jury, say*, "by the verdict of the jury,") was convicted of the said offense, and I, (*or* "the said jury,") assessed the fine which he should pay at the sum of —— dollars.

Therefore, it is adjudged and determined by me, the said justice, that the said L. M., for the offense aforesaid, shall forfeit and pay the sum of ——— dollars, so assessed; and I do further adjudge and deter-

mine that the said L. M. shall pay the sum of ——— dollars, for the costs and charges of this prosecution.

In witness whereof I have hereunto set my hand and seal, this —— day of ———, 18—.

J. K., *J. P.* [SEAL.]

Warrant of Distress.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The People of the State of Illinois to any Constable of said County:

Whereas, upon the information and complaint of E. F., of said county, lately exhibited upon oath, before J. K., a justice of the peace in and for said county, against L. M., of the said county, for that on, &c., at, &c., (*as in complaint*); and, thereupon, the said justice issued his warrant, and caused the said L. M. to be apprehended and brought before him, and proceeded, in the presence of the said L. M., (*if a jury, then add,* "and of a jury, at the request of the said L. M. for that purpose empanneled and sworn,") to enquire into the truth of the said charge, and after hearing the proofs and allegations of the parties, the said L. M., on the —— day of, &c., by the said justice, (*or* "by the verdict of the said jury,") was convicted of the offense aforesaid; and the said justice, (*or* "the said jury,") assessed the fine which he should pay at the sum of —— dollars; and the said justice thereupon adjudged and determined that the said L. M. for the said offense should forfeit and pay the sam of —— dollars, for the costs and charges of the said prosecution:

We, therefore, command you, without delay, to levy the said sum of —— dollars, for the fine aforesaid, and also the sum of —— dollars for the costs and charges aforesaid, by distress and sale of the goods and chattels of the said L. M.; and do you return this precept with all convenient speed, with what you shall do thereon.

Given under the hand and seal of the said justice, the —— day of ——, 18—.

J. K., *J. P.* [SEAL.]

CHAPTER IX.

OF PROCEEDINGS IN CASES OF ASSAULT, ASSAULT AND BATTERY, AND AFFRAYS.

Assault and battery is the unlawful beating of another.[1]

Rev. Stat. 329, Sec. 95. "In all cases of assault, assault and battery, and frays, any justice of the peace may, upon his own knowledge, or upon oath of any competent person, issue his warrant to any constable in his county for the arrest of every person charged with either of said offenses; and upon the arrest of such person, shall cause a jury to be summoned, (unless the party accused shall dispense with a jury,) who shall hear the cause, and if they find the accused guilty, shall assess such fine as they shall deem just, not, however, to be less than three nor more than one hundred dollars.

"Sec. 96. Upon the jury returning their verdict of guilty, and the assessment of the fine, the justice shall record the same in his docket or record book, and proceed to render judgment thereon for the amount of the said fine and costs; but if the jury return a verdict of not guilty, the justice shall record the same, and discharge the defendant or defendants without costs.

"Sec. 97. Upon the rendition of such judgment, the justice shall issue execution for the fine and costs, which may be levied upon any personal property of the defendant or defendants, which shall be sold for whatever it will bring in cash, after giving notice as in other cases: *Provided, however,* That if the party so convicted have a family, then the constable shall reserve from execution one bed and bedding, one cow, and ten dollars' worth of household and kitchen furniture.

"Sec. 98. If the constable shall return upon such execution, that the defendant or defendants have no goods and chattels whereof to make the money, the justice shall issue a *capias* against the body of the de-

(1) Rev. Stat. 159, Sec. 53.

fendant or defendants, and the constable shall arrest such person or persons, and commit him or them to the jail of the county, there to remain forty-eight hours; and if the fine exceed ten dollars, then to remain in said jail twenty-four hours for every five dollars over and above the said ten dollars, and so on in proportion to the amount of said fine.

"Sec. 99. If any person so convicted, shall wish to appeal to the circuit court, he shall signify the same to the justice of the peace who gave the judgment, and the justice shall give him a statement of the amount of the fine and costs, and upon producing the same to the clerk of the circuit court of the proper county, the clerk shall write a bond to the people of the State of Illinois, in a penalty double the amount of the fine, and a sufficiency to cover all costs, conditioned for the payment of the amount of whatever judgment the court may render against said defendant, which the said party appealing shall execute, with sufficient security to be approved by the said clerk; and when such bond shall be executed, the clerk shall notify the justice who tried the cause thereof, and the said justice shall stay all further proceedings, and return the papers to the next succeeding circuit court, when the same shall be tried: *Provided*, All such appeals shall be prayed for, and the bond executed, within five days after judgment rendered.

"Sec. 100. If the defendant shall be found guilty in the circuit court, judgment shall be rendered against both principal and security in the appeal bond, for the amount of the fine assessed by the jury in said court, and all costs that may have accrued.

"Sec. 101. If any person shall be dissatisfied with the verdict given in such cases, before any justice of the peace, because of the fine being too low, or because the defendant may have been acquitted, he shall be permitted to remove the said case into the circuit court, upon his executing bond to the people of the State of Illinois, before the clerk, in a penalty sufficient to cover all costs that have or may accrue, conditioned for the payment of all costs, in case the defendant shall be acquitted, or the fine not increased; which bond shall be executed in ten days after the judgment of the justice shall have been given; and when said bond is executed, the clerk shall notify the justice thereof, and said justice shall return all the proceedings to the said court; and if the defendant shall be acquitted in the circuit court, or the fine not increased by the jury, the court shall render judgment against the party who removed the said case into the circuit court, and his security in the appeal bond, for all costs occasioned by the appeal: *Provided*, The party removing a case into the circuit court shall not be a witness against the defendant in said court, upon the trial of such appeal.

"Sec. 102. When any defendant convicted of either of the said offenses, or any person dissatisfied with the verdict as aforesaid, appeals to the circuit court, it shall be the duty of the justice to return to the clerk when he returns the papers in the case, the names of all the material witnesses who shall have testified on the trial, and the clerk shall issue subpœnas for them.

"Sec. 103. When the case is removed into the circuit court, as provided by the one hundred and first section, the party removing it shall cause a summons to be issued and served upon the defendant, notifying him of the appeal; and if the defendant cannot be found in the county, to serve said process upon, the case shall not be continued; but the court shall cause his appearance to be entered, and proceed to trial, as though the defendant were present, and had filed the plea of not guilty.

"Sec. 104. If any person accused of either of the above offenses shall confess himself guilty, the jury, or the justice, if he shall not require a jury, shall hear the evidence and assess the fine; and the justice shall enter judgment and issue execution, subject to appeal as in other cases.

"Sec. 105. No person shall be proceeded against for the commission of any of the offenses herein enumerated, after the expiration of twelve months from the time the offense was committed, unless such offender shall withdraw himself from the county for the purpose of avoiding trial, in which case he shall be tried at any time within twelve months after his return or apprehension."

Form of Complaint for an Assault.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The information and complaint of A. B., of ——, in said county, who, being duly sworn, upon his oath says, that C. D., of ——, in the said county, on the —— day of ——, 18—, with force and arms, at ——, in the county aforesaid, him, the said A. B., did unlawfully make an attempt to strike, beat, and wound with a cane, then and there having the ability to commit the said injury. He, therefore, prays that the said C. D. may be arrested and dealt with according to law.

A. B.

Subscribed and sworn before me, this —— day of ——, 18—.

L. M., *J. P.*

Form of Information and Complaint for Assault and Battery.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The information and complaint of A. B., of ——, in said county, who, being duly sworn, upon his oath says, that C. D., of ——, in the said county, on the —— day of ——, 18—, with force and arms, at ——, in the county aforesaid, in and upon the said A. B., did make an assault, and with his hands and feet did then and there beat, bruise, wound and injure him, the said A. B. He, therefore, prays that the said C. D. may be arrested and dealt with according to law.

Subscribed and sworn before me, this —— day of ——, 18—. L. M., *J. P.* } A. B.

Form of Information and Complaint for an Affray.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The information and complaint of A. B., who being duly sworn, upon his oath says, that C. D. and G. H., on the —— day of ——, 18—, at ——, in the county aforesaid, did, by agreement, fight in a public place, that is to say, in the public highway, there situate, and did then and there make an affray, to the terror of the citizens of this State then and there being. He, therefore, prays that the said C. D. and G. H. may be arrested and dealt with according to law.

Sworn and subscribed before me, this —— day of ——, 18—. L. M., *J. P.* } A. B.

Form of Warrant for an Assault.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The People of the State of Illinois to any Constable of said County:

Whereas, A. B. has this day made complaint in writing, upon oath, before L. M., Esquire, a justice of the peace of said county, that on the —— day of ——, 18—, at ——, in the county aforesaid, C. D. did unlawfully attempt to violently strike, beat, and wound him, the said A. B., with a cane, then and there having the ability to commit the said injury:

These are, therefore, to command you forthwith to arrest the said C. D., and bring him before the said justice, to answer unto the said complaint, and to be further dealt with according to law.

Given under the hand and seal of the said justice, at ——, in said county, the —— day of ——, 18—.

L. M., *J. P.* [SEAL.]

Form of Warrant for Assault and Battery.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The People of the State of Illinois to any Constable of said County:

Whereas, A. B. has this day made complaint in writing, upon oath, before L. M., Esquire, a justice of the peace of said county, that on the —— day of ——, 18—, at——, in the county aforesaid, C. D. did violently assault and unlawfully beat him, the said A. B.:

These are, therefore, to command you forthwith to arrest the said C. D., and bring him before the said justice, to answer unto the said complaint, and to be further dealt with according to law.

Given under the hand and seal of the said justice, at ——, in the said county, the —— day of ——, 18—.

L. M., *J. P.* [SEAL.]

Form of Warrant for an Affray.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The People of the State of Illinois to any Constable of said County:

Whereas, A. B. hath this day made complaint in writing, upon oath, before L. M., Esquire, a justice of the peace of said county, that on the —— day of ——, 18—, at ——, in the county aforesaid, C. D. and G. H. did, by agreement, fight in a public place, that is to say, in the public highway, there situate, and did then and there make an affray, to the terror of the citizens of this State, then and there being:

These are, therefore, to command you forthwith to arrest the said C. D. and G. H., and bring them before the said justice, to answer unto the said complaint, and to be further dealt with according to law.

Given under the hand and seal of the said justice, at ——, in the said county, the —— day of ——, 18—.

L. M., *J. P.* [SEAL.]

Form of Recognizance of Defendant to appear before the Justice, in case of continuance of trial.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

Be it remembered that on this —— day of ——, 18—, C. D., of ——, in the said county, and G. H., of ——, in the said county, and I. J., of ——, in the said county, personally come before me, L. M., Esquire, a justice of the peace of said county, and severally and respectively acknowledge themselves to owe to the people of the State of Illinois, that is to say, the said C. D., the sum of one hundred dollars, and the said G. H. and I. F., the sum of fifty dollars each, to be levied of their respective goods and chattels, lands and tenements, to the use of the said people, if the said C. D. shall make default in the condition following:

The condition of this recognizance is such that if the said C. D. shall personally be and appear before the said justice, at his office, in ——, on the —— day of ——, 18—, at a court then and there to be held, before the said justice, for the trial of an assault and battery, alleged to have been committed by the said C. D., upon A. B., (*or if for an assault or an affray, state it here,*) and to do and receive what shall by the court be then and there enjoined upon him, and shall not depart the court without leave; then this recognizance to be void, or else to remain in full force.

Taken, subscribed and acknowledged, the day and year first above written, before me, L. M., *J. P.* } C. D. G. H. I. J.

Form of a Venire.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The People of the State of Illinois to any Constable of said County:

We command you to summon twelve (*or* "six," *as may be required by the accused,*) good and lawful men, qualified to serve as jurors, and not exempt from such service by law, and who are not in any wise related either to A. B. or C. D., to be and appear before L. M., Esquire, a justice of the peace of the said county, on the ——— day of ——— instant, at — o'clock in the ——— noon, at the office of the said justice, in ———, to make a jury for the trial of the said C. D., for an

assault and battery upon the said A. B., and have you then and there a panel of jurors and this precept.

Given under the hand and seal of the said justice the ——— day of ——— 18—.

L. M., *J. P.* [SEAL.]

Form of Juror's Oath or Affirmation.

You do swear, (*or* "you do solemnly, sincerely, and truly declare and affirm,") that you will well and truly try this issue of traverse between the people of the State of Illinois and C. D., the defendant, and a true verdict give therein according to the evidence.

Form of a Subpœna.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The People of the State of Illinois to E. F., G. H., S. T. and K. L.:

We command you, and every of you, that you do in your proper persons appear before L. M., Esquire, a justice of the peace of said county, at his office in ———, in said county, forthwith, (*or* "on the ——— day of ———, 18—, at ——— o'clock in the —— noon,") to testify the truth according to your knowledge touching an information and complaint against C. D., for an assault and battery, (*or* "for an assault," *or as the offense is,*) for which the said C. D. is then and there to be tried, on the part of the people, (*or* "on the part of the defendant.")

Given under the hand and seal of the said justice, the ——— day of ———, 18—.

L. M., *J. P.* [SEAL.]

Form of Oath of Witness.

You do swear, that the evidence you shall give in this issue of traverse, between the people of the State of Illinois and C. D. the defendant, shall be the truth, the whole truth, and nothing but the truth.

Form of a Constable's Oath on retiring with a jury to consider their verdict.

You do swear that you will, to the utmost of your ability, keep the persons sworn as jurors on this trial, together in some private and con-

venient place, without meat or drink, except ordered by the court; that you will not suffer any communication, orally or otherwise, to be made to them; that you will not communicate with them yourself, orally or otherwise, unless by order of the court, or to ask them if they have agreed on their verdict, until they shall be discharged; and that you will not, before they render their verdict, communicate to any person the state of their deliberations, or the verdict they have agreed on.

Form of Execution to levy Fine and Costs.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The People of the State of Illinois to any Constable of said County:

Whereas, upon the information and complaint of A. B., lately exhibited before L. M., Esquire, a justice of the peace of said county, upon oath, against C. D. for an assault and battery, the said C. D. was arrested and tried before the said justice and a jury, and found guilty of the charge, and the said jury assessed the fine which the said C. D. should pay, at the sum of *ten dollars*, and it was thereupon adjudged and determined by the said justice, that the said C. D. pay the fine so assessed, and, also, the sum of *three dollars* and *ninety-four cents* costs:

We therefore command you immediately to levy the said sum of ten dollars so assessed, and, also, the said sum of three dollars and ninety-four cents costs, by distress and sale of the goods and chattels of the said C. D., (except such goods and chattels as are by law exempt in such cases,) giving twenty days' public notice of the day of sale, by putting up written advertisements at three of the most public places in the county; and do you return this precept with all convenient speed with what you shall do thereon. Hereof fail not.

Given under the hand and seal of the said justice, the ——— day of ———, 18—.

L. M., *J. P.* [SEAL.]

Form of Execution to levy Costs in case of Malicious Prosecution.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The People of the State of Illinois to any Constable of said County:

Whereas upon the information and complaint of A. B., lately exhibited before L. M., Esquire, a justice of the peace of said county,

upon oath, against C. D., for an assault and battery, the said C. D. was arrested and tried before the said justice, (*or*, "and jury") and found not to be guilty of the charge, and it was therefore adjudged and determined by the said justice, that the said C. D. be discharged and acquitted of the said charge; and it appearing to the said justice on the said trial, that there was no reasonable ground for the said prosecution, and that it was maliciously entered, it was adjudged and determined that the said A. B. pay the costs of said suit, and judgment was thereupon entered against him for the sum of *seven dollars*, the amount of said costs:

We therefore command you to levy the said sum of seven dollars, costs as aforesaid, by distress and sale of the goods and chattels of the said A. B., (except such goods and chattels as are by law exempt from execution,) giving twenty days' notice of the day of sale, by putting up written advertisements at three of the most public places in the county; and do you return this precept with all convenient speed, with what you shall do thereon. Hereof fail not.

Given under the hand and seal of the said justice, the ——— day of ———, 18—.

L M., *J. P.* [SEAL.]

Form of Capias against the body, or Mittimus.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The People of the State of Illinois to any Constable of said County, and to the Keeper of the Common Jail of the said County:

Whereas upon the information and complaint of A. B., lately exhibited before L. M., Esquire, a justice of the peace of said county, upon oath, against C. D. for an assault and battery, the said C. D. was arrested and tried before the said justice and a jury, and found guilty of the charge, and the said jury assessed the fine which he should pay at the sum of *ten dollars;* and it was thereupon adjudged and determined by the said justice, that the said C. D. should pay the fine so assessed, and also the sum of *three dollars* and *ninety-four cents*, costs:

And whereas it appears by the return of J. K., constable, dated the ——— day of ———, 18—, that he hath made diligent search for, but doth not know of, nor can find any goods and chattels of the said C. D., by distress and sale whereof the said sum of ten dollars fine,

and three dollars and ninety-four cents costs, may be levied pursuant to the command of our writ of execution to him delivered for that purpose:

We therefore command you to apprehend the said C. D., and convey him to the common jail of the said county, and deliver him into the custody of the said keeper. And you the said keeper are hereby required to receive the said C. D. into your custody in the said jail, and him there safely keep for the space of forty-eight hours, unless the said fine and costs shall be sooner satisfied, or until he shall be discharged by due course of law.

Given under the hand and seal of the said justice, the ——— day of ———, 18—.

L. M., *J. P.* [SEAL.]

CHAPTER X.

OF DOCKET ENTRIES IN CRIMINAL AND SUMMARY PROCEEDINGS, AND FORMS THEREOF.

In cases of assault, assault and battery, and affrays, the justice is required to enter the proceedings upon his docket, and to render judgment according to the finding of the jury.[1] And in cases of offenses specified in sections one hundred and forty-three, one hundred and forty-four, one hundred and forty-five, one hundred and forty-six, and one hundred and forty-seven of the Criminal Code, he will in like manner enter the proceedings upon his docket.[2] He should also, when any person is examined before him on any criminal charge, enter so much of the proceedings as may be material, upon his docket. In short, all proceedings had before him, or acts done of a judicial nature, ought properly to appear upon his docket. This should not only be done for the benefit of the parties, but may operate in many instances as a further protection to the justice.

Form of Docket Entry on the examination of a person charged with any criminal offense.

STATE OF ILLINOIS, }
—— COUNTY, }

Before L. M., Justice of the Peace.

The People } Charge of Larceny.
vs. }
C. D. }

1855—September 10th.—This day personally appeared A. B., who being duly sworn, says, that on the 9th day of September, instant, at

(1) Rev. Stat. 329, Sec. 96. (2) Rev. Stat. 177, Secs. 149, 150.

the county aforesaid, C. D. did feloniously steal, take, and carry away, one gold watch, of the value of one hundred dollars, the property of the said A. B. Whereupon a warrant is issued for the arrest of the said C. D., and delivered to constable E. F., to serve.

September 11th. Warrant returned by constable E. F., with the said C. D. in custody, before me. G. H. and I. K., sworn as witnesses and testified on the part of the people. O. P. sworn and testified on the part of the prisoner; being all the witnesses attending.

Upon consideration of the facts and circumstances proved by said witnesses, it appears to me, that the said charge against the said C. D. is true, and he is admitted to bail in good and sufficient security in the sum of *five hundred dollars*, which the said C. D. fails to give, whereupon he is committed to the common jail of the county of ———.

L. M.

The foregoing form will probably suffice for the various occasions of examinations, by being varied to conform to the facts.

Form of Docket Entry in case of assault and battery.

STATE OF ILLINOIS, }
—— COUNTY, }

Before L. M., Justice of the Peace.

The People
vs.
C. D. } Assault and Battery.

1855—September 6th.—Information and complaint of A. B., a competent person, upon oath, against C. D., for an assault and battery committed upon him, the said A. B. Warrant issued for the arrest of the said C. D., and delivered to constable E. F. to serve.

Warrant returned at this date by constable E. F., executed by arresting the said C. D., who is now in custody. Constable's fees, 50 cents. The accused pleads not guilty, and dispenses with a jury. A. B. and J. K. sworn as witnesses on the part of the people.

Upon hearing the evidence adduced, it is adjudged by the court, that the accused is guilty of the charge alleged against him, and that he should pay a fine of ten dollars; judgment is therefore rendered against the said C. D. for *ten dollars*, with the costs of this proceeding herein taxed at ———.

L. M.

When the cause is tried by jury, the form of docket entry in civil proceedings may be observed, with alterations to conform to the facts.

The two preceding forms, together with such examples as have been already given, will no doubt suffice in affording a sufficient illustration in regard to docket entries, for every occasion which may arise.

CHAPTER XI.

OF JUSTICES' FEES IN CRIMINAL CASES.

Rev. Stat. 246, Sec. 16. "For taking each complaint in writing, under oath, twenty-five cents.

For taking the examination of the accused and the testimony of witnesses in cases of felony, and returning the same to the circuit court, for every seventy-two words, twelve and a half cents.

For each warrant, twenty-five cents.

Taking recognizance, and returning the same, fifty cents.

For each subpœna, twenty-five cents.

Administering each oath, six and a fourth cents.

For each jury warrant in a trial of assault and battery, twenty-five cents.

For entering the verdict of the jury, twelve and a half cents.

For each order or judgment thereon, twenty-five cents.

For each *mittimus*, twenty-five cents.

For each execution, twenty-five cents.

For entering each appeal, twenty-five cents.

For transcript of judgment and proceedings in cases of appeal, fifty cents.

But in all cases where the defendant shall be acquitted, or otherwise legally discharged without the payment of costs, the justice shall not be entitled to any fees."

In prosecutions in behalf of the people, where no conviction is had, neither the State nor county is bound to pay the fees of officers; and where the defendant is convicted, it is held that the officers must look to the defendant's estate for their costs, and run the risk of losing them, if he be insolvent.[1]

(1) 4 Scam. 163.

PART THIRD.

OF THE POWERS AND DUTIES OF JUSTICES OF THE PEACE UNDER PARTICULAR STATUTES.

CHAPTER I.

OF ATTACHMENTS BEFORE JUSTICES OF THE PEACE.

I. OF THE ORDINARY PROCEEDING BY ATTACHMENT AGAINST THE GOODS AND CHATTELS OF THE DEFENDANT.
II. OF ATTACHMENTS OF BOATS AND VESSELS.

I. OF THE ORDINARY PROCEEDING BY ATTACHMENT AGAINST THE GOODS AND CHATTELS OF THE DEFENDANT.

Rev. Stat. 58, Sec. 1. "If any creditor, his agent or attorney, shall file an affidavit with any justice of the peace in this State, setting forth that any person is indebted to such creditor, in a sum not exceeding one hundred dollars, and that such debtor has departed, or is about to depart from this State, with the intention of having his effects removed from this State; or is about removing his property from this State, to the injury of such creditor; or that such debtor conceals himself, or stands in defiance of an officer, so that process can not be served upon him; or that such debtor is not a resident of this State, it shall be lawful for the justice to grant a writ of attachment against the personal estate, goods, chattels, rights, moneys and effects of the debtor, directed to any constable of his county, and returnable within thirty days from the date thereof.

"Sec. 2. The writ of attachment required in the preceding section, shall be substantially in the following form:

STATE OF ILLINOIS, } sct.
—— COUNTY, }

The people of the State of Illinois, to any constable of said county, greeting: Whereas, A. B., (or agent or attorney of A. B., as the case may be,) hath complained on oath (or affirmation) before C. D., a justice of the peace in and for said county, that E. F. is justly indebted to the said A. B., in the amount of ——— dollars, and oath (or affirmation) having been also made that the said E. F. so absconds or conceals himself, or stands in defiance of a peace officer, authorized to arrest him or her, with civil process, so that the ordinary process of law can not be served on him (or her, as the case may be,) and the said A. B., having given bond and security according to the directions of the act in such cases made and provided; We therefore, command you that you attach so much of the personal estate of the said E. F. to be found in your county as shall be of value sufficient to satisfy the said debt and costs, according to the complaint, and such personal estate so attached, in your hands to secure, or so to provide that the same may be liable to further proceedings thereon, according to law, before the undersigned justice of the peace. And in case personal property of value sufficient can not be found, that you summon all persons whom the plaintiff or his agent shall direct, to appear before said justice, on the ——— day of ——— next, then and there to answer what may be objected against him or them, when and where you shall make known how you executed this writ; and have you then and there this writ. Given under my hand and seal, this ——— day of ——— 18—.

C. D., Justice of the Peace. Seal.

"Sec. 3. Upon the issuing of any such writ of attachment, the justice shall take from the creditor, his agent or attorney, a bond to the defendant with good security, to be approved by said justice in a penalty of at least double the amount of the plaintiff's claim, conditioned that said creditor will pay to the defendant and to all others interested in such attachment, or the proceedings to grow out of it, all damages and costs which may be sustained by reason of the wrongful suing out of said attachment.

"Sec. 4. The condition of the bond required in the preceding section, shall be substantially as follows:

"The condition of the above obligation is such, that whereas the above bounden ——— hath, on the day of the date hereof, prayed an attachment at the suit of ———, against the personal estate of the above named ———, for the sum of ———, and the same being about to be sued out, returnable on the —— day of ——, before (said justice.) Now if the said ———, shall prosecute his suit with effect, or in case of failure therein, shall well and truly pay and satisfy the said ———, all such costs in such suit, and such damages as the said ——— may sustain by reason of wrongfully suing out the said attachment, then the above obligation to be void, else to remain in full force and virtue.

Witness our hands and seals, this —— day of ——, 18—.

Seal.

Seal.

"Sec. 5. The constable to whom any attachment may be delivered, shall, without delay, execute the same by levying on the personal property of the defendant, of value sufficient to satisfy the debt or damages claimed to be due, and all costs attending the collection of the same; he shall also read the same to the defendant, if the defendant can be found in the county, and make return thereof, stating how he has executed the same. If the defendant, or any other person for him, shall be in the act of removing such personal property, the officer may pursue and take the same, in any county in this State, and convey the same to the county from which such attachment issued.

"Sec. 6. No attachment shall be abated or dismissed for want of form, if the essential matters required in this chapter be substantially set forth; and justices of the peace shall allow any amendment to be made, of any affidavit, writ, return or bond, or allow a new affidavit or bond to be filed, which may be necessary to obviate objections to the same; and in cases of appeals to the circuit courts, the courts shall allow amendments as aforesaid. And in case a plea in abatement, traversing the facts set forth in the affidavit, shall be filed, and if, on a trial to be had thereon, the issue be found for the defendant, the attachment shall be quashed.

"Sec. 7. Upon the return of any attachment issued by a justice of the peace, if it shall appear that the defendant has been personally served with the same; or if such defendant shall appear without such service, the justice shall proceed to hear and determine the cause, as in cases of proceeding by summons. But if it does not appear that the defendant has been served, and no appearance be entered by the defendant as aforesaid, the justice shall continue the case ten days, and shall

immediately prepare a notice to be posted up at three public places in the neighborhood of the justice, directed to the defendant, and stating the fact, that an attachment had been issued, and at whose instance the amount claimed to be due, and the time and place of trial; and also stating that unless the said defendant shall appear at the time and place fixed for trial, judgment will be entered by default, and the property attached ordered to be sold to satisfy the same; which notice shall be delivered to the constable, who shall post three copies of the same at three public places in the neighborhood of the justice, at least eight days before the day set for trial; and on or before that day, he shall return the notice delivered to him by the justice, with an endorsement threon, stating the time when and the place where he posted copies as herein required.

"Sec. 8. When notices shall be given of any proceedings by attachment, as required by the seventh section of this chapter, the justice shall on the day set for trial of the cause, proceed to hear and determine the same, as though process had been personally served upon the defendant, and if judgment be given against the defendant, shall order a sale of the property attached, or so much thereof, as will satisfy the judgment and all costs of suit. But if the constable shall have failed to post the notices as herein required, the justice shall again continue the cause, and require notices to be posted as aforesaid, previous to any trial of the cause.

"Sec. 9. When any constable shall be unable to find personal property of any defendant, sufficient to satisfy any attachments issued under the provisions of this chapter, he is hereby required to notify any and all persons within this county, whom the creditor shall designate as having any property, effects or choses in action, in his possession or power, belonging to the defendant, or who are in anywise indebted to such defendant, to appear before such justice on the return day of the attachment, then and there to answer upon oath what amount he or she is indebted to the defendant in the attachment, or what property, effects or choses in action, he or she had in his or her possession or power at the time of serving the attachment. The person or persons so summoned, shall be considered as garnishees, and the constable shall state in his return, the names of all persons so summoned, and the date of service on each.

"Sec. 10. When an attachment shall be returned executed upon any person, as garnishee, the justice shall make an entry upon the record of his proceedings in the cause, stating the name of each per-

son summoned, and continue the case as to such garnishee, and shall proceed with the cause as against the defendant, in the attachment, as though the attachment had been levied on personal property.

"Sec. 11. When judgment is entered by a justice of the peace, against a defendant in attachment, and any person or persons have been summoned as garnishee in the case, it shall be the duty of the justice to issue a summons against each person so summoned, requiring him or her to appear before the justice, at a time and place to be fixed in the summons, not less than five nor more than fifteen days from the date thereof, and show cause, if any he or she has, why a judgment shall not be entered against him or her, for the amount of the judgment and costs against the defendant in attachment, which summons shall be served and returned by some constable of the county, and on the return day thereof, if any person so summoned shall fail to appear, the justice shall enter judgment against the person so failing to appear, for the amount of the judgment obtained against the defendant in attachment, and execution shall be issued thereon, as in other cases.

"Sec. 12. If any garnishee shall appear at the time and place required by the constable, as aforesaid, and shall upon oath deny all indebtedness to the defendant in the attachment, and deny having any property or effects, or choses in action in his possession or power, belonging to such defendant, the justice shall forthwith discharge him, unless the plaintiff in the attachment shall satisfy the justice by other testimony, that the garnishee was indebted to the defendant in the attachment, or had property, effects or choses in action in his possession or power, at the time he was garnisheed, in which case the justice shall give judgment in the premises, according to the right and justice of the cause, and issue execution as in other cases.

"Sec. 13. Judgments obtained under the provisions of this chapter, where the defendant has been personally served with process, or shall have appeared to the action, shall have the same force and effect, as judgments obtained upon a summons; but the property attached shall be sold before any execution is issued upon such judgment, and if such property shall not sell for a sum sufficient to pay the judgment and costs, execution may be issued to collect the balance.

"Sec. 14. Judgments obtained under the provisions of this chapter, when the defendant has not been personally served with process, and no appearance being entered, shall only authorize a sale of the property levied upon, and proceedings against garnishees to collect the amount thereof. Defendants in attachments issued under the provisions of this

chapter, where property may be levied upon, or the person in whose possession the property may be found, may retain possession of such property upon executing a bond to the plaintiff in the attachment, with good security in a penalty of double the amount claimed by the attachment, conditioned that the property shall be delivered to any constable of the county, whenever demanded, to be sold in satisfaction of any judgment which may be obtained in the attachment suit, or in case the property is not delivered, that the obligors will pay and satisfy the said judgment and costs; and when a bond shall be executed, the constable shall return the same with the attachment, and upon a breach of any condition thereof, the plaintiff shall have a right to prosecute suit thereon, and to recover the amount due upon his judgment and costs.

"Sec. 15. In all cases arising under the provisions of this chapter, when two or more attachments shall be levied on the same property, or be proved on the same garnishee, and judgment shall be entered on the same day, the proceeds of the property attached, or the money obtained from garnishees, shall be divided among the several plaintiffs in attachment, according to the amount of their judgments respectively: *provided*, that, when the property sought to be attached shall have been removed from the county in which the attachment issued, and shall be overtaken and returned to such county, the claim of such attaching creditor shall have priority over attachments subsequently issued.

"Sec. 16. Persons summoned as garnishees may set up the same defense in trials under this chapter, as they might against the defendant in the attachment; and may, in like manner, make any set-off against the defendant, whether the same be due or not.

"Sec. 17. Whenever judgment shall have been rendered against any garnishee, and it shall appear that the debt from him to the defendant in the attachment, is not yet due, execution shall not issue against him until twenty days after the same shall become due: *provided*, the plaintiff may swear out execution, as in other cases, after the said debt becomes due.

"Sec. 18. Any garnishee having effects of the defendant in his hands, may, by delivering the same, or any part thereof, to the constable, and taking his receipt therefor, be discharged from his liability respecting such effects so delivered.

"Sec. 19. When two or more persons not residing in this State, are jointly indebted, either as joint obligors, partners, or otherwise, the writ or writs of attachment may be issued against the separate and joint estate of such debtors, or any of them, either by their proper names,

or by, or in the name or style of the partnership, or by whatever other name or names such joint debtors shall be generally reputed, known or distinguished in this State, or against the heirs, executors or administrators of them, or either of them; and the goods, chattels, rights, credits and effects of such debtors, or either or any of them, shall be liable to be seized and taken for the satisfaction of any just debt or other legal demand, and may be sold to satisfy the same.

"Sec. 20. The right of property may be tried, and appeals taken in all cases arising under this chapter, in the same manner as when property is taken on execution or judgment rendered in ordinary cases.

"Sec. 21. The affidavit required in the first section of this chapter, may be sworn to in the manner prescribed in section thirty-two of chapter nine of the revised statutes.

"Sec. 22. This chapter shall be construed in all courts in the most liberal manner for the detection of fraud.

"Sec. 23. The provisions of chapter one of the revised statutes shall apply as well to suits in attachment, as to other cases."

Form of Affidavit for Attachment.

STATE OF ILLINOIS, } ss.
Cook COUNTY, }

A. B., of said county, being duly sworn, doth depose and say, that C. D., against whom the said A. B. is about to sue out an attachment, is justly indebted to him in a sum not exceeding one hundred dollars, to wit, the sum of *twenty-five* dollars; and that the said C. D. has departed from this State, (*or* "is about to depart from this State, with the intention of having his effects removed from this State;" *or* "is about removing his property from this State to the injury of such creditor;" *or* "that such debtor conceals himself, or stands in defiance of an officer, so that process cannot be served upon him;" *or* "that such debtor is not a resident of this State.")

Subscribed and sworn to before me, this — day of —, A. D. 18—. } A. B.
BENJAMIN COOL, *J. P.*

Form of Attachment Bond.

Know all men by these presents, that we A. B. and C. D. are held and firmly bound unto E. F. in the penal sum of —— dollars, (*insert at least double the amount of the plaintiff's claim,*) for the payment of which

well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

The condition of the above obligation is such that, (*conclude according to the form prescribed by the statute*, see *ante*, Page 274, Sec. 4.)

Approved by me, this —— day of ——, A. D. 18—.
BENJAMIN COOL, *J. P.*

A. B.
C. D.

Writ of attachment. For form of the writ of attachment, see Page 274, Sec. 2, being the same as prescribed by the statute.

Form of Attachment Notice, when defendant is not personally served.

In Justice's Court.

A. B.
vs.
C. D.

To the above named defendant:

You are hereby notified that an attachment has been issued by the undersigned, a justice of the peace in and for the county of ——, at the instance of A. B., the above named plaintiff, against your personal property; that the said attachment was issued for the sum of fifty dollars, which amount the said plaintiff claims to be due to him from you; that the cause will be tried before me at my office in ——, in said county, on the —— day of ——, and that, unless you shall appear at the time and place fixed for trial, judgment will be entered by default, and the property attached ordered to be sold to satisfy the same.

Dated this —— day of ——, 18—.

L. M.,
Justice of the Peace.

Form of Summons for Garnishee who does not appear on return day of attachment.

STATE OF ILLINOIS, *Cook* COUNTY, } ss.

The People of the State of Illinois to any Constable of said County, GREETING:

Whereas A. B. recovered a judgment in attachment before the undersigned, justice of the peace of said county, against C. D., and whereas R. T. was duly served with said attachment as garnishee, and has not made answer therein; you are therefore hereby commanded to summon

the said R. T., to appear before me at my office in *North Chicago*, on the —— day of ———, A. D. 185–, at —— o'clock, — M., to show cause, if any he have, why judgment shall not be entered against him for —— dollars and —— cents, the amount of said judgment and costs against the said defendant in attachment. Hereof make due service and return as the law directs.

Given under my hand and seal this —— day of ——, A. D. 185–.

THOS. G. PRENDERGAST, *J. P.* [SEAL.]

II. OF ATTACHMENTS OF BOATS AND VESSELS.

Rev. Stat. 71, Sec. 1. "Boats and vessels of all descriptions, built, repaired or equipped, or running upon any of the navigable waters within the jurisdiction of this State, shall be liable for all debts contracted by the owner or owners, masters, supercargoes or consignees thereof, on account of all work done, supplies or materials furnished by mechanics, tradesmen and others, for, on account of, or towards the building, repairing, fitting, furnishing or equipping such boats and vessels, their engines, machinery, sails, rigging, tackle, apparel and furniture; and such debts shall have the preference of all other debts due from the owners, or proprietors, except the wages of mariners, boatmen and others, employed in the service of such boats and vessels, which shall first be paid.

"Sec. 2. Any person having a demand, contracted as before mentioned, against any such boat or vessel, may have an attachment to be issued out of any court, or by any justice of the peace having jurisdiction thereof in any county in this State in which such boat or vessel may be found, either against the owner or owners by their proper names, or by the name and style of their copartnership, if known, otherwise against such boat or vessel, by her name or description only, authorizing and directing the seizure and detention of the same, with her engine, machinery, sails, rigging, tackle, apparel and furniture, by the sheriff or constable, upon affidavit being made of the justice of such demand, and bond given by the plaintiff as in other cases of attachment: *Provided*, That in all cases where such proceedings are instituted against such boat or vessel by her name and description only, the bond to be given by the plaintiff, shall be made payable to the people of the State of Illi-

nois, but for the use and benefit of the owner or owners of such boat or vessel, who may institute a suit thereon, if damages be occasioned by the issuing of such attachment, and have recovery thereon, in the same manner as if said bond had been given to such person or persons by their proper names, or in the name and style of their copartnership.

"Sec. 3. Upon the return of such attachment, the person or persons having demands of the description aforesaid, and for whose benefit such attachment was issued, shall file a written declaration or statement, against such boat or vessel by her name or description, or against the owner or owners, if known as aforesaid, briefly reciting the nature of the demand, whether for work done, or materials, firewood, or supplies of provisions furnished; and whether at the request of the owner, master, supercargo or consignee of such boat or vessel, and that such demand remains unpaid, annexing to such declaration or statement, a bill of the particulars constituting such demand, in separate and distinct items; and the like proceedings shall be had in all other respects, and the like judgment and execution as in other cases of attachment.

"Sec. 4. All engineers, pilots, mariners, boatmen and others employed in any capacity, in or about the service of any such boat or vessel, who may be entitled to arrearages of wages in consequence of such service, may proceed to collect such wages under the provisions of this chapter, and shall be entitled to all the benefits hereof.

"Sec. 5. If the owner or owners, master, supercargo or consignee, of any such boat or vessel, seized by attachment as aforesaid, shall at any time before final judgment, give bond to the plaintiff, with security to be approved by the clerk of the circuit court, or by the judge in term time, (or justice of the peace, as the case may be,) in double the amount of the demand sued for, and a sufficiency to discharge all costs which may accrue thereon, conditioned to pay and satisfy such judgment as the court (or justice of the peace,) may render against such boat or vessel or defendant party, together with the costs of suit, then such boat or vessel shall be forthwith discharged from such attachment, seizure and detention; but shall nevertheless be liable to be taken and sold on any execution to be issued on such judgment, or upon the judgment which may be rendered at any time on the bond required to be given by the defendant party as aforesaid.

"Sec. 6. No creditor shall be allowed to enforce the lien created under the provisions of this chapter, as against, or to the prejudice of

any other creditor, or subsequent incumbrancer, or *bona fide* purchaser, unless suit be instituted to enforce such lien as provided in this chapter, within three months after the indebtedness accrues or becomes due, according to the terms of the contract."

As will be seen by section 3 of the preceding chapter of the statute, the like proceedings will be had in all other respects from those pointed out by said chapter, as in other cases of attachment; therefore some of the forms heretofore given in cases of attachment, may be used in proceeding under this chapter; and which it has been thought unnecessary to repeat in the following list of forms.

Form of Affidavit for an Attachment against a boat or vessel.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

C. D. of ———, in said county, being duly sworn, says that on the ——— day of ———, 18—, at ———, in said county, he made a contract with E. F., then the master of the steamboat ———, to furnish for the said boat certain materials towards repairing the said boat, and in pursuance of said contract, did furnish the same, and that the said master contracted and agreed on his part to pay him therefor the sum of ——— dollars, which said sum is still due and unpaid; and that he does not know whether the said boat is owned by co-partners, nor does he know who are the owners thereof. He therefore prays an attachment against said steamboat by her name, authorizing and directing the seizure and detention of the same, with her engine, machinery, apparel, and furniture.

Subscribed and sworn to before me, L. M., a justice of the peace of said county, this —— day of ——, 18—. L. M., *J. P.* C. D.

Form of Bond for an Attachment against a boat or other vessel.

Know all men by these presents, that we, C. D. and E. F., of the county of ———, and the State of Illinois, are held and firmly bound unto the people of the State of Illinois, for the use and benefit of the owner or owners of the steamboat ———, in the sum of (*insert double the sum for which the complaint is made,*) to be paid to said people of the State of Illinois for the use aforesaid; to which payment well

and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this ——— day of ———, 18—.

Whereas, the above bounden C. D. hath on the day of the date hereof, prayed an attachment in favor of the said C. D., against the steamboat ———, with her engine, machinery, apparel, and furniture, the owners of which are unknown, for the sum of ——— dollars, and the same being about to be sued out, returnable on the ——— day of ——, instant, (*or* "next,") before L. M., a justice of the peace of ——— county:

Now therefore, the condition of this obligation is such, that if the said C. D. shall prosecute his suit with effect, or in case of failure therein, shall well and truly pay and satisfy all such costs in said suit, and such damages as shall be awarded against the said C. D., his heirs, executors, or administrators, in any suit or suits which may hereafter be brought for wrongfully suing out the said attachment, then the above obligation to be void, or otherwise to remain in full force and effect.

Sealed and delivered in the presence of L. M.

C. D. [SEAL.]
E. F. [SEAL.]

Form of Attachment against a boat or vessel.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The People of the State of Illinois to any Constable of said County, GREETING:—

Whereas, A. B. hath this day complained on oath, that, on the —— day of ———, 18—, he made a contract with C. D., then the master of the steamboat ———, to furnish for the said boat certain materials towards repairing the said boat, and, in pursuance of said contract, did furnish the same; and that the said master contracted and agreed on his part, to pay him therefor the sum of —— dollars, which said sum is still due and unpaid; and that he did not know whether the said boat was owned by co-partners, nor did he know who were the owners thereof; and, whereas the said A. B. thereupon made application to me, the undersigned, a justice of the peace of said county, for an attachment for said sum of —— dollars, against said steamboat, by her name, authorizing and directing the seizure and detention of the same, with her en-

gine, machinery, apparel, and furniture, and gave bond and security according to the directions of the statute in such case made and provided:

We, therefore, command you that you attach the said steamboat ———, with her engine, machinery, apparel and furniture, if to be found in your county, and detain the same, so that they may be liable to further proceedings thereon according to law, before the undersigned, a justice of the peace, at his office in ——, in said county, on the —— day of —— instant, (*or* "next,") at —— o'clock in the —— noon, when and where you shall make known to the said justice of the peace how you have executed this writ; and have you then and there this precept.

Given under the hand and seal of said justice, this ——— day of ———, A. D. 18—.

L. M., *J. P.* [SEAL.]

Form of Affidavit against the owners of a vessel.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

A. B., of ———, in said county, being duly sworn, deposes and says, that C. D., E. F. and G. H., the owners of the schooner ———, are justly indebted to him in the sum of —— dollars, for work done upon the said schooner ———, and for materials furnished for the same, by this deponent, at the request of I. J., the master of the said schooner.

Subscribed and sworn to before me, L. M., a justice of the peace of said county, this —— day of ——, 18—.
L. M., *J. P.*

A. B.

Form of Bond for an Attachment against the owners of a vessel.

Know all men by these presents, that we, C. D. and K. L., of the county of *Lake* and State of Illinois, are held and firmly bound unto E. F., G. H. and I. J. in the sum of (*insert double the sum for which the complaint is made,*) to be paid to the said E. F., G. H. and I. J., their executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this —— day of ———, 18—.

Whereas, the above bounden C. D. hath, on the day of the date hereof, prayed for an attachment in favor of C. D., against the said E. F., G. H. and I. J., for the sum of —— dollars, authorizing and directing the seizure and detention of the schooner ———, with her sails, rigging, tackle, apparel and furniture, and the same being about to be sued out, returnable on the —— day of ——— instant, (*or* "next,") before L. M., a justice of the peace of the county of *Lake:*

Now, therefore, the condition of this obligation is such, that if the said C. D. shall prosecute his suit with effect, or in case of failure therein, shall well and truly pay and satisfy to the said E. F., G. H. and I. J., all such costs in said suit, and such damages as shall be awarded against the said C. D., his heirs, executors, or administrators, in any suit or suits which may hereafter be brought for wrongfully suing out the said attachment, then the above obligation to be void, otherwise to remain in full force and effect.

Sealed and delivered in the presence of } C. D. [SEAL.] K. L. [SEAL.]

Form of Attachment against the owners of a boat or vessel.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The People of the State of Illinois to any Constable of said County, GREETING:—

Whereas, C. D. hath this day complained, on oath, that E. F., G. H. and I. J., the owners of the schooner ———, were justly indebted to him in the sum of ——— dollars, for work done upon said schooner ———, and for materials furnished for the same by this deponent, at the request of K. L., the master of said schooner:

We therefore command you, that you attach the said schooner, with her sails, rigging, tackle, apparel, and furniture, if to be found in your county, and detain the same, so that they may be liable to further proceedings thereon according to law, before the undersigned, a justice of the peace, on the ——— day of ———, instant, (*or* "next,") at ——— o'clock in the ——— noon, at his office in ———, in said county, when and where you shall make known to the said justice of the peace, how you have executed this writ. And have you then and there this precept.

Given under my hand and seal at my office in ———, in said county, this ——— day of ———, A. D. 18—.

L. M., *J. P.* [SEAL.]

Form of Declaration or Statement in Attachment against boats or vessels.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

Before L. M., a justice of the peace of said county:

C. D. *vs.* The steamboat ——— } Attachment.

The steamboat ——— was attached in this case at the suit of C. D., the plaintiff, and thereupon the said plaintiff complains of said steamboat, for that whereas, on the ——— day of ———, 18—, at said county, the said steamboat was indebted to the plaintiff in the sum of ——— dollars, for the work and labor of the plaintiff, before that time done, performed, and bestowed, in and about the repairing of the said steamboat, at the request of one E. F., then the master thereof; which said demand remains wholly unpaid: the plaintiff further avers, that he does not know who are the owners of said boat.

C. D., Plaintiff.

Bill of Particulars.

18—.

Jan. 1st. The Steamboat ——— to ——— ———, Dr.

To ten days' labor in painting said boat, at $——— per day, ... $———

Another form, in Attachment against Owners.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

Before L. M., a justice of the peace of said county.

A. B. *vs.* C. D., E. F. and G. H. } Attachment.

C. D., E. F. and G. H., the defendants, were attached in this case at the suit of A. B., the plaintiff, and thereupon the said plaintiff

complains, for that whereas, on the ——— day of ———, 18—, at the said county, the said C. D., E. F. and G. H. were indebted to the plaintiff in the sum of ——— dollars, for certain firewood and materials before that time furnished by the plaintiff to the defendants, to be used in and about the repairing, furnishing and fitting the steamboat ———, at the request of the said defendants; which demand now remains wholly unpaid.

A. B., Plaintiff.

Bill of Particulars.

C. D., E. F. and G. H., owners of the

18—.	steamboat ——— to ——— ———,	Dr.
Jan'y 1st.	To 1,000 feet pine Lumber, ...	$ ———
"	To 1 doz. Common Chairs, ...	———
"	To 10 cords Wood, at $— per cord, ...	———

Deputation of Constable pro. tem. to serve Attachment.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

It being made to appear to the undersigned, a justice of the peace of said county, that there is a probability that the goods and chattels of the within named defendant will be removed before application can be made to a qualified constable to execute the within attachment, he therefore appoints O. P. to execute this precept.

Given under my hand and seal, this ——— day of ———, 18—.

L. M., *J. P.* [SEAL.]

CHAPTER II.

OF THE ACKNOWLEDGMENT AND PROOF OF DEEDS AND OTHER INSTRUMENTS.

Rev. Stat. 106, Sec. 17. "When any husband and wife residing in this State, shall wish to convey the real estate of the wife, it shall and may be lawful for the said husband and wife, she being above the age of eighteen years, to execute any grant, bargain, sale, lease, release, feoffment, deed, conveyance or assurance, in law whatsoever, for the conveying of such lands, tenements and hereditaments; and if, after the executing thereof, such wife shall appear before some judge or other officer, authorized by this chapter to take acknowledgments, to whom she is known, or proved by a credible witness to be the person who executed such deed or conveyance, such judge or other officer shall make her acquainted with, and explain to her the contents of such deed or conveyance, and examine her separate and apart from her husband, whether she executed the same voluntarily, freely, and without compulsion of her said husband; and if such woman shall, upon such examination, acknowledge such deed or conveyance to be her act and deed, that she executed the same voluntarily and freely, and without compulsion of her husband, and does not wish to retract, the said judge or other officer shall make a certificate indorsed on, or annexed to such deed or conveyance, stating that such woman was personally known to the said judge or other officer, or proved by a witness, (naming him,) to be the person who subscribed such deed or conveyance, and setting forth the examination and acknowledgment aforesaid, and that the contents were made known and explained to her; and such deed, (being acknowledged or proved according to law as to the husband,) shall be as effectual in law as if executed by such woman while sole and unmarried. No covenant or warranty contained in any such deed or

conveyance, shall in any manner bind or affect such married woman, or her heirs, further than to convey from her and her heirs effectually, her right and interest expressed to be granted or conveyed in such deed or conveyance."

When by Husband and Wife, conveying the real estate of the wife.[1]

STATE OF ILLINOIS, }
Cook COUNTY, } ss.

I, *Homer Wilmarth*, a justice of the peace in and for said county, do certify that C. D. and E. D., his wife, whose signatures appear to the foregoing *deed*, and who are personally known to me to be the persons whose names are subscribed to such *deed*, as having executed the same, appeared before me this day in person, and did acknowledge the same to be their free act and deed.

And the said E. D., who is above the age of eighteen years, having been by me examined separate and apart from her said husband, and the contents of said *deed* having been by me made known and explained to her, she acknowledged that she had executed the same voluntarily, freely and without compulsion of her said husband, and does not wish to retract the same.

Given under my hand and seal this —— day of ——, A. D., 18—.

HOMER WILMARTH, *J. P.* [SEAL.]

"Sec. 20. No judge or other officer, shall take the acknowledgment of any person to any deed or instrument of writing as aforesaid, unless the person offering to make such acknowledgment, shall be personally known to him to be the real person who, and in whose name such acknowledgment is proposed to be made, or shall be proved to be such, by a credible witness, and the judge or officer taking such acknowledgment, shall, in his certificate thereof, state that such person was personally known to him to be the person whose name is subscribed to such deed or writing, as having executed the same, or that he was proved to be such by a credible witness, (naming him.) And on taking proof of any deed or instrument of writing, by the testimony of any subscribing witnesses, the judge or officer shall ascertain that the person who offers to prove the same, is a subscribing witness, either from his own knowledge, or from the testimony of a credible witness; and if it shall appear from the testimony of such subscribing witness,

(1) Rev. Stat. 106, Sec. 17. See *ante*, Page 289.

that the person whose name appears subscribed to such deed or writing, is the real person who executed the same, and that the witness subscribed his name as such, in his presence and at his request, the judge or officer shall grant a certificate, stating that the person testifying as subscribing witness, was personally known to him to be the person whose name appears subscribed to such deed as a witness of the execution thereof, or that he was proved to be such by a credible witness, (naming him, and stating the proof made by him; and where any grantor or person executing such deed or writing, and the subscribing witnesses are deceased, or cannot be had, the judge or officer as aforesaid, may take proof of the hand writing of such deceased party and subscribing witness or witnesses (if any,) and the examination of a competent and credible witness, who shall state on oath or affirmation, that he personally knew the person, whose hand writing he is called to prove, and well knew his signature, (stating his means of knowledge,) and that he believes the name of such person subscribed to such deed or writing, as party or witness (as the case may be), was thereto subscribed by such person; and when the hand writing of the grantor or person executing such deed or writing, and of one subscribing witness (if any there be,) shall have been proved as aforesaid, the judge or officer shall grant a certificate thereof, stating the proof aforesaid."

Form of Certificate of Acknowledgment by one Grantor, personally known to the Justice.[1]

STATE OF ILLINOIS, } ss.
Cook COUNTY, }

I, *C. DeWolf*, a justice of the peace in and for said county, do certify that C. D., whose signature appears to the foregoing *deed*, and who is personally known to me to be the person whose name is subscribed to such *deed*, as having executed the same, appeared before me this day in person, and did acknowledge the same to be his free act and deed.

Given under my hand and seal, this —— day of ——, A. D. 18—.

C. DEWOLF, *J. P.* [SEAL.]

(1) Rev. Stat. 107, Sec. 20.

By a Grantor, when proved by a credible witness.[1]

STATE OF ILLINOIS, }
Cook COUNTY, } ss.

I, *Patrick Lamb*, a justice of the peace in and for said county, do certify, that C. D., whose signature appears to the foregoing *deed*, who was proved to me, by the oath of E. F., a competent and credible witness, to be the person whose name is subscribed to such *deed*, as having executed the same, appeared before me this day in person, and did acknowledge the same to be his free act and deed.

Given under my hand and seal, this —— day of ——, A. D. 18—.

PATRICK LAMB, *J. P.* [SEAL.]

When proof of deed or instrument is taken by the testimony of a subscribing witness known to the justice.[2]

STATE OF ILLINOIS, }
Cook COUNTY, } ss.

I, *Owen McCarthy*, a justice of the peace in and for said county, do certify, that C. D., who is personally known to me to be the person whose name appears subscribed to the foregoing *deed* as a witness of the execution thereof, appeared before me this day in person, and being duly sworn, according to law, testified that E. F., whose name appears subscribed to such deed as having executed the same, is the real person who executed the same, and that he, the said C. D., subscribed his name as such witness, in the presence of the said C. D., and at his request.

Given under my hand and seal, this —— day of ——, A. D. 18—.

OWEN MCCARTHY, *J. P.* [SEAL.]

When proof of deed or instrument is taken by subscribing witness, not known, but proved to the justice.[3]

STATE OF ILLINOIS, }
Cook COUNTY, } ss.

I, *Andrew Aiken*, a justice of the peace in and for said county, do certify, that C. D., whose name appears subscribed to the foregoing *deed*, as a witness of the execution thereof, and who was proved to me, by the oath of E. F., a competent and credible witness, to be the per-

(1) Rev. Stat. 107, Sec. 20. See *ante*, Page 290.
(2) Ibid. See *ante*, Page 290.
(3) Ibid. See *ante*, Page 290.

son whose name appears subscribed to such *deed* as a witness to the execution thereof, appeared before me this day in person, and being duly sworn according to law testified, that G. H., whose name appears subscribed to such deed as having executed the same, is the real person who executed the same, and that he, the said C. D., subscribed his name as such witness in the presence of the said G. H., and at his request.

Given under my hand and seal, this —— day of ——, A. D. 18—.

ANDREW AIKEN, *J. P.* [SEAL.]

When Proof of Deed is made, where the grantor and subscribing witnesses are deceased, or not to be had.[1]

STATE OF ILLINOIS, }
Cook COUNTY, } ss.

I, *M. L. Dunlap*, a justice of the peace in and for said county, do certify, that C. D., a competent and credible witness, appeared before me this day in person, and being duly sworn according to law, stated on oath, that he personally knew E. F., whose name appears subscribed to the foregoing *deed*, as having executed the same, and G. H., whose name appears subscribed to such deed as a witness to the execution thereof; that they are now deceased, (*or* "cannot be had," *as the case may be*); that he well knew the signature of each of said persons, having seen each of them frequently write their names, (*or other means of knowledge*,) and that he believes the name of said E. F., subscribed to such *deed* as having executed the same, and the name of said G. H., subscribed thereto as a witness of the execution thereof, were thereunto subscribed by said persons.

Given under my hand and seal, this —— day of ——, A. D. 18—.

M. L. DUNLAP, *J. P.* [SEAL.]

"SEC. 21. It shall and may be lawful for any married woman to release her right of dower of, in and to any lands and tenements, whereof her husband may be possessed or seized, by any legal or equitable title during coverture, by joining such husband in the deed or conveyance, for the conveying of such lands and tenements, and appearing and acknowledging the same before any judge or other officer authorized to take acknowledgments by this chapter; and it shall be the duty of such judge or other officer, if such woman be not personally known to him to be the person who subscribed such deed or con-

(1) Rev. Stat. 107, Sec. 20. See *ante*, Page 290.

veyance, to ascertain the same by the testimony of at least one competent and credible witness; and upon being satisfied of that fact, shall acquaint such woman with the contents of the deed or conveyance, and shall examine her separate and apart from her husband whether she executed the same, and relinquished her dower to the lands and tenements therein mentioned, voluntarily, freely, and without compulsion of her said husband; and if she acknowledged that she executed the same, and relinquishes her dower in the lands and tenements therein mentioned, voluntarily, freely and without the compulsion of her husband, such judge, or other officer, shall grant a certificate to be indorsed on, or annexed to such deed, stating that such woman was personally known to him, or was proved by a witness (naming him) to be the person who subscribed such deed or writing; and that she was made acquainted with the contents thereof, and was examined and acknowledged such deed as aforesaid; which being recorded, together with the deed duly executed and acknowledged by the husband according to law, shall be sufficient to discharge and bar the claim of such woman to dower in the lands and tenements conveyed by such deed or conveyance."

When by Husband and Wife for relinquishment of Dower.[1]

STATE OF ILLINOIS, }
Cook COUNTY, } ss.

I, *Benjamin Cool*, a justice of the peace, in and for said county, do certify that C. D. and E. D., whose names appear to the foregoing *deed*, and who are personally known to me to be the persons whose names are subscribed to such *deed* as having executed the same, appeared before me this day in person, and did acknowledge the same to be their free act and deed.

And the said E. D., wife of the said C. D., having been by me made acquainted with the contents of said *deed*, and being examined by me separate and apart from her said husband, she acknowledged that she executed the same, and relinquished her dower to the lands and tenements therein mentioned, voluntarily, freely and without compulsion on the part of her said husband.

Given under my hand and seal, this —— day of ——, A. D. 18—.

BENJAMIN COOL, *J. P.* [SEAL.]

"Sec. 24. All powers or letters of attorney, or agency, authorizing the granting, selling, conveying, assuring, releasing or transferring,

(1) Rev. Stat. 107, Sec. 21.

or for the executing or acknowledging of any grants, sales, leases, assurances, or other conveyances or writings whatsoever concerning any lands and tenements, or whereby the same may be effected in law or equity, shall be acknowledged or proved, and recorded as herein before required in cases of deeds and other assurances; after which all grants, conveyances and assurances, made and acknowledged pursuant to the powers granted, unless the same be revoked by a deed duly acknowledged and proven, and recorded as aforesaid, shall be as valid and effectual as if executed and acknowledged by the constituent or constituents."

When the Grantor executes under a Power of Attorney.[1]

STATE OF ILLINOIS, }
Cook COUNTY, } ss.

I, *Nicholas Berdel*, a justice of the peace in and for said county, do certify that C. D., whose signature appears to the foregoing *deed*, as the attorney of E. F., and who is personally known to me to be the person who thus subscribed and executed the same, appeared before me in person, and did acknowledge the same to be his free act and deed.

Given under my hand and seal, this —— day of ——, A. D. 18—.

NICHOLAS BERDEL, *J. P.* [SEAL.]

"Sec. 41. If any grantor shall not have duly acknowledged the execution of any deed or instrument, entitled to be recorded, and the subscribing witnesses be dead, or not to be had, it may be proved by evidence of the hand writing of the grantor, and of at least one of the subscribing witnesses, which evidence shall consist of the testimony of two or more disinterested persons, swearing to each signature."

Proof of Deed of Grantor, when the subscribing witnesses are dead, or not to be had.[2]

STATE OF ILLINOIS, }
Cook COUNTY, } ss.

I, *James O'Donohue*, a justice of the peace in and for said county, do certify, that C. D. and E. F., two disinterested persons, being competent and credible witnesses, appeared before me this day, in person, and being duly sworn according to law, testified that they were persön-

(1) Rev. Stat. 108, Sec. 24.

(2) Rev. Stat. 110, Sec. 41.

ally acquainted with G. H., the person whose name appears subscribed to the foregoing *deed* as grantor, and that said signature is in the hand writing of the said G. H., and also that they were acquainted with J. K., one of the subscribing witnesses, (*or* "the subscribing witness," *if but one,*) thereto, and that said signature of said witness is in the hand writing of the said J. K.

Given under my hand and seal this —— day of ——, A. D. 18—.

JAMES O'DONOHUE, *J. P.* [SEAL.]

CHAPTER III.

OF BASTARDY, AND PROCEEDINGS IN CASES THEREOF.

Rev. Stat. 85, Sec. 1. "When any unmarried woman, who shall be pregnant or delivered of a child, which by law would be deemed a bastard, shall make complaint to any one or more of the justices of the peace of the county where she may be so pregnant or delivered, and shall accuse, under oath or affirmation, any person with being the father of such child, it shall be the duty of such justice or justices to issue a warrant, directed to the sheriff or any constable of such county, against the person so accused, and cause him to be brought forthwith before him or them. Upon his appearance, it shall be the duty of said justice or justices, to examine the said woman, upon oath or affirmation, in the presence of the man alleged to be the father of the child, touching the charge against him. If the said justice or justices shall be of opinion that sufficient cause appears, it shall be his or their duty to bind the person so accused, in bond, with sufficient and good security to appear at the next circuit court to be holden for said county, to answer to such charge; to which such court said warrant and bond shall be returned. On neglect or refusal to give such bond and security, the justice or justices shall cause such person to be committed to the jail of the county, there to be held to answer such complaint."

BASTARDY.

Form of Complaint before birth.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The complaint of A. B. of ———, in said county, an unmarried woman, made before L. M., Esquire, one of the justices of the peace

in and for said county, under oath, who says that she is now pregnant with a child, and that the said child is likely to be born a bastard; and that C. D., of ———, in the said county, is the father of the said child.

Taken, signed, and sworn, this ——— day of ———, 18—, before me, L. M., *J. P.* } A. B.

Form of a Complaint, after birth.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The complaint of A. B., of ———, in the said county, an unmarried woman, made before L. M., Esquire, one of the justices of the peace in and for said county, under oath, who says, that on the ——— day of ———, 18—, at ———, in the county aforesaid, she was delivered of a (male) bastard child, and that C. D. of ———, in the said county, is the father of the said child.

Taken, signed, and sworn, this ——— day of ———, 18—, before me, L. M., *J. P.* } A. B.

Form of Warrant, before birth.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The People of the State of Illinois to the Sheriff or any Constable of said County:

Whereas A. B. of ———, in the said county, an unmarried woman, has this day made complaint upon oath, before L. M., Esquire, a justice of the peace in and for said county, that she is pregnant with a child, which is likely to be born a bastard, and that C. D. is the father of the said child:

We therefore command you to arrest the said C. D., and bring him before the said justice, to answer unto the said complaint, and to be further dealt with according to law.

Given under the hand and seal of the said justice, the ——— day of ———, 18—.

L. M., *J. P.* [SEAL.]

Form of Warrant, after birth.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The People of the State of Illinois to the Sheriff or any Constable of said County:

Whereas A. B. of ———, in the said county, an unmarried woman, has this day made complaint under oath, before L. M., Esquire, a justice of the peace in and for the said county, that on the ——— day of ———, 18—, at ———, in the county aforesaid, she was delivered of a (male) bastard child, and that C. D. is the father of the said child:

We therefore command you to arrest the said C. D., and bring him before the said justice, to answer unto the said complaint, and to be further dealt with according to law.

Given under the hand and seal of the said justice the ——— day of ———, 18—.

L. M., *J. P.* [SEAL.]

Form of Oath or Affirmation upon the examination.

You do swear (*or*, "you do solemnly, sincerely, and truly declare and affirm,") that you will true answers make to all such questions as shall be put to you, touching the present complaint now in hearing against C. D.

Form of Bond for appearance at the Circuit Court.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

Know all men by these presents, that we, C. D., P. Q. and R. S., are held and firmly bound unto the people of the State of Illinois, in the sum of ——— dollars, to be paid to the said people, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the —— day of ———, 185–.

Whereas complaint has been made before L. M., Esquire, one of the justices of the peace in and for the said county of ———, by A. B. of ———, in said county, an unmarried woman, that she is pregnant with a child, which is likely to be born a bastard, (*or* "that on

the —— day of ———, 185–, she was delivered of a (male) bastard child,") and that C. D. is the father of the said child; whereupon the said justice issued a warrant, and caused the said C. D. to be brought before him to answer the said complaint, and to be further dealt with according to law; and upon examination of the said A. B., upon oath (*or* "affirmation,") in the presence of the said C. D., touching the said charge, and upon due consideration thereupon had, the said justice was of opinion that sufficient cause appeared, and did adjudge and determine that the said C. D., enter into a bond with good and sufficient security, to appear at the next circuit court, to be held in and for the said county of ———, to answer to such charge.

Now therefore the condition of this obligation is such, that if the above bounden C. D., shall appear at the next circuit court, to be held in and for the said county of ———, and answer to the said complaint, and not depart the court without leave, then this obligation to be void, otherwise to remain in force.

Signed, sealed and delivered in the presence of L. M., *J. P.*

C. D. [SEAL.]
P. Q. [SEAL.]
R. S. [SEAL.]

Form of Commitment on neglecting or refusing to give bond.

STATE OF ILLINOIS, —— COUNTY, } ss.

The People of the State of Illinois to the Sheriff or any Constable of said County, and to the Keeper of the Common Jail of said County:

Whereas complaint has been made before E. F., Esquire, one of the justices of the peace of the said county, by A. B., of (Grafton precinct), in said county, an unmarried woman, that she is pregnant with a child which is likely to be born a bastard, (*or* "that on the —— day of ——, 185–, she was delivered of a (male) bastard child,") and that C. D. is the father of the said child, whereupon the said justice issued a warrant, and caused the said C. D. to be brought before him, to answer to the said complaint, and to be further dealt with according to law; and upon examination of the said A. B. upon oath (*or* "affirmation,") in the presence of the C. D., touching the said charge, and upon due consideration thereupon had, the said justice was of opinion that sufficient cause appeared, and did adjudge and determine that

the said C. D. enter into a bond with good and sufficient security, in the sum of —— dollars, to appear at the next circuit court, to be held in and for the said county of ———, to answer such charge; and the said C. D., having neglected (or refused) to give such bond and security:

We, therefore, command you, the said sheriff or constable, forthwith to convey the said C. D. to the common jail of the said county, and deliver him to the keeper thereof, together with this precept; and you, the said keeper, are hereby required to receive the said C. D. into your custody, in the said jail, there to be held to answer such complaint, until he shall give such bond and security, or until he shall be discharged by due course of law.

Given under the hand and seal of the said justice, the ——— day of ———, 185–.

E. F., *J. P.* [SEAL.]

"Sec. 2. The circuit court of such county, at their said next term, shall have full cognizance and jurisdiction of the said charge of bastardy, and shall cause an issue to be made up, whether the person charged as aforesaid, is the real father of the child or not, which issue shall be tried by a jury. Such inquiry shall not be *ex parte*, when the person charged shall appear and deny the charge; but he shall have a right to appear and defend himself by counsel, and controvert, by all legal evidence, the truth of such charge.

"Sec. 3. If at the time of such court, the woman be not delivered, or be unable to attend, the court shall order a recognizance to be taken of the person charged as aforesaid, in such an amount, and with such sureties as the court may deem just, for the appearance of such person at the next court, after the birth of the child; and should such mother not be able to attend at the next term after the birth, the recognizance shall be continued until she is able.

"Sec. 4. On the trial of every issue of bastardy, the mother shall be admitted as a competent witness, and her credibility shall be left to the jury. She shall not be admitted as a witness, in case she has been duly convicted of any crime which would, by law, disqualify her from being a witness in another case.

"Sec. 5. In case the issue be found against the defendant, or reputed father, or whenever he shall, in open court, have confessed the truth of the accusation against him, he shall be condemned by the judgment of the said court, to pay such sum of money, not exceeding fifty dollars,

yearly, for seven years, as in the discretion of the said court may seem just and necessary for the support, maintenance, and education of such child; and shall, moreover, be adjudged to pay all the costs of the prosecution, for which execution shall issue as in other cases of costs. The said defendant, or reputed father, shall give bond and security for the due and faithful payment of such sum of money, as shall be ordered to be paid by the said court, to be paid by him for the period aforesaid; which shall be made payable quarter-yearly to the judge of the court of probate, and his successor in office for the county in which the prosecution aforesaid was commenced; and the same, when received, shall be laid out and appropriated, from time to time, by the said judge, under his order and direction, for the purposes aforesaid. In case the defendant, or reputed father, shall refuse or neglect to give such security as may be ordered by the court, he shall be committed to the jail of the county, there to remain until he shall comply with such order, or until otherwise discharged by due course of law: *Provided, always*, That the said reputed father, after giving bond with approved security, to the court of probate, in said county, conditioned for the suitable maintenance of any such child, for the term aforesaid, shall be permitted to take charge and have the control of his said child, at any time after said child shall arrive at the age of three years; and from the time of the said father taking charge of such child, or should the mother refuse to surrender the said child, when so demanded by the said father, then and from thenceforth, the said father shall be released and discharged from the judgment of all such sum or sums of money as may thereafter become due against the said father, for the support, maintenance, and education of any such child. If the said child should never be born alive, or being born alive, should die at any time, and the fact shall be suggested upon the record of the said court, then the bond aforesaid shall from thenceforth be void. But when a guardian shall be appointed for such bastard, the money arising from such bond shall be paid over to such guardian.

"Sec. 6. If, upon the trial of the issue aforesaid, the jury shall find that the child is not the child of the defendant, or pretended father, then the judgment of the court shall be, that he be discharged. The woman making the complaint shall pay the costs of the prosecution, and judgment shall be entered therefor, and execution may thereupon issue.

"Sec. 7. If the mother of any bastard child, and the reputed father, shall at any time after its birth, intermarry, the said child shall

in all respects, be deemed and held legitimate, and the bond aforesaid be void.

"Sec. 8. No prosecution, under this chapter, shall be brought after two years from the birth of the bastard child: *Provided*, The time any person accused shall be absent from the State, shall not be computed."

Under the fifth section of the foregoing chapter of the statute, it will be observed that the father after entering into the bond required by said section, may demand, and is entitled to the possession, control, and charge of the child. If the mother refuse to surrender it, he is discharged from his liability upon the bond, so long as she continues to refuse; if she surrender it, the father is not required to give a further bond, but he is bound for its maintenance, support and education thereafter, during its minority, in the same manner as though it had been born in lawful wedlock. Under the common law, it was otherwise; the reputed father was not entitled to the custody of the child.[1]

Bastardy is in law a misdemeanor, which may be compromised or compounded, at the discretion of the parties interested.[2]

(1) 2 Gil. 587.

(2) 3 Scam. 380.

CHAPTER IV.

OF CONTEMPT OF COURT.

Rev. Stat. 322, Sec. 50. "Every person who shall appear before a justice of the peace, when acting as such, or who shall be present at any legal proceeding before a justice, shall demean himself in a decent, orderly, and respectful manner; and for failure to do so, such person shall be fined by the said justice, for contempt, in any sum not more than five dollars."

The power to punish for contempt is incident to all courts of justice, independent of statutory provisions.[1]

When a contempt is committed, in violation of the foregoing section of the statute, the offender may be instantly apprehended and dealt with according to law, without any further proof or examination. The justice may at once draw up a conviction, according to the truth of the case.[2]

Form of Record of Conviction.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

Be it remembered that on this ——— day of ——— instant, during the trial of a case between A. B., plaintiff, and C. D., defendant, before me, L. M., Esquire, one of the justices of the peace in and for the county of ———, at my office in ———, in said county, J. K. did willfully and contemptuously accuse me of gross partiality and abuse of power, in the office of justice of the peace, in the presence of a num-

(1) Breese, 266; 3 Scam. 403. (2) 4 Bl. Com. 286.

ber of bystanders, (*or* "interrupted me while engaged in the trial of the said cause, by making a great noise and disturbance, and being ordered by me to cease, refused so to do, and said that he did not regard me nor my authority," *or if for any other cause, set it forth particularly*); and, whereas the said J. K. was forthwith called upon by me, and required to answer for the said contempt, and show cause why he should not be convicted thereof, but did not make any defense, nor show any cause why he should not be convicted, nor make any apology for his said conduct:

Therefore I, the said justice, do hereby convict the said J. K. of the said contempt, and adjudge and determine that he pay a fine of five dollars, and that he be committed to the common jail of said county, until he pay the said fine, or until he shall be discharged by due course of law.

In witness whereof I have hereunto set my hand and seal, this —— day of ———, 18—.

L. M., *J. P.* [SEAL.]

Form of Commitment for a fine.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The People of the State of Illinois to any Constable of the said County, and to the Keeper of the Common Jail of said County:

Whereas, on this —— day of ——, 18—, while L. M., Esquire, one of the justices of the peace of the said county, was engaged in the trial of a cause between A. B., plaintiff, and C. D., defendant, at his office in ——, in the said county, J. K. did willfully and contemptuously [interrupt the proceedings in said cause by making a great disturbance, and being ordered by said justice to cease, refused so to do, and said that he did not regard him nor his authority]; and, whereas, the said J. K. was forthwith called upon by the said justice, and required to answer for the said contempt, and show cause why he should not be convicted thereof, but did not make any defense nor show any cause why he should not be convicted, nor make any apology for his said conduct; and, whereas, the said justice did thereupon convict the said J. K. of the said contempt, and adjudge and determine that he pay a fine of five dollars, and that he be committed to the common jail of the said county until he pay the said fine, or until he be discharged by due course of law:

We, therefore, command you, the said constable, to take the said J. K. and deliver him to the keeper of the common jail of the said county, together with this warrant; and you, the said keeper, are hereby required to receive him into your custody, in the said jail, and him there safely keep, until he pay the said fine, or until he shall be discharged by due course of law. Hereof fail not at your peril.

Given under the hand and seal of the said justice, this —— day of ——, 18—.

L. M., *J. P.* [SEAL.]

Form of Commitment of Witness on neglecting to pay a fine for non-attendance.[1]

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The people of the State of Illinois to any Constable of said County, GREETING:

Whereas, *John Doe* has this day been convicted before me, L. M., Esquire, a justice of the peace in and for the said county, for a contempt, for that the said *John Doe* was duly subpœnaed to appear and testify in a suit depending before the said justice, between A. B., plaintiff, and C. D., defendant, on the —— day of ——, 18—, and failing so to attend, and he not having purged himself when called upon by me to show cause why he should not be fined for such contempt, and, whereas, upon such conviction the said justice did adjudge and determine that the said *John Doe* should pay a fine of five dollars, and be imprisoned in the common jail of the said county, until he paid the said fine or was discharged by due course of law; and, whereas the said *John Doe* has neglected to pay the said fine:

We, therefore, command you, the said constable, to take the said *John Doe* and deliver him into the custody of the said keeper of the said jail. And you the said keeper are hereby required to receive the said *John Doe* into your custody in the said jail, and him there safely keep until he pay the said fine or be discharged by due course of law. Hereof fail not.

Given under the hand and seal of the said justice, this ——— day of ———, 18—.

L. M., *J. P.* [SEAL.]

(1) This form should more properly have been embraced under the head of "*attachment against defaulting witnesses*," *ante*, page 83, but was inadvertently omitted, and is therefore inserted here.

Form of Commitment of a Witness for refusing to be sworn, or for refusing to testify.[1]

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The people of the State of Illinois to any Constable of the said County, and to the Keeper of the Common Jail of said County, GREETING:

Whereas, on the trial of a cause before L. M., Esquire, a justice of the peace of the said county, between A. B., plaintiff, and C. D., defendant, *John Doe* being called as a witness on the part of the plaintiff, (*or* "defendant,") and being present and admitting that he had been duly subpœnaed to attend the said trial as a witness on the part of the said plaintiff, (*or* "defendant,") (*or* "it being proved to me by the oath of the said plaintiff," (*or* "defendant,") *or* "by the oath of J. K.," *or* "by the return of R. S., one of the constables of said county, that the said *John Doe* had been duly subpœnaed," &c.); refused to be sworn as such witness in any form prescribed by law, (*or* "*John Doe* was called and sworn as a witness on the part of said plaintiff, and on his examination as such witness the said *John Doe* was asked by the said plaintiff the pertinent and proper question, "whether he was acquainted with the hand writing of C. D.?" to which question the said *John Doe* refused to make answer.")

And the said A. B. having made oath before the said justice of the peace that the testimony of the said *John Doe* was so far material that without it he could not safely proceed to the trial of said cause:

We, therefore, command you, the said constable, to take and deliver the said *John Doe* into the custody of the said keeper of the said jail. And you the said keeper are hereby required to receive the said *John Doe* into your custody, in the said jail, and him there safely keep until he shall submit to be sworn as such witness as aforesaid, and shall be discharged by due course of law, (*or* "until he shall submit to answer the said question so put to him by the said A. B., and be discharged by due course of law.") Hereof fail not at your peril.

Given under the hand and seal of the said L. M., justice of the peace, this —— day of ——, 18—.

L. M., *J. P.* [SEAL.]

(1) This form, like the preceding one, is not strictly in place under this chapter, but was inadvertently omitted in its proper order.

CHAPTER V.

OF DISTRESS FOR RENT.

A distress is defined to be the taking of a personal chattel, without legal process, from the possession of the wrong doer into the hands of the party grieved, as a pledge for the redress of an injury, the performance of a duty, or the satisfaction of a demand.[1] It is a general rule, that a man who has an entire duty, shall not split the entire sum, and distrain for part of it at one time, and part of it at another time. But if a man seizes for the whole sum that is due him, but mistakes the value of the goods distrained, there is no reason why he should not afterwards complete his execution by making a further seizure.[2] It is to be observed also, that there is an essential difference between distress at common law, and distress prescribed by statute. The former are taken *nomine penae*, (by way of penalty,) as a means of compelling payment; the latter are similar to executions, and are taken as satisfaction for a duty; the former could not be sold; the latter might be. Their only similarity is that both are replevisable.[3]

Rev. Stat. 334, Sec. 6. "In all cases of distress for rent, the person making the same, shall immediately file with some justice of the peace, in case the amount claimed does not exceed one hundred dollars, or with the clerk of the circuit court, in case it exceeds that sum, a copy of the distress warrant, together with an inventory of the property levied upon; and thereupon the party against whom the distress warrant shall have been issued, shall be duly summoned, and the amount due from him assessed and entered upon the records of the court finding the same. The said court shall certify to the person or

(1) 3 Bl. Com. 6. (2) 1 Burr. 589. (3) See 1 Bouv. L. D., title "Distress."

officer making the same, the amount so found due, together with the costs of court; and said officer shall thereupon proceed to sell the property so distrained, and make the amount thus certified to him, and return the certificate so issued to him, with an endorsement thereon of his proceedings, which return and certificate shall be filed in the proper court.

"Sec. 7. In all cases of distress for rent, it shall be lawful for the landlord, by himself, his agent, or attorney, to seize for rent any personal property of his tenant that may be found in the county where such tenant shall reside; and in no case shall the property of any other person, although the same may be found on the premises, be liable to seizure for rent due from such tenant.

"Sec. 8. Every landlord shall have a lien upon the crops growing or grown upon the demised premises in any year, for rent that shall accrue for such year.

"Sec. 9. In case of the removal or abandonment of the premises, or any part thereof, by such tenant, all grain or vegetables grown or growing upon any part of the premises so abandoned, may be seized by the landlord, his agent, or attorney, before the rent is due, and the landlord so distraining, shall cause the grain or vegetables so growing, to be properly cultivated and perfected, and in all cases husband such grain or vegetables grown and growing, until the rent agreed upon shall become due, when it shall be lawful for such landlord, his agent, or attorney, to sell and dispose of the same as in other cases of seizure, after the rent shall have become due; and also to retain a just compensation for his care, culture, and husbanding of such grain or vegetables: *Provided*, That such tenant may at any time redeem the property so taken before the rent is due, by tendering the rent agreed upon, and all reasonable expenses attending the same, for care, cultivation, and husbandry, as aforesaid, or replevy the same, as in case of seizure, where the rent is due.

"Sec. 10. When any goods or chattels shall be distrained for rent, and the tenant or owner of the goods so distrained, shall not, within five days after such distress taken, and notice thereof, and the cause of taking, replevy the same with sufficient security, according to law, the person distraining, or his agent duly authorized, may with the sheriff or constable of the county, cause the goods and chattels so distrained, to be appraised by two reputable freeholders under oath, which oath may be administered by such sheriff or constable, to appraise said goods and chattels, according to their best judgment and

understanding; the person making such distress, after having obtained such assessment as specified in section six of this chapter, and on giving ten days' notice, may sell such goods and chattels at public auction, and after retaining the amount of rent distrained for, and the costs of distress and sale, shall pay the overplus, if any there be, to such tenant or tenants.

"Sec. 11. Any landlord distraining, or officer or other person, in whose hands perishable property may be, when there is danger that the same will perish or be lost if it shall remain undisposed of until the conclusion of the suit, such landlord, officer, or other person, may sell the same, as provided in the preceding section, and after paying the costs attending such sale, shall pay over the balance to the person or persons to whom the same shall be due.

"Sec. 12. The same articles of personal property which are by law exempt from execution, except the crops grown or growing upon the demised premises, shall also be exempt from distress for rent."

Warrant of Distress by Landlord.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

To the Sheriff or any Constable of the said County:

Distrain the goods and chattels of C. D., which are liable to be distrained, wherever they may be found in the county of ———, where the said C. D. resides, for the sum of *twenty-five* dollars, being one quarter's (*or* "one year's") rent due me on the ——— day of ——— 185–, for the premises now in his possession, demised to him by me, and situated in said county. A. B.

Dated the ——— day of ——— 185–.

Form of Inventory.

An inventory of the several goods and chattels of C. D., distrained by me, O. P., Constable, on the ——— day of ———, 18—, in the county of ———, where the said C. D. resides, by virtue of the warrant and authority, and in behalf of E. F., the landlord, for the sum of ——— dollars, being one quarter's (*or* "one year's") rent due to the said landlord, on the —— day of ———, 18—, for the premises in the warrant mentioned, to wit:

Two tables, six chairs, &c.

One cow, two mules, one wagon, &c.

Form of Notice to the Tenant.

Mr. C. D.:

Take notice, that I have distrained the several goods and chattels specified in the above inventory, for the sum of ——— dollars, being one quarter's (*or as the case is*) rent, due to E. F., your landlord, on the ——— day of ———,.18—, for said premises. (*If the beasts are impounded in a private pound, then say,* "and the beasts therein mentioned are impounded in the private pound, or enclosure, of R. S., near his house, in said county,") and that, unless you pay the said rent, with the costs of distraining for the same, within five days from the service hereof, after the landlord's demand shall be proved, pursuant to the statute, the said goods and chattels will be appraised and sold according to law.

Given under my hand, at ———, in the county of ———, the ——— day of ———, 18—.

O. P., Constable.

The landlord, having distrained the goods and chattels of the tenant, the same proceedings should then be had as in cases arising under the statute, conferring civil jurisdiction upon justices of the peace. It is also held to be an indispensable requisite in all proceedings affecting the rights of an individual, that the individual to be affected shall have notice of such proceedings, and the justice should not proceed to judgment without evidence before him that such notice has been given.[1]

A landlord has a right to distrain for rent, where no power of distress is contained in the lease.[2]

In case of distress for rent, the court has only to inquire whether the relation of landlord and tenant exists, and to ascertain the amount of rent due, when the distress was made, and enter the assessment on the record, and certify the amount and costs to the bailiff.[3]

In such a proceeding, the landlord cannot introduce a demand against the tenant for which he has not the right to distrain; nor can the tenant set up, by way of set-off, any demand against the landlord. The tenant may show that he has made payment on account of rent, to reduce the amount of the assessment.[4]

The goods of a sub-lessee of a part of demised premises, are not liable to be distrained for rent reserved in the original lease.[5]

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(1) 1 Scam. 515. See also Rev. Stat. 316, Sec. 17, paragraph 6th, in relation to jurisdiction of justices of the peace; also, *ante*, p. 27.
(2) 3 Scam. 306. (3) 14 Ill. 75. (4) Ibid. (5) 11 Ill. 527.

Form of Summons after the goods have been distrained.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The People of the State of Illinois to any Constable of said County, GREETING:

Whereas A. B. has lately distrained the goods and chattels of C. D., for the sum of ——— dollars, claimed to be due to him for the rent of certain premises leased to the said C. D.:

We, therefore, command you to summon the said C. D., to appear before L. M., Esquire, one of the justices of the peace of the said county, at his office in ———, in the said county, on the —— day of ———, 185–, at —— o'clock in the —— noon, to answer the complaint of the said A. B., for a failure to pay him a certain demand not exceeding one hundred dollars, and do you make return hereof, as the law directs.

Given under the hand and seal of the said justice, the —— day of ———, 185–.

L. M., *J. P.* [SEAL].

After the rent shall have been proved to the satisfaction of the justice, he will render judgment accordingly, and if the same is not paid, and the goods distrained are not replevied according to law, the landlord will then apply to the constable, and procure the goods and chattels to be appraised by two reputable freeholders under oath.

Form of Oath to be administered to Appraisers.

You and each of you, do swear, that you will, well and truly, appraise the goods and chattels of C. D., pointed out to you as being distrained by A. B., according to your best judgment and understanding.

The constable will then endorse on the inventory before taken, the following memorandum:

Memorandum.—That on the —— day of ———, 18—, L. M. and J. N., appraisers, were severally sworn (*or* "affirmed,") by the subscriber, a constable of the county of ———, well and truly to appraise the goods and chattels mentioned in this inventory, according to their best judgment and understanding.

As witness my hand. O. P., Constable.

Form of the Appraisement to be endorsed on the inventory.

We, the above named L. M. and J. N., being duly sworn (*or* "affirmed,") by O. P., the constable above named, well and truly to appraise the goods and chattels mentioned in this inventory, according to our best judgment and understanding, and having viewed the goods and chattels, do appraise and value the same at the sum of ——— dollars and —— cents.

As witness our hands the —— day of ———, 18—.

L. M.,
J. N., } *Appraisers.*

Form of Notice of Sale.

Notice is hereby given, that on the —— day of ———, 18—, at —— o'clock, — M., at ——— in ——, in pursuance of the statute in such case made and provided, I shall expose to sale at public vendue, (*describe the property,*) of the goods and chattels of C. D., lately distrained for rent due to A. B.

Dated this —— day of ———, 18—.

O. P., Constable.

CHAPTER VI.

OF CONTESTING ELECTIONS.

Rev. Stat. 222, Sec. 42. "When any candidate shall desire to contest the validity of any election, or the right of any person declared duly elected, to hold the office to which such candidate claims the right, such candidate shall give notice of his intention in writing, to the person whose election he intends to contest, or leave a notice thereof at his usual place of residence, within thirty days after the day of election, expressing the points on which the same will be contested, the name of one of the justices of the peace who will attend at the taking of the depositions, the place where, and the time when said depositions will be taken; which time so fixed upon for the taking of the depositions, shall not exceed sixty days from the day of election.

"Sec. 43. The party whose election is contested, may select another justice of the peace to attend at the trial. Should the party whose election is contested, refuse or neglect to select a justice, as aforesaid, the justice chosen by the person contesting the election, as aforesaid, shall make such selection for him. The two justices so elected or chosen, shall make choice of a third justice; and if they cannot agree upon a third justice to act with them, they shall make such selection by lot; and the three justices thus selected, or either of them, shall have power, and they are hereby authorized and required, to issue subpœnas and such other process as may be necessary to secure the attendance at such trial, of all persons whose testimony may be required by either party, in the same manner as is provided in other cases of proceedings before justices of the peace.

"Sec. 44. The said justices, or any one of them, shall, in all such cases, have power to issue subpœnas for witnesses to any county in this State, directed to the sheriff of such county, who shall make service and re-

turn as in other cases. And any witness, duly subpœnaed, refusing or neglecting to appear and testify, shall, in addition to the penalties otherwise imposed by law, forfeit and pay a fine of fifty dollars, to be recovered by action of debt, in any court having cognizance thereof, one-half to the county, and one-half to the person suing for the same.

"Sec. 45. The said justices, or any one of them, may issue attachments for witnesses so neglecting or refusing to attend, who may be brought before them; and at any time before the day for the decision of the question between the contesting parties, the said justices shall, at the request of either, after giving notice to the other party of five days, if resident in their county, or ten days, if residing out of their county, proceed to take the testimony of such witnesses, to be used in the case.

"Sec. 46. If any justice of the peace selected, as aforesaid, to attend at the taking of the depositions, shall, without reasonable excuse, fail or refuse to attend at the time and place appointed, after having undertaken to attend, he shall forfeit and pay a fine of fifty dollars, to be recovered by action of debt, in any court having cognizance thereof, one half to the county, and the other half to the person who will sue for the same.

"Sec. 47. The said justices shall hear and examine all the evidence offered on either side. If the contest be respecting any county office, they shall decide which of the said candidates shall have been duly elected, and certify the same to the clerk of the county commissioners' court of the proper county, who shall thereupon make out and deliver to the successful party a certificate of his election. If such contest be respecting a seat in the Senate or House of Representatives of this State, the said justices shall hear and reduce to writing, all the testimony taken in the case, and certify and transmit the same under seal, together with all other papers and documents pertaining to the case, to the speaker of the Senate or House of Representatives, as the case may be.

"Sec. 48. No testimony shall be heard by the said justices on the part of the person contesting the election, which does not relate to the points specified in the notice. Such justices shall have power to appoint a clerk, and may adjourn from day to day, until their duties shall be completed. They shall have the same power to preserve order, and to punish disorders and contempts, as justices of the peace may exercise, when holding court.

"Sec. 49. In all contests for county offices, in which the justices hearing the case are authorized to decide, they shall enter judgment on

the docket of the justice last chosen, for all the costs of such contest, against the unsuccessful party, upon which execution may issue as in other cases. Either party may appeal from the decision of such justices to the circuit court, as in other cases of appeal from the judgment of a justice of the peace, the decision of which court shall be final.

"Sec. 50. In all contests other than for county offices, the proceedings for taking testimony hereinbefore provided, may be had in such county in which it is necessary to take testimony, and the like returns shall in each case be made. In those cases in which the justices examining, do not decide the contest, they shall not be compelled to certify or transmit the testimony and documents pertaining to the case, until the reasonable costs of the examination and of certifying the same, are tendered or paid; and the party who is finally unsuccessful shall be liable for such costs, to the person who shall have paid the same. But if neither party shall require or cause such testimony and documents to be transmitted, then judgment may be entered and execution had, as before provided, against the party at whose instance such examination was instituted.

Form of Notice to be given by candidate desiring to contest an election.

Sir: You will please take notice that as a candidate for the office of county judge, at the late election for the county of —— in the State of Illinois, I intend to contest your right to hold and exercise the office of county judge of said county, and that the following are the points upon which your election will be contested, to wit: (*Here state the points.*)

And that L. M., Esquire, one of the justices of the peace of the said county of ——, will attend at the trial of such contest, on the —— day of ———, 18—, at ———, in the forenoon, at his office in ———, in said county, in pursuance of the statute in such case made and provided.

Dated this —— day of ——, 18—. Yours, &c. A. B.

To Mr. C. D.

If depositions are to be taken, the time and place of taking the same should be set forth in the notice.

Form of Subpœna for Witnesses.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The People of the State of Illinois to G. H. and J. K.

You are hereby commanded to appear before the undersigned, three justices of the peace of said county, on the —— day of —— instant,

at —— o'clock — M., at the office of L. M., in ——, in said county, to testify the truth, according to your knowledge, touching the matters relative to contesting the right of C. D. to hold and exercise the office of county judge of said county by A. B., on the part of the said A. B., and this you are not to omit.

Given under our hands and seals, this —— day of ——, 18—.

L. M., *J. P.* [SEAL.]
N. O., *J. P.* [SEAL.]
P. Q., *J. P.* [SEAL.]

Form of Oath to be administered to Witnesses.

You do swear, that the evidence you shall give touching the matters relative to the right of C. D. to hold the office of county judge, of *Lake* county, contested by A. B., shall be the truth, the whole truth, and nothing but the truth.

Form of Certificate of Election, or Record of Proceedings by Justices.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

Be it remembered that we, L. M., N. O., and P. Q., three of the justices of the peace of the said county, were duly named, elected and chosen to attend on the —— day of —— instant, at —— o'clock in the —— noon, at the office of L. M., in ——, in said county, at the trial of the right of C. D. to hold and exercise the office of county judge of the said county of ——, contested by A. B., a candidate for the said office at the last election, in the following manner: that the said L. M. was named and selected by the said A. B., that the said N. O. was selected by said C. D., and that the said P. Q. was chosen (*or* "selected by lot,") by the two justices first named and selected, and herein first above mentioned, to act with them; that we met at the time and place above mentioned, and the following notice and attestation of service thereof was delivered to us. (*Here set forth the notice given by A. B. to C. D., and the affidavit of service.*) That at the time and place aforesaid, as well the said A. B. as the said C. D., appeared before us, and after hearing and examining the evidence offered by both of the parties, we do decide and determine that the said A. B. has been duly elected county judge of the said county of ———, and we do adjudge and determine, that the said C. D. pay all the costs of this contest, amounting to the sum of ——— dollars, and that execution issue for the same.

In witness whereof we do hereunto set our hands and seals the —— day of ———, 18—.

L. M., *J. P.* [SEAL.]
N. O., *J. P.* [SEAL.]
P. Q., *J. P.* [SEAL.]

Form of Certificate to be attached to the foregoing Record.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

We, the subscribers, three of the justices of the peace of the said county, do certify to the clerk of the county commissioners' court of the said county, that the above is a true record of the proceedings before us, and of our decision in the matter, relative to the right of C. D. to hold and exercise the office of county judge of ——— county, contested by A. B., and also of our adjudication concerning costs.

Given under our hands, this —— day of ———, 18—.

L. M., *J. P.*
N. O., *J. P.*
P. Q., *J. P.*

Form of Execution for Costs.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The People of the State of Illinois to any Constable of said County, GREETING:

Whereas, A. B., a candidate, lately gave notice to C. D., that he intended to contest his right to hold and exercise the office of county judge of the county of ———, and named L. M., a justice of the peace of said county, to attend at the trial of such contest, on the —— day of ———, 18—, at his office in ———, in said county; and whereas, the said C. D., did select N. O., a justice of the peace of said county, to attend at the said trial; and whereas, the two justices so named and selected, did make choice of (*or* "select by lot,") P. Q., a justice of the peace of said county, to act with them; and whereas, the said justices in pursuance of their nomination, selection and choice, and of the statute in such case made and provided, met at the time and place above mentioned, and as well the said A. B., as the said C. D., appeared before them, and the said justices having heard and

examined the evidence offered by both of the parties, did decide and determine that the said A. B., had been duly elected county judge of ——— county, and the said justices did adjudge and determine that the said C. D. pay all the costs of the said contest, amounting to the sum of ——— dollars, and that execution issue for the same:

We, therefore, command you, that of the goods and chattels of the said C. D., in your county, you levy the said sum of —— dollars, costs, as aforesaid; and do you make return of what you shall do hereon, with all convenient speed.

Given under the hands and seals of the said justices, the —— day of ———, 18—.

L. M., *J. P.* [SEAL.]
N. O., *J. P.* [SEAL.]
P. Q., *J. P.* [SEAL.]

CHAPTER VII.

OF ESTRAYS.

Rev. Stat. 227, Sec. 1. "Every person who shall take up any estray horse, mare, colt, mule, or ass, after having given not less than ten, nor more than fifteen days' notice, by posting up notices in three of the most public places in the justice's district in which he resides, shall take the same before some justice of the peace of the county where such estray shall be taken up, and make oath before such justice, that the same was taken up at his or her plantation, or place of residence in said county, and that the marks or brands have not been altered since the taking up.

"Sec. 2. The said justice shall then issue his warrant to three disinterested housekeepers in the neighborhood, unless they can otherwise be had, causing them to come before him, to appraise said estray, after they or any two of them being sworn to appraise such estray, without partiality, favor, or affection; which appraisement, together with the marks, brands, stature, color and age of such horse, mare or colt, mule, or ass, shall be entered in a book to be kept by such justice, and certified under his hand, and transmitted to the clerk of the county commissioners' court of such county, within fifteen days after the same is taken up.

"Sec. 3. Any person who shall take up any head of neat cattle, sheep, hog, or goat, after having given the notice required in section one of this chapter, shall go with some householder before a justice of the peace of the county, and make oath before him, as is required in taking up an estray horse, mare, or colt, mule, or ass, and then such justice shall take from such housekeeper upon oath, a particular description of the marks, brands, color and age of every such neat cattle, sheep, hog, or goat, and said justice shall cause the said estrays

to be appraised in like manner as is required to be done in case of a horse, mare or colt, mule or ass; which description and valuation shall be entered by such justice in a book to be kept by him as aforesaid, and by such justice transmitted to the clerk of the county commissioners' court of the county, to be by him kept as before directed: *Provided*, That in all cases where the value of such neat cattle, sheep, goat, or hog, does not exceed five dollars, said justice shall not be required to make a return to the clerk as aforesaid; but shall enter in his estray book the description and appraisement value of such sheep, hog, or goat, and advertise the same in three of the most public places in his neighborhood.

"Sec. 4. Every such clerk shall cause a copy of such description and valuation of every neat cattle, sheep, hog, and goat returned to him, to be publicly affixed at the court house door of his county, within five days after the same shall be transmitted to him as aforesaid, for which he shall receive the same fee as for entering the same in a book.

"Sec. 5. If two or more estrays of the same species are taken up by the same person at the same time, they shall be included in one entry and one advertisement, and in such case, such justice and clerk shall receive no more pay than for one of such species.

"Sec. 6. No person shall be allowed hereafter to take up and post any head of neat cattle, sheep, hog, or goat, between the month of April and the first day of November, unless the same may be found in the lawful fence or inclosure of the taker up, having broken in the same; and for a reward of taking up, there shall be paid by the owner, one dollar for every horse, mare or colt, mule or ass; and for every head of neat cattle, fifty cents; and for every hog, sheep, or goat, twenty-five cents, together with all reasonable charges.

"Sec. 7. Proof of the giving of notice, as required in the first and third sections of this chapter, may be made by the oath of the person advertising, or a credible witness, previous to the appraisement.

"Sec. 8. If the owner of any such animals shall prove and take them away before the appraisement thereof, he shall pay to the person who has care of the same, all reasonable charges for taking up and keeping the same.

"Sec. 9. It shall not be lawful for persons taking up estrays, to use the same previous to advertising them, unless it be to milk cows, and the like, for the benefit and preservation of such animals.

"Sec. 10. It shall be the duty of the clerk of the county commis-

sioners' court, when the description and valuation of any estray horse, mare or colt, mule or ass, shall be transmitted to him by the justice, as aforesaid, and in ten days thereafter make out a copy thereof, and transmit the same to the public printer of the State, and endorse thereon, "Estray papers," together with the sum of one dollar, to pay the said printer; which sum the taker up is required to deposit with the clerk prior to the expiration of said ten days. It shall be the duty of the public printer to publish said advertisement, and transmit one copy of each number of his paper to each of the clerks of the county commissioners' court of the several counties of this State, free of charge, which shall be regularly filed by said clerks in their respective offices, for the examination of those who may desire it.

"Sec. 11. And if no owner appear and prove his property within one year after such publication, the property shall be vested in the taker up; nevertheless, the former owner may, at any time thereafter, by proving his property, recover the valuation money, upon payment of costs and all reasonable charges.

"Sec. 12. And if any person shall trade, sell or take away any such estray or estrays out of the State, for any purpose whatever, before the expiration of said one year, he or she so offending, shall be liable to indictment in the circuit court of the proper county, and on conviction thereof, shall be fined in a sum double the value of the property, one-half to the owner thereof, and the other half to the county treasury; and when the owner of any estray head of neat cattle, sheep, hog or goat, does not prove his property within twelve months after the same has been published at the door of the court house, as aforesaid, and when the valuation does not exceed five dollars, the property shall be vested in the taker up; but when the valuation shall exceed five dollars, and no owner appear within the time aforesaid, the property shall also be vested in the taker up; nevertheless, the former owner may at any time, by proving his property, recover the valuation thereof, upon payment of all reasonable costs and charges; and if the taker up and the owner cannot agree upon the charges, they shall call upon three disinterested householders, whose decision shall be binding on both parties; and it shall not be lawful for any person to take up any estray, (except such as shall be hereinafter excepted,) unless he shall be a freeholder or a housekeeper.

"Sec. 13. Any person finding a stray horse, mare, colt, mule or ass, running at large without any of the settlements of this State, may take up the same, and shall immediately take such estray or estrays be-

fore the nearest justice of the peace, and make oath that he has not altered the marks or brands of such estray, since taking up; and if such taker up shall be a freeholder or housekeeper within that county, it may and shall be lawful for him, to post such estray or estrays as hereinbefore directed in this chapter, as if the same had been taken up on his plantation or place of residence; and when the taker up shall not be qualified, as aforesaid, he shall take the oath before required, and deliver such estray or estrays to the said justice, who shall cause the same to be dealt with as directed by this chapter.

"Sec. 14. If no owner appear to prove his property within one year, such estray or estrays shall be sold to the highest bidder, giving public notice of such sale twenty days previous thereto, the purchaser giving a bond and approved security, payable to the county commissioners' court of the county where such estray shall be taken up; and, after paying the taker up all reasonable charges, the balance shall be put into the county treasury by the said justice, who shall take a receipt for the same from the county treasurer; nevertheless, the former owner, at any time within two years after taking up, by proving his property before the clerk of the county commissioners' court of said county, or before the justice of the peace before whom the property was taken up, and obtaining a certificate thereof, from the clerk of said court or justice of the peace, to the treasurer, shall receive the balance aforesaid.

"Sec. 15. And when any justice of the peace shall fail to pay any money for any estray or estrays, to be sold agreeably to this chapter, into the county treasury, within three months after selling such estray or estrays, such justice shall forfeit and pay the sum of twenty dollars with costs, to be recovered by action of debt, before any justice of the peace of the county, or other court having jurisdiction thereof, the one-half for the use of the county, and the other half for the use of any person suing for the same; and moreover, be liable to pay the price of such estray or estrays, with interest thereon.

"Sec. 16. If any estray or estrays, taken up as aforesaid, shall die or get away before the owner shall claim his or her right, the taker up shall not be liable for the same; and if any person shall take up any estray or estrays, at any other place within the inhabited parts of this State, than his or her plantation or place of residence, or without being qualified as required by this chapter, he shall forfeit and pay the sum of ten dollars with costs, recoverable before any justice of the peace of the county where the offense shall have been committed, and not having property sufficient to pay such fine,

he shall be liable to be confined one month in the jail of the county where he may be found, being found guilty of such offense according to law; and any person taking up any estray or estrays out of the limits of the settlements of this State, and failing to comply with the requisitions of this chapter, shall be liable to the same penalties; and if any person, taking up any estray or estrays of any species, fail to comply with the requisitions of this chapter, he shall, for every such offense, forfeit and pay to the informer, the sum of ten dollars with costs, recoverable before any justice of the county where such offense shall be committed, one-half to the use of the county, and the other half to the use of the person suing for the same.

"Sec. 17. If any person or persons shall hereafter stop or take up any keel, or flat boat, ferry flat, batteau, pirogue, canoe, or other vessel or water craft, or raft of timber, or plank found adrift on any water course within the limits or upon the borders of this State, and the same shall be of the value of five dollars or upwards, it shall be the duty of such person or persons, within five days thereafter, (provided the same shall not, before that time, be proven and restored to the owner,) to go before some justice of the peace of the proper county, and make affidavit in writing, setting forth the exact description of such vessel or craft, when and where the same was found, whether any, and if so, what cargo was found on board, and that the same has not been altered or defaced, either in whole or in part, since the taking up, either by him, her, or them, or by any other person or persons, to his, her, or their knowledge; and the said justice shall thereupon issue his warrant, directed to some constable of his county, commanding him forthwith, to summon three respectable householders of the neighborhood, if they cannot otherwise be had, whose duty it shall be, after being sworn by said justice, to proceed without delay, to examine and appraise such boat or vessel, and cargo, if any, and make report thereof, under their hands and seals, to the justice issuing such warrant, who shall enter such appraisement, together with the affidavit of the taker up, at large, in his estray book; and it shall be the further duty of said justice, within ten days after the said proceedings shall have been entered in his estray book as aforesaid, to transmit a certified copy thereof, to the clerk of the county commissioners' court of his county, to be, by him recorded in his estray book, and filed in his office.

"Sec. 18. In all cases where the appraisement of such boat or water craft, including her cargo, shall not exceed the sum of twenty dollars, the taker up shall advertise the same on the door of the court

house, and in three of the most public places in the county, within ten days after the justice's said certificate shall have been entered on the records of the county commissioners' court; and if no person shall appear to prove and claim such boat or water craft, within six months from the time of taking up as aforesaid, the property in the same shall vest in the taker up; but if the value thereof shall exceed the sum of twenty dollars, it shall be the duty of the clerk of the county commissioners' court, within twenty days from the time of the reception of the justice's said certificate at his office, to cause an advertisement to be set up on the door of the court house, and also a notice thereof to be sent to the public printer as aforesaid, who shall publish the same as aforesaid; and if the said vessel be not claimed and proven within six months from said advertisement, the same shall be vested in the taker up; nevertheless the former owner may, at any time thereafter, recover the valuation money, by proving his property and allowing to the taker up a reasonable compensation for his trouble, and costs, and charges.

Sec. 19. In all cases where services shall be performed by any officers or other person or persons under this chapter, the following fees or compensation, shall be allowed, to wit: To the justice of the peace, for administering oath to the taker up or finder, making an entry thereof, with report of the appraisers and making and transmitting a certificate thereof to the clerk of the county commissioners' court, fifty cents; to the clerk or justice for taking proof of the ownership of, and granting a certificate of the same, twenty-five cents; for registering each certificate transmitted to him by any justice as aforesaid, twelve and a half cents; for advertisements, including the newspaper publications, fifty cents in addition to the cost of such publication; to the constable for each warrant so served on appraisers, twenty-five cents; and to each appraiser, the sum of twenty-five cents; which said fees shall be paid by the taker up to the persons entitled thereto, whenever said services shall be rendered. All which costs and charges shall be reimbursed to the taker up or finder, in all cases where restitution of the property shall be made to the owner, in addition to the reward to which such person may be entitled for taking up as aforesaid.

"Sec. 20. If any person shall act contrary to the duties enjoined by this chapter, for which no penalty is hereinbefore pointed out, the person so offending shall, on conviction thereof, forfeit and pay for every such offense, not less than five, nor more than one hundred dollars, to be sued for in the name of the proper county, before any justice of the peace, or other court having cognizance thereof."

Under the estray laws, a party who has not given the required notice, cannot acquire the property by lapse of time, or by possession. Neither could he recover the property from another in an action of trover; and one who retains an estray without giving notice as the law directs, is a *tort feasor*.[1]

Notice of an Estray.

Taken up as an estray by the subscriber, at his place of residence, (*or* "plantation,") in ———, in ——— county, on the ——— day of ———, 18—, a [sorrel mare, four years old, or thereabouts, fifteen hands high, having a star in her forehead, and branded with the letters R. S. on the left shoulder,] which I intend to have appraised according to the statute in such case made and provided.

Dated the ——— day of ———, 18—. A. B.

Oath of the person taking up an Estray, and proof of posting advertisements.

Lake COUNTY,
Town (*or* "Precinct") of ——, } ss.

A. B., of said town, (*or* "precinct,") being duly sworn, deposes and says that he is a freeholder (*or* "housekeeper") of said county; that on the ——— day of ———, 18—, at his place of residence (*or* "plantation") in the said county, he took up an estray, a [sorrell mare,] particularly described in the advertisement of which the following is a copy, viz., (*here insert the advertisement*); that on the ——— day of ———, 18—, he posted up copies of the said advertisement in three of the most public places in said town (*or* "precinct,") (*or if neat cattle, &c., then say*, "his neighborhood"); that the marks or brands of the said mare have not been altered since the taking up.

Subscribed and sworn before me, this —— day of ——, 18—. A. B.
SHELDON WOOD, *J. P.*

(1) 13 Ill. 65.

Form of an Advertisement when an Estray is taken up without any of the settlements, &c.

NOTICE OF AN ESTRAY.

Taken up as an estray by the subscriber, of the county of ———, on the ——— day of ———, 18—, in the said county, a [bay horse, six years old, or thereabouts, fourteen hands high, having white hind feet, branded with the letters L. M. on the right shoulder,] running at large, without any of the settlements of this State; which I intend to have appraised, according to the statute in such case made and provided.

Dated the ——— day of ———, 18—. A. B.

Oath of the person taking up an Estray, and proof of posting the above advertisement.

Lake COUNTY,
Town (*or* "Precinct") of ——, } ss.

A. B., of said county, being duly sworn, deposes and says that he is a housekeeper, (*or* "freeholder") (*if the taker up is not a housekeeper or freeholder, state according to facts*); that on the ——— day of ———, 18—, in the said county, he took up an estray, a [bay horse,] particularly described in an advertisement, of which the following is a copy, (*here insert the advertisement*); that on the ——— day of ———, 18—, he posted up copies of the said advertisement in three of the most public places in said town (*or* "precinct") and that the marks or brands of the said horse have not been altered since the taking up.

Subscribed and sworn before me, the ——— day of ———, 18—. A. B.
J. BANGS, *J. P.*

Form of Appointment of Appraisers.

To E. F., G. H., and I. J., three housekeepers in the neighborhood of A. B., in ———, in the county of ———:

Whereas A. B. has made application before me, the subscriber, one of the justices of the peace in and for ——— county, for the appointment of three disinterested housekeepers in the neighborhood, to appraise a [sorrell mare,] taken up by him as an estray, at his place of

residence, (*or* "plantation") in said county, and proved before me that he posted up written advertisements of the taking up ten days previous to the making of said application:

This is therefore to appoint you to appear before me forthwith, (*or* "on the —— day of ——, 18—, at —— o'clock in the —— noon,") and after being duly sworn, to appraise the said estray, and to report to me your appraisement.

Witness L. M., Esquire, a justice of the peace in ———, in said county, the ——— day of ———, 18—.

L. M.,
Justice of the Peace.

Form of Warrant for Appraisers.

Lake COUNTY, }
Town (*or* "Precinct") of ——, } ss.

The People of the State of Illinois to any Constable of said County:

Whereas, A. B. has made application before *L. H. Bute*, Esquire, one of the justices of the peace of the said county, for the appointment of three disinterested housekeepers in the neighborhood, to appraise a [sorrell mare,] taken up by him as an estray, at his residence, (*or* "plantation,") in said county, and proved before the said justice that he had posted up written advertisements of the taking up ten days previous to the making of said application; and, whereas, it has been made satisfactorily to appear to the said justice, by the oath of the said A. B., that appraisers cannot be had without a warrant for that purpose:

We, therefore, command you to cause E. F., G. H. and I. J. personally to appear before the said justice forthwith, (*or* "on the —— day of ——, 18—, at —— o'clock in the —— noon,") at his office, in ———, to appraise, under oath, the said estray, and report to him the said appraisement.

In witness whereof the said justice has hereunto set his hand and seal, this —— day of ———, 18—.

L. H. BUTE, *J. P.* [SEAL.]

Form of Oath or Affirmation of Appraisers.

You, and each of you, do swear, (*or* "you do solemnly, sincerely and truly declare and affirm,") that you will appraise the [horse] now shown to you as an estray, taken up by A. B., without partiality, favor, or affection.

Form of Report of Appraisement.

Lake COUNTY,
Town (*or* "Precinct") of ——, } ss.

We, the undersigned, housekeepers in said town, (*or* "precinct,") appraisers, appointed and sworn by L. M., Esquire, one of the justices of the peace of said county, do respectfully report to you, the said justice, that we have examined a [bay horse, six years old, or thereabouts, fourteen hands high, having white hind feet, and branded with the letters L. M. on the right shoulder,] shown to us as an estray, taken up by A. B., and have appraised the said horse at the sum of ——— dollars.

Dated this ——— day of ———, 18—.

E. F. [SEAL.]
G. H. [SEAL.]
I. J. [SEAL.]

Form of Entry to be made by Justice on Estray Book.

Lake COUNTY,
Town (*or* "Precinct") of ——, } ss.

Be it remembered that on the —— day of ———, 18—, A. B. of said county appeared before me, L. M., Esquire, a justice of the peace of the said county, and took and subscribed the following oath, viz: (*set out the oath at length*); that I did thereupon appoint (*or* "cause") E. F., G. H. and I. J., three disinterested housekeepers of the neighborhood, to come before me forthwith, (*or* "on the —— day of ——, 18—,) to appraise the said estray, and report to me their appraisement: who did thereupon, forthwith (*or* "on the —— day of ——, 18—) appear, and having been by me duly sworn to appraise the said estray without partiality, favor or affection, did appraise the same and report to me their appraisement, in the words following, viz: (*here insert the report at length.*)

In witness whereof the said justice of the peace has hereunto set his hand and seal, the —— day of ——, 18—.

L. M., *J. P.* [SEAL.]

A copy of the above should be transmitted to the clerk in all cases, (except in case of neat cattle, sheep, hogs, and goats, when the valuation does not exceed five dollars,) and certified as follows, viz:

Lake COUNTY,
Town (*or* "Precinct") of ——, } ss.

I, L. M., one of the justices of the peace in and for the said county, do hereby certify that the above is a true copy of the proceedings in relation to the estray therein described, as entered by me on my estray book.

Dated this ——— day of ———, 18—.

L. M.,
Justice of the Peace.

Form of Advertisement of Neat Cattle, &c., by the justice, valuation not exceeding five dollars.

NOTICE OF AN ESTRAY.

Taken up, as an estray, by A. B., of ——— county, on the ——— day of ———, 18—, (*describe the estray,*) which has been appraised at the sum of —— dollars, by three appraisers, appointed and sworn by me.

Dated the ——— day of ———, 18—.

L. M.,
Justice of the Peace.

Form of Affidavit by taker up of water craft.

STATE OF ILLINOIS,
—— COUNTY, } ss.

A. B., of said county, being duly sworn, deposes and says that on —— day of ———, 18—, (*here state particularly where the boat was found, and give an exact description of the craft, whether any, and if so, what kind of cargo was found on board,*) that he then and there took up the said boat; and that the same has not been altered nor defaced either in whole or in part since the taking up, either by him or any other person or persons, to his knowledge.

A. B.

Subscribed and sworn to before me, this — day of —, A. D. 18—.
L. M., *J. P.*

Form of a Warrant to summon Appraisers.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The People of the State of Illinois to any Constable of said County, GREETING:

Whereas, A. B., of said county, has on the ——— day of ———, 185–, made affidavit in writing, before L. M. Esquire, one of the justices of the peace of the said county, that on the ——, day of ——, 185–, he found adrift on the —— river a (*here describe the craft as in the affidavit,*) and then and there took up the same:

You are, therefore, hereby commanded to summon three respectable householders of the neighborhood to appear forthwith before me, to be by me duly sworn to examine and appraise said flat boat.

Witness L. M., Esquire, justice of the peace, at —— in said county, this —— day of ——, 185–.

L. M.,
Justice of the Peace.

Oath of Appraisers.

You, and each of you, do solemnly swear that you will, without partiality, favor or affection, examine and appraise a flat boat taken up adrift by A. B., of —— county, and make a true report thereof.

Report of Appraisers.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

We, the undersigned, householders of said county, appraisers appointed and sworn by L. M., one of the justices of the peace in and for the said county, do respectfully report that we have examined a flat boat, (*describe the boat,*) shown to us as the one found adrift on the —— river, and taken up by A. B. of said county, and have appraised said flat boat at the sum of —— dollars, (*if it be a boat and cargo, then add*) and we do further report, that we have appraised the cargo of said boat as follows, viz:

10 Barrels of flour,.....$40,00.
50 Bushels of potatoes,..... 12,00.

In witness whereof, we have this ——— day of ———, 185–, set our hands and seals.

E. F. [SEAL.]
G. H. [SEAL.]
I. J. [SEAL.]

Form of Entry by a justice in his estray book in case of taking up water craft.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

Be it remembered that on the ——— day of ———, 185–, A. B., of said county, appeared before me, L. M., a justice of the peace, and took and subscribed an affidavit in the words following, to wit: (*set out affidavit at length.*)

That I did thereupon appoint E. F., G. H., and I. J., three respectable householders of the neighborhood, forthwith to appraise the said flat boat, ("and cargo," *if any,*) who being by me first duly sworn to examine and appraise the same without partiality, favor or affection, and make a true report thereof, made their report to me in the words following, viz: (*Here set out the report at length.*)

In witness whereof, the said justice has hereunto set his hand and seal, this —— day of ——, 185–.

L. M. [SEAL.]

STATE OF ILLINOIS, } ss.
—— COUNTY, }

I, L. M., justice of the peace in and for the said county, do hereby certify that the above is a true copy of the proceedings in relation to the flat boat, &c., therein described, as entered by me on my estray book.

Dated the ——— day of ———, 185–.

L. M., *J. P.* [SEAL.]

Advertisement by the taker up, where appraisement of the craft, including the cargo, does not exceed twenty dollars.

NOTICE.

Taken up by the subscriber, on the ——— day of ———, 185–, (*describe accurately the craft, and cargo, if any,*) found adrift, (*state when found,*) in ——— county, which I have caused to be appraised according to law.

Dated the ——— day of ———, 185–.

A. B. [SEAL.]

How to proceed in Counties adopting Township Organization.

By an act to amend chapter thirty-nine of the revised Statutes, entitled "Estrays," approved February 15, 1855, it is enacted:

"Sec. 1. That in counties which have adopted or shall hereafter adopt township organization, the town clerks of every town thereof shall provide a book for the purpose of registering the mark, brand and color of any animals enumerated in chapter thirty-nine of the revised statutes, taken up as an estray, which book shall be open at all times for inspection by all persons interested therein, and shall be deemed a part of the records of said town.

"Sec. 2. Any person who shall take up any estray according to the provisions of the act to which this is an amendment, shall cause to be registered in the book provided in the foregoing section, the marks, brands and color of said estray within five days from the time of such taking up."

CHAPTER VIII.

OF FORCIBLE ENTRY AND DETAINER.

Rev. Stat. 256, Sec. 1. "If any person shall make any entry into any lands, tenements or other possessions, except in cases where entry is given by law, or shall make any such entry by force, or if any person shall willfully and without force, hold over any lands, tenements, or other possessions, after the determination of the time for which such lands, tenements, or possessions were let to him, or to the person under whom he claims, after a demand made in writing for possession thereof, by the person entitled to such possession, such person shall be adjudged guilty of a forcible entry and detainer, or a forcible detainer, as the case may be, within the intent and meaning of this chapter.

"Sec. 2. Any justice of the peace of any county in this State, shall have jurisdiction of any case arising under this chapter, and on complaint upon oath of the party aggrieved, or his authorized agent, shall issue his summons directed to the sheriff (or coroner, if the sheriff be interested,) of his county, commanding him to summon the person against whom the complaint is made, to appear before such justice at a time and place to be stated in such summons, not more than twelve nor less than six days from the time of issuing such summons, and which shall be served at least five days before the return day thereof, by reading the same to the defendant, or leaving a copy at his place of abode; and the said justice shall also, at the same time, issue a precept to the sheriff or coroner, commanding him to summon a jury of twelve good and lawful men of the county, to appear before him at the return of such summons, to hear and try the said complaint. And if any part of the jurors shall fail to attend or be challenged, the said justice may order the sheriff or coroner to complete the number, by summoning and returning others forthwith.

"Sec. 3. The sheriff or coroner shall return to the said justice, the summons and precept as aforesaid, on the day assigned for trial, and shall state on the back of said summons, how the same was served, and on the back of said precept, a list of the names of the jurors. And if the defendant does not appear, the justice shall proceed to try the said cause, *ex parte*, or may, in his discretion, postpone the trial for a time not exceeding ten days; and the said justice shall also issue subpœnas for witnesses, and proceed in the trial of said cause, as in other cases of trial by jury.

"Sec. 4. No indictment or inquisition shall be necessary in any case arising under this chapter; but the justice shall set down in writing, the complaint under oath, particularly describing the lands, tenements, or possessions in question, and shall keep a record of the proceedings had before him; and if the jury shall find the defendant guilty, he shall give judgment thereon, for the plaintiff to have restitution of the premises and his costs, and shall award his writ of restitution; and if a verdict be given for the defendant, judgment shall be given against the plaintiff for costs, and execution issued therefor.

"Sec. 5. If either party shall feel aggrieved by the verdict of the jury or the decision of the justice on any trial had under this chapter, he or she may have an appeal to the circuit court, to be obtained in the same manner, and tried in the same way as appeals from justices of the peace in other cases.

"Sec. 6. If the defendant or defendants appeal, he or they shall also insert in the appeal bond, a clause conditioned for the payment of all rents becoming due, if any, from the commencement of the suit, until the final determination thereof. If the appeal be taken within five days after the trial had before the justice, no writ of restitution or execution shall be issued by him; and the circuit court, on giving judgment for the plaintiff, shall award a writ of restitution, and execution for costs, including the costs before the justice; and if judgment be for the defendant, he shall recover costs in like manner, and have execution for the same."

Amendment to the foregoing. By an act to extend the jurisdiction of justices of the peace, and constables, in action of forcible entry and detainer, or forcible detainer only, approved February 25th, 1845,[1] it is enacted:

"Sec. 1. That in all actions of forcible entry and detainer, or forcible detainer only, hereafter to be brought in this State, it shall be

(1) See Rev. Stat. 582.

lawful for constables in the respective counties where such shall be brought, to serve all process therein, and who shall be entitled to the same fees and emoluments therefor, as sheriffs are now authorized by law to receive for similar services.

"Sec. 2. That when any such action shall be hereafter brought, the justice of the peace before whom such suit shall be commenced, shall direct all process to be issued therein to the sheriff or any constable of his county to execute; and when such process shall be issued and directed, it shall be at the option of the plaintiff and defendant to give their respective process to the sheriff of the county, or to any constable of the justice's district, to execute and return the same, any law now in force in this State to the contrary notwithstanding."

There are four cases in which a forcible entry and detainer may be maintained in this State: 1. Where there has been a forcible entry upon the possession of another. 2. Where there has been an illegal—as contradistinguished from a forcible—entry upon such possession. 3. Where a person settles upon the unsold public lands within this State, according to the pre-emption or claim law. 4. Where there has been a wrongful holding over by a tenant, after the expiration of the time for which the premises may have been let to him. In the three first, there must be an illegal and forcible entry upon the actual possession of another.[1] In order to give a justice of the peace jurisdiction in this action, the complaint should contain sufficient allegations to bring it within one of the several cases contemplated by the statute,[2] and in order to maintain the action, two things must concur, First, The possession must be illegally or forcibly taken, which constitutes the entry; and Second, The possession so taken must be withheld, which constitutes the detainer.[3] It is not necessary to prove actual force and physical violence.[4]

A complaint for forcible entry and detain r, should show clearly the foundation of the right which is sought to be enforced, and that the wrongful or illegal entry was made upon the actual or constructive possession of the plaintiff, or the existence of landlord and tenant, and a wrongful holding over.[5]

There is no precise form for a complaint in an action of forcible entry and detainer. It is sufficient, if the complaint show that the relation of landlord and tenant existed, that the time for which the

(1) 1 Scam. 409. (2) 3 Gil. 449. (3) 5 Id. 219.
(4) 1 Scam. 409. (5) 3 Gil. 443.

premises let has expired, and that the tenant persisted in holding the premises after demand made in writing for the possession.[1]

The description of the premises sought to be regained, should be exact and particular.[2] Where a complaint only stated that "the complainant was entitled to the possession of a house and lot in the town of Galena, wherein one Wells lives, and that said Wells refuses to give possession of said house, although he was notified so to do in writing," it was held insufficient.[3]

The action of forcible entry and detainer is purely a civil remedy, the sole object of which is to regain a possession which has been invaded, and the only judgment that can be rendered is, that the plaintiff have restitution of the premises.[4]

The jurisdiction of this action is, in the first place vested exclusively in justices of the peace; county and circuit courts obtain jurisdiction only by appeal.[5]

Where a tenant claims adversely to his landlord, his possession from that moment becomes tortious, and the landlord may regain it by an action of forcible entry and detainer, whether it is occupied by the tenant, his agents or assigns.[6]

In a case of forcible detainer by the landlord, against the tenant, the latter is not permitted to show that the title of the former has expired, or that some third person has the right to the possession. The tenant must first surrender the possession to him from whom he received it, before he shall be permitted to say that his landlord has no longer a right to retain it.[7]

Where a lease provides that the party may re-enter and take possession, on non-payment of rent, it will be sufficient to aver a demand in general terms, and that the lease provides for re-entry, &c.; the utmost technical strictness is not necessary in a declaration before a justice of the peace; if it is substantially correct, it will be good.[8]

In an action of forcible detainer only, the plaintiff should state that the defendant willfully, and without force, holds over the premises after the time has expired for which they are leased; or, in other words, the relation of landlord and tenant should be shown to exist, and a holding over after a demand made in writing by the landlord.[9]

A verdict of a jury which simply finds the defendant guilty, will be

(1) 5 Gil. 293; 11 Ill. 93.
(2) 11 Ill. 93; 1 Scam. 407.
(3) Breese, 264.
(4) 5 Gil. 219.
(5) 4 Id. 131.
(6) 14 Ill. 135; 5 Gil. 62.
(7) 5 Gil. 41.
(8) 3 Id. 291.
(9) Breese, 264.

sufficient.[1] The judgment in this action will be that the plaintiff have restitution of the premises of which he has been unjustly deprived.[2]

The proceedings in this action, under our statute, being contrary to the common law, the statute must be strictly followed.[3]

Form of Complaint for an Entry without force.

STATE OF ILLINOIS, }
Cook COUNTY, } ss.

The complaint of A. B., of ——, in said county, who, being duly sworn, upon his oath gives L. M., one of the justices of the peace of said county, to understand and be informed that C. D., on the —— day of ———, 18—, at ———, in the county aforesaid, did unlawfully enter into the lands (*or* "tenements") and possessions of the complainant, there situate, known and designated as follows, to wit: (*describe the land,*) and then and there did unlawfully put out and expel the complainant from his said lands (*or* "tenements") and possessions, wherein this complainant had, at the time aforesaid, an estate of freehold then and still subsisting, (*or* "was possessed of a certain term of years, then and still to come and unexpired," *or* "been in quiet and peaceable possession for the space of eight years preceding, and that his interest therein still subsists,") and the said C. D. still doth hold and detain the said lands (*or* "tenements") and possessions from the said complainant, unlawfully and without right, contrary to the form of the statute in such case made and provided. Therefore, he prays that the said C. D. may be summoned to answer this complaint.

A. B.

Subscribed and sworn before me, the —— day of ——, 18—.
L. M., *J. P.*

Form of a Complaint for forcible Entry.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The complaint of A. B., of ——, in the said county, who, being duly sworn, upon his oath gives L. M., one of the justices of the peace in said county, to understand and be informed that C. D. on the —— day of ——, 18—, at ——, in said county, did unlawfully make a forcible entry into the lands (*or* "tenements") and possessions of this

(1) 5 Gil. 293. (2) Id. 219; 2 Scam. 66. (3) Breese, 264.

complainant, there situate, and known and designated as follows, to wit: (*insert the description,*) and then and there with strong hand and multitude of people, did violently, forcibly and unlawfully eject and expel the complainant from the said lands (*or* "tenements") and possessions wherein this complainant had, at the time aforesaid, an estate of freehold, then and still subsisting, (*or* "was possessed of a certain term of years, then and still to come unexpired," *or* "been in quiet and peaceable possession for the space of six months, then next preceding,") and that the said C. D. still doth hold and detain the said lands (*or* "tenements,") and possessions from the said A. B., unlawfully, forcibly, and with strong hand, against the form of the statute in such case made and provided. Therefore, he prays that the said C. D. may be summoned to answer to the said complaint.

Sworn and subscribed before me, the —— day of ——, 18—.
L. M., *J. P.*

A. B.

Form of Demand of Possession.

To Mr. C. D.:

Sir: Take notice that I hereby demand that you quit and immediately deliver up possession of the lands (*or* "tenements") and possessions which you now hold of me, situate in ——, in the county of ——, being the same now occupied by you. Mr. E. F. is hereby authorized to receive possession of said land for me.

Dated the —— day of ——, 18—.

Yours, &c., A. B.

Form of Notice, when given by an agent.

To Mr. C. D.:

Sir: Take notice that I do, as the agent for and on behalf of your landlord, A. B., of ——, demand that you quit and immediately deliver up possession of the lands (*or* "tenements") and possessions which you now hold of the said A. B., situate in ——, in —— county, being the same on which you now reside.

Dated the —— day of ——, 18—.

Yours, &c., G. H.,
Agent for the said A. B.

Form of Complaint for a forcible Detainer.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The complaint of A. B. of ———, in said county, who being duly sworn, upon his oath gives L. M., Esquire, a justice of the peace of said county, to understand and be informed that on or about the —— day of ———, 185–, he did demise and lease to C. D. of the place aforesaid, all that certain farm (*or* "messuage,") situate in ———, in the county aforesaid, known and designated as follows: (*describe the premises,*) for and during the term of one year from the said —— day of ———, 185–, and that the said C. D. willfully and without force, after the expiration of the said lease, held over and still continues in possession of the premises without the permission of this complainant, notwithstanding demand has been made in writing by this complainant upon the said C. D., to quit and deliver up possession thereof to him; therefore he prays that the said C. D. may be summoned to answer to the said complaint.

Subscribed and sworn before me, the —— day of ———, 185–.
L. M., *J. P.*

A. B.

Form of Summons.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The People of the State of Illinois to the Sheriff or any Constable of the said County:

Whereas complaint has been made before L. M., Esquire, one of the justices of the peace of said county, that C. D. on the —— day of ———, 185–, at ———, in the county aforesaid, did unlawfully enter into the lands and possessions of A. B. there situate, and known and designated as follows, to wit: (*describe the premises,*) and then and there did unlawfully put out and expel the said A. B. from his said lands and possessions, wherein he had been in the quiet and peaceable possession for the space of eight years preceding, and that his interest therein still continues, and that the said C. D. still doth hold and detain the said lands and possessions from the said A. B., unlawfully and without right, (*or if for any other cause, set it forth in the complaint*):

We, therefore, command you to summon the said C. D. to appear before the said justice at his office in ———, in said county, on the —— day of ———, instant, at —— o'clock, in the —— noon, to answer the said complaint; and have you then and there this precept. Hereof fail not at your peril.

Given under the hand and seal of said justice, the ——— day of ———, 185–.

L. M., *J. P.* [SEAL.]

Form of a Subpoena.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The People of the State of Illinois to I. J., K. L., M. N. and O. P.:

You, and each of you, are hereby required to be and appear before L. M., Esquire, one of the justices of the peace of the said county at his office in ———, in said county, on the —— day of ——, instant, at —— o'clock, in the —— noon, to testify the truth, according to your knowledge, touching a certain complaint made and exhibited by A. B. before the said justice, against C. D., for a forcible entry and detainer (*or* "detainer,") and for which the said C. D. is then and there to be tried on the part of the complainant, (*or* "on the part of the defendant.")

Given under the hand and seal of the said justice, the ——— day of ———, 185–.

L. M., *J. P.* [SEAL.]

There may be four witnesses put in one subpœna.

Form of Precept for summoning a Jury.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The People of the State of Illinois to the Sheriff or or any Constable of the said Connty:

We command you to summon twelve good and lawful men of your county, who are in no wise of kin to A. B. or C. D., to appear before L. M., Esquire, one of the justices of the peace in said county, at his office in ———, in the said county, on the —— day of —— instant, at —— o'clock in the —— noon, to make a jury, upon their oaths to hear and try the traverse of the complaint of the said A. B., and now

pending before the said justice against the said C. D., for a forcible entry and detainer (*or* "detainer,") against the form of the statute, in such case made and provided; and that you make a list of the persons summoned, and certify the same on the back of this precept, and make return hereof to the said justice.

Given under the hand and seal of the said justice, the —— day of ——, 185–.

L. M., *J. P.* [SEAL.]

Jurors' Oath upon the Traverse.

You, and each of you, do swear that you will well and truly hear, try and determine this issue of traverse between A. B., the complainant, and C. D., the defendant, and a true verdict give according to the evidence. So help you God.

Form of Oath of Witness.

You do swear, (*or* "you do solemnly, sincerely and truly declare and affirm,") that the evidence which you shall give upon the issue of traverse, between A. B., the complainant, and C. D., the defendant, shall be the truth, the whole truth, and nothing but the truth. So help you God.

The verdict of the jury should be, "We find the defendant guilty in manner and form as stated in complaint," *or* "We find the defendant not guilty."

Form of Record of Proceedings.

A. B.
vs.
C. D. } —— COUNTY, ss.

Be it remembered that on the —— day of ——, 18—, at ——, in said county, A. B. complains to me, L. M. Esquire, one of the justices of the peace in and for the said county, (*what follows in brackets must correspond with the charge in the complaint,*) [that C. D. on the —— day of ——, 18—, at ——, in the county of ——, did unlawfully enter into the lands and possessions of the said A. B., there situate, and known and designated as follows, to wit: (*insert the description*); and then and there did unlawfully put out and expel the complainant from his said lands and possessions wherein the said A. B. had been in

the quiet and peaceable possession for the space of eight years preceding, and that his interest therein still subsists, and that the said C. D. still doth hold and detain the said lands and possessions from the said A. B. unlawfully and without right.]

Whereupon the said A. B., on the —— day of ——, 18—, prayed of me, being a justice as aforesaid, to issue a summons in this behalf, and I, having heard the said complaint and prayer, did thereupon issue a summons, in the name of the people of the State of Illinois, directed to the Sheriff of said county, requiring him to summon the said C. D. to appear before me, at my office in ——, on the —— day of ——, 18—, at — o'clock, in the —— noon, which was duly returned with an endorsement thereon, signed by the said sheriff, as follows: "Personally served, the —— day of ——, 18—, by reading to the within named C. D.;" and on the said —— day of ——, 18—, I issued a precept for a jury to the said sheriff, commanding him to summon a jury of twelve good and lawful men of the county, to appear before me at the return of the said summons, to hear and try the said complaint, which was returned by the said sheriff with a list of the names of the jurors on the back thereof, and certified by him.

And on the ——— day of ———, 18—, in pursuance of the said summons, personally appeared before me, as well the said C. D. as the said A. B., and the said complaint having been read to the said C. D., he said that he was not guilty of the matters set forth therein. And the jurors, of the jury summoned as aforesaid, having been called, tried, and sworn, did sit together before me, and hear the proofs and allegations of said parties, which were delivered publicly in their presence; and after hearing the said proofs and allegations, the jury were kept together in a convenient place by the said sheriff, until they had agreed on their verdict.[1] And the said jury having agreed on their verdict, came into court, and delivered the same publicly, and thereby found the said C. D. guilty, in manner and form as set forth in the complaint.

It is therefore considered by me, the said justice, that the said A. B. recover and be restored to the possession of the lands and possessions particularly described and designated in said complaint, and that he

(1) If the verdict is for the defendant, then say, "And the said jury having agreed on their verdict, came into court and delivered the same publicly, and thereby found the said C. D. not guilty. It is therefore considered that the said C. D. recover against the said A. B., the sum of ——— dollars for his costs and charges by him laid out and expended in his defense on this behalf, according to the form of the statute in such case made and provided, and that he have execution therefor. In testimony whereof," &c.

have a writ of restitution therefor; and it is further considered, that he recover against the said C. D., the sum of ——— dollars, for his costs and charges, by him laid out and expended in and about the prosecution of this suit, according to the form of the statute in such case made and provided, and that he have execution therefor.

In testimony whereof, I, the said L. M., one of the justices of the peace, as aforesaid, have hereunto set my hand and seal at ———, in the county of ———, the ——— day of ———, 18—.

L. M., *J. P.* [SEAL.]

Form of Writ of Restitution.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The People of the State of Illinois to the Sheriff of the said County:

Whereas A. B., lately exhibited his complaint under oath, in writing, before L. M., Esquire, one of the justices of the peace of said county, that (*set out the charge as in the complaint,*) and prayed that the said justice issue a summons in that behalf; whereupon the said justice issued a summons, directed to the sheriff, requiring him to summon the said C. D. to appear before the said justice on the ——— day of ———, 18—, and at the same time issued a precept to the sheriff, commanding him to summon a jury to appear before him at the same time and place, on which day the said C. D. appeared before the said justice, and traversed the said complaint, and the jury being sworn, after hearing the proofs and allegations of the parties, found the said C. D. guilty; whereupon it was considered by the said justice, that the said A. B. be restored to the possession of the said lands and possessions, and have a writ of restitution therefor; and it was further considered by the said justice that the said A. B. recover against the said C. D. the sum of ——— dollars for his costs and charges by him laid out and expended, in and about the prosecution of said suit, as appears to us by the record of the said justice:

We, therefore, command you to go to the said premises without delay, taking with you the power of the county, if necessary, and to cause the said A. B. to be restored and put in full possession of the said lands (*or* "tenements,") and possessions, according to his estate and right therein before the said entry, (*or* "detainer,") in pursuance of the statute in such case made and provided.

And we also command you to levy of the goods and chattels of the

said C. D. in your county, the said sum of ——— dollars, which was adjudged to the said A. B. for his costs and charges aforesaid, whereof the said C. D. is convicted, as appears to us by the said record, and that you make return of what you shall do hereon, with all convenient speed.

Given under the hand and seal of the said justice, the ——— day of ———, 185–.

L. M., *J. P.* [SEAL.]

Form of Execution for Costs against the Complainant.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

The People of the State of Illinois to the Sheriff of the said County:

Whereas, A. B. lately exhibited his complaint under oath in writing before L. M., Esquire, one of the justices of the peace of the said county, against C. D. for a forcible entry and detainer, whereupon the said C. D. was summoned, and appeared before the said justice on the —— day of ———, 185–, and traversed the said complaint, and the jury for that purpose duly summoned and sworn, after hearing the proofs and allegations of the parties, by their verdict found the said C. D. not guilty; whereupon it was considered by the said justice that the said C. D. recover against the said A. B. the sum of ——— dollars for his costs and charges by him laid out and expended in and about his defense in this behalf, as appears to us by the record of the said justice:

We therefore command you that of the goods and chattels of the said A. B. in your county, you levy the sum of ——— dollars for his costs and charges by the said C. D. laid out and expended as aforesaid. And do you make return of what you shall do hereon with all convenient speed.

Given under the hand and seal of the said justice, the —— day of ——, 185–.

L. M., *J. P.* [SEAL.]

CHAPTER IX.

OF INCLOSURES AND FENCES.

Rev. Stat. 280, Sec. 11. "For the better ascertaining and regulating of partition fences, it is hereby directed that when any neighbors shall improve lands adjacent to each other, or when any person shall inclose any land adjoining to another's land already fenced, so that any part of the first person's fence becomes the partition fence between them, in both these cases the charge of such division fence, (so far as inclosed on both sides,) shall be equally borne and maintained by both parties; to which, and other ends in this chapter mentioned, the county commissioners, yearly, and every year in the term next after the month of January, shall nominate, and are hereby required to nominate and appoint three honest, able men for each township, who being duly sworn to the faithful discharge of the duties of their appointment, shall proceed at the request of any person or persons feeling him or themselves aggrieved, to view all such fence and fences, about which any difference may happen or arise; and the aforesaid persons, or any two of them, in each township respectively, shall be the sole judges of the charge to be borne by the delinquent, or by both or either party, and of the sufficiency of all fences, whether partition fences or others."

By the Act to provide for township organization, approved February 17th, 1851, Article 3, Sec. 3, the assessor and the three commissioners of highways of each town, in counties adopting township organization, are made fence viewers by virtue of their office.[1]

It would seem that before a party can be made liable for making or repairing a partition fence, the proportion which he is bound to make

(1) The forms here given, have been prepared with reference to township organization, (See Haines' Town. Organ., page 88,) and when used in counties not adopting this system, the only change necessary will be to insert the number of the township, according to the customary description, instead of the name of the town.

or repair, ought to be either agreed upon or else assigned according to law, for until this is done, the obligation is undefined, unless it may have been otherwise determined by prescription;[1] and where there exists in such case, a joint obligation to make the fence, it is held that no legal effect would flow from it; for then each party would be bound equally to make every part; and if the fence be defective, each party would be chargeable with the deficiency; and upon the escape of cattle from either close to the other, through a defect in any part of the fence, the owner of the cattle could not allege the escape to be from the deficiency of the other's fence.[2]

Agreement to divide Partition Fence.

On this —— day of ———, in the year of our Lord one thousand eight hundred, &c., it is agreed by and between A. B. of the county of ———, and State of Illinois, of the one part, and C. D. of said county, of the other part, as follows, viz.:

Whereas, the said A. B. has heretofore erected a fence on the division line, between his lands and the lands of the said C. D., which said fence commences at the (*here describe location of fence,*) and whereas, after the erection of said fence, the said C. D. inclosed a field on the east side of said division line, so that sixty rods of said fence, commencing at the (*here describe the location of said portion of fence,*) has become, and now is a partition fence between the fields of the said A. B. and C. D., and whereas, the said C. D. has paid to the said A. B. one half of the expense of building said sixty rods of fence, it is therefore, now agreed between the parties hereto, that the thirty rods on the north part of the said sixty rods, shall be well and sufficiently maintained and kept in repair by the said A. B., and the remainder of the said sixty rods shall be kept in like repair by the said C. D.

In witness whereof, we have hereto set our hands and seals, the day and year aforesaid.

Executed and delivered in the presence of

A. B. [SEAL.]
C. D. [SEAL.]

(1) 6 Mass. 100.

(2) 6 Mass. 101; 19 Johns. 385.

Form of Certificate of Fence Viewers of Value of Fence in case of an adjoining Owner.

—— COUNTY,
TOWN OF ———, } ss.

Whereas, A. B. and C. D. were and are, as appears to us, the owners of certain adjoining lands in said town of ———. The lands of the said A. B. being described as (*describe the premises in question with reasonable certainty,*) and the land of the said C. D. being described as (*describe the land,*) and the said A. B. formerly permitted his land so adjoining that of the said C. D., to lie open and unenclosed, while the land of the said C. D., has been and is now enclosed by a fence; and whereas, the said A. B. has lately enclosed his said land, so that now the fence of the said C. D., has become a division fence between said lands; and whereas a dispute or disagreement has arisen between the said parties concerning the proper portion of the value of said division fence to be paid by the said A. B. Now therefore, we, the undersigned fence viewers of said town of ———, do hereby certify that we have made inquiry into the facts, and examined the premises; that the following is a correct description of the fence built by the said C. D. as aforesaid, to wit: *Commencing at the north-west corner of section eight in said town, and running thence south on the west line of said section, one hundred and sixty rods to the south-west corner of said quarter section;* and that we have estimated the value of said fence to be —— dollars, and that the proportion of said fence to be paid by said A. B. to the said C. D., is —— dollars.

Given under our hands this —— day of ——, A. D. 18—.

E. F.,
G. H.,
I. J.,
K. L., } *Fence Viewers of the Town of* ——.

Form of Certificate of Fence Viewers in relation to Fence to be made or maintained by Owners of adjoining Lands.

—— COUNTY,
TOWN OF ——— } ss.

Whereas, A. B. and C. D., are, as appears to us, the owners of certain lands adjoining, in the said town of ——, (*here describe the lands*

as in the foregoing form, with reasonable certainty,) and as dispute or disagreement has arisen between them concerning the respective portions of a division fence to be maintained (*or* "to be made," *as the case may be,*) by them. Now therefore, we the undersigned fence viewers of the said town of ——, do hereby certify that upon the application of the said parties, we did, on the —— day of ———, A. D. 18—, proceed to examine the premises, and hear the allegations of the parties, and that we do determine that (*here state the determination of the viewers according to the fact.*)

Given under our hands this —— day of ——, A. D. 18—.

E. F.,
G. H.,
I. J.,
K. L.,
} *Fence Viewers of the Town of* ——.

"Sec. 12. When they shall judge any fence to be insufficient, they shall give notice thereof to the owners or possessors; and if any one of the owners or possessors, upon request of the others, and due notice given by the said viewers, shall refuse or neglect to make or repair the said fence or fences, or to pay the moiety of the charges of any fence before made, being the division or common fence, within twenty days after notice given, then, upon proof thereof before two justices of the peace of the respective county, it shall be lawful for the said justices to order the person aggrieved, and suffering thereby, to make or repair the said fence or fences, who shall be reimbursed his costs and charges from the person so refusing or neglecting to make or repair the partition fence or fences aforesaid, or to order the delinquent to pay the moiety of the charge of the fence before made, being a division or common fence, as the case may be."

Form of Certificate of Fence Viewers in adjudging fence insufficient between adjoining lands.

——— COUNTY,
TOWN OF ——— } ss.

Whereas, A. B. and C. D. are, as appears to us, the owners of certain lands adjoining, in said town of ——, (*here describe the lands of each with reasonable certainty,*) and a dispute or disagreement has arisen between them as to the sufficiency of a division fence between the said lands; and we, the undersigned fence viewers of the said town

of ——— having, at the request of the said parties, (*or one of them, as the case may be, naming him,*) proceeded to view such fence, and having viewed the same, and heard the allegations of the respective parties, do adjudge and determine that the portion of said fence, to wit: (*here describe it,*) which belongs to the said C. D. to maintain and keep in repair, is not a good and sufficient fence; and that the said C. D. ought, and he is hereby requested, to repair the same, or to make a good and sufficient fence, within twenty days from the time he shall be notified of this our determination in the premises, and in default thereof, that the said A. B. will sufficiently repair said fence, to reimburse his costs and charges from the said C. D.

Given under our hands this —— day of —— A. D. 18—.

E. F.,
G. H.,
I. J.,
K. L.,
} *Fence Viewers of the Town of* ——.

Form of Notice to be given by Fence Viewers, to an adjoining owner, of their determination in relation to insufficiency of partition fence

To A. B., of the town of ——, *in the county of* ——:

SIR:—You will take notice that we, the undersigned fence viewers of said town of ——, after full hearing, did make the following certificate, to wit: (*here insert a copy of the certificate,*) and you will repair the said fence, in said certificate mentioned, (*or make it, as the case may be,*) so that the same shall be a good and sufficient fence, within twenty days from the time you shall have received this notice.

Given under our hands this —— day of ——, A. D. 18—.

C. D.,
E. F.,
G. H.,
I. J.,
} *Fence Viewers of the Town of* ——.

Form of Request by an adjoining owner, after determination of fence viewers, to make, or repair partition fence.

To A. B., of the town of ——, *in the county of* ——:

The fence viewers of the said town of ——, having, on the —— day of ——, A. D. 18—, determined and certified that a certain partition fence, between or adjoining in said town, so far as it belongs to you to maintain the same, is not a good and sufficient fence; you are, therefore, hereby requested to repair the same, so as to make it good

and sufficient, within twenty days from this date, (*or make the same, as the case may be,*) and in default thereof, I shall apply to two justices of the peace of the said county of ——, for an order to authorize me to repair (*or make*) the said fence, and requiring you to reimburse my costs and charges thereof. C. D.

Dated this —— day of ——, A. D. 18—.

In proceeding under the *Act regulating Inclosures*, it is necessary that the justices of the peace, before whom proceedings are had, should notify the defendant of the same. An appeal lies from the decision of two justices of the peace, under the *Act regulating Inclosures.*[1]

Form of Notice by two Justices of the Peace to person refusing or neglecting to make or repair fence, &c. Of Proceedings to be had before them.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

To A. B.:

You are hereby notified that C. D. has this day filed with E. F., Esquire, a justice of the peace in and for said county, a certain certificate of fence viewers of the town of ——, in said county, of which the following is a copy: (*here insert a copy of certificate of viewers,*) and that the said C. D. has applied to the above named E. F., Esquire, and also to G. H., Esquire, a justice of the peace in and for said county, to hear proof in the premises, and for such order thereon as the case shall require; and that the said justices will, on the —— day of ——, A. D. 18—, at — o'clock — M., at the office of the said E. F., Esquire, in the town of ———, in said county, proceed to hear such proof as may be then and there offered, and to make such order in the premises as the case shall seem to require. You can then and there appear, and be heard, if you so desire.

Given under the hands of said justices this —— day of ——, of ——, A. D. 18—.

E. F.
G. H.

Form of Order of two Justices in relation to Partition Fence between adjoining Lands.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

Whereas, the fence viewers of the town of ——, in said county, did, on the —— day of ——, A. D. 18—, determine and certify as fol-

(1) 1 Scam. 515.

lows, to wit: (*here insert a copy of the certificate of viewers in the case,*) and whereas it has been made to appear to us, by satisfactory proof, that the said A. B. was duly notified of the action and determination of said viewers; and whereas it has further been made to appear to us, by other like satisfactory proof, that the said C. D. did, on the —— day of——, A. D. 18—, request the said A. B. to repair the said fence, (*or as the case may be,*) within twenty days from that date; and it further appearing, by like satisfactory proof, that the said A. B. hath wholly refused to repair (*or as the case may be,*) said fence, therefore we, the undersigned justices of the peace, in and for the county aforesaid, due notice having been given by us to the said A. B., being now fully advised in the premises, do order that the said C. D. repair (*or as the case may be,*) said fence, and that he be reimbursed his costs and charges therefor from the said A. B.

Witness our hands this —— day of ——, A. D. 18—.

E. F.
G. H.

"Sec. 13. If the delinquent shall neglect or refuse to pay the party injured the moiety of the charge of any fence before made, or to reimburse the costs and charges of making or repairing the said fence or fences, under the order aforesaid, then the same shall be levied upon the delinquent's goods and chattels, under warrant from a justice of the peace, by distress and sale thereof, the overplus, if any, to be returned to the said delinquent."

Form of Warrant of Distress by a Justice of the Peace against a Delinquent failing to comply with the foregoing order.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The People of the State of Illinois to any Constable of said County, GREETING:

Whereas, it was, on the —— day of ——, A. D. 18—, ordered by E. F. and G. H., two justices of the peace in and for said county, that, (*here recite the order,*) and whereas it has been made to appear to me, the undersigned, a justice of the peace in and for said county, that the said C. D. has repaired (*or as the case may be,*) the said fence, and that the said C. D. hath not been reimbursed his costs and charges from

the said A. B., which is —— dollars and —— cents. Now, therefore, these are to command you, that of the goods and chattels of the said A. B. to be found in your county, you make the sum of —— dollars and —— cents, together with costs of proceedings, and make return of this writ to me, the said justice, with your doings thereon, within seventy days from the date hereof. And this you will not omit.

Given under my hand and seal this —— of ——, A. D. 18—.

L. M., *J. P.* [SEAL.]

"Sec. 14. But nothing herein contained shall be intended to prevent or debar any person or persons from inclosing his or their grounds in any manner they please, with sufficient walls or fences of timber, other than those heretofore mentioned, or by dikes, hedges and ditches, all such walls and fences to be in height at least five feet from the ground; and all dikes to be at least three feet in height from the bottom of the ditch, and planted and set with thorns and other quickset, so that such inclosures shall fully answer and secure the several purposes meant to be answered and secured by this law: *Provided*, That such walls or fences of timber, other than those heretofore mentioned, and dikes, hedges and ditches shall be subject to all provisions, inspections and restrictions, to which by this chapter, any other inclosure or fence is made liable, according to the true intent and meaning hereof.

"Sec. 15. If any horse, mare, gelding, colt, mule or ass, sheep, lamb, goat, kid, bull, cow, heifer, steer or calf, or any hog, shoat or pig, shall break into any person's inclosure, the fence being good and sufficient, the owner of such animal or animals, shall be liable in an action of trespass, to make good all damages to the owner or occupier of the inclosure, for the first offense single damages only, and ever afterwards double the damages sustained.

"Sec. 16. The condition of the fence at the time the trespass was committed, may be proven upon trial, and on complaint made by the party injured before any justice of the peace of the county wherein such trespass shall be made, such justice is hereby authorized and required to issue a summons without delay, to three respectable householders of the neighborhood, noways related to either of the parties, nor interested concerning the trespass, reciting the complaint, and requiring them to view the fence where the trespass is complained of, and their testimony in such case shall be good evidence touching the sufficiency of the fence.

"Sec. 17. If any person injured for want of such sufficient fence,

shall hurt, wound, kill, lame or destroy, or shall cause to be hurt, wounded, killed, lamed or destroyed, by shooting, hunting with dogs, or otherwise, any of the aforesaid animals, he or she so offending, shall satisfy or pay the owner of the same, the damages with costs, recoverable as aforesaid: *Provided*, That if the party liable to damages as aforesaid, in either case, will abide and pay what may be deemed reasonable by three neighbors, indifferently chosen to assess the same, it shall be a bar against such suit.

"Sec. 18. All animals trespassing, the owners of the same (if known) shall be notified thereof, and if they shall refuse to secure the said animals and prevent their trespassing, the persons on whom the trespass was committed, shall be authorized to secure the same, supplying the aforesaid animals with provender and water, for which they shall receive a compensation from said owner: *Provided*, That if said animals shall receive any abuse or damage from said persons, they shall be barred from any compensation for the aforesaid services.

"Sec. 19. When any person or persons may, by mistake, erect and make a fence or inclosure on the land of another person, then, and in that case, when the line or lines are legally run by the proper authority, and the fence and inclosures are known to be on the land of such other person, the person or persons making such fence or fences as aforesaid, through mistake, shall be empowered and authorized by this chapter to enter into the said land of another, doing as little damage as possible, and take away the rails, posts, wood and stones of which said fence or fences are made and erected, within one year from the time said line or lines may be legally run.

"Sec. 20. The owner or owners of any land whereon a fence or fences may have been made by mistake, shall not throw down, nor in any manner disturb the said fence or fences for one year from the time such mistake is found out.

"Sec. 21. When either the owner of the rails, or the owner of the land is desirous of having the line or lines run, dividing such land, then in that case, the person wishing such survey, shall give the other person notice in writing, ten days before such survey is made, of the time and place of making such survey."

CHAPTER X.

OF MARRIAGES.

Rev. Stat. 353, Sec. 1. "All male persons over the age of seventeen years. and females over the age of fourteen years, may contract and be joined in marriage: *Provided*, In all cases where either party is a minor, the consent of parents or guardians be first had, as is hereinafter required.

"Sec. 2. No person of color, negro or mulatto, of either sex, shall be joined in marriage with any white person, male or female, in this State; and all marriages or marriage contracts entered into between such colored person and white person, shall be null and void in law; and any person so marrying, or contracting to marry, shall be liable to pay a fine, be whipped in not exceeding thirty-nine lashes, and be imprisoned not less than one year, and shall be held to answer in no other than a criminal prosecution, by information or indictment; and any clerk who shall knowingly issue a license to any such colored person, negro or mulatto, or to any white person, to be joined to a negro or mulatto, in manner aforesaid; or if any officer, or person authorized to solemnize marriages in this State, shall join any such colored person, negro or mulatto in marriage with a white person, such magistrate or other person, so offending, as aforesaid, on conviction thereof, shall be fined in a sum not less than two hundred dollars, to be sued for and recovered, in any court of record in this State, the one half for the use of the county in which said suit is brought, and the other half to the person suing for the same; and thereafter be ineligible to any office in this State.

"Sec. 3. All persons belonging to any religious society, church or denomination, may celebrate their marriage according to the rules and principles of such religious society, church or denomination; and a cer-

tificate of such marriage, signed by the regular minister, or if there be no minister, then by the clerk of such religious society, church or denomination, registered as hereinafter directed, shall be evidence of such marriage.

"Sec. 4. Any persons wishing to marry, or be joined in marriage, may go before any regular minister of the gospel, authorized to marry, by the custom of the church or society to which he belongs, any justice of the supreme court, judge of any inferior court, or justice of the peace, and celebrate or declare their marriage, in such manner and form as shall be most agreeable.

"Sec. 5. Any minister of the gospel, justice of the supreme court, judge or justice of the peace, who shall celebrate any marriage, shall make a certificate of such marriage, and return the same, with the license, to the clerk of the county commissioners' court, who issued such license, within thirty days after solemnizing such marriage.

"Sec. 6. The clerk of the county commissioners' court, after receiving such certificate, shall make a registry thereof, in a book to be kept by him for that purpose only; which registry shall contain the christian and surnames of both the parties, the time of their marriage, and the name of the person certifying the same: and said clerk shall, at the same time, indorse on such certificate, that the same is registered, and the time when; which certificate shall be carefully filed and preserved; and the same, or a certified copy of the registry thereof, shall be evidence of the marriage of the parties.

"Sec. 7. If any clerk shall, for more than one month, refuse or neglect to register any marriage certificate, which has been, or may hereafter be delivered to him for that purpose, (his fee therefor being paid,) he shall be liable to be removed from office, and shall moreover pay the sum of one hundred dollars, to the use of the party injured, to be recovered by action of debt in any court having cognizance of the same.

"Sec. 8. If any minister, justice of the supreme court, judge or justice of the peace, having solemnized a marriage, or clerk of any religious society, as the case may be, shall not make return of a certificate of the same, as required, within the time limited, to the clerk of the commissioners' court of the county in which such marriage was solemnized, he shall forfeit and pay one hundred dollars for each case so neglected, to go to the use of the county, to be recovered by indictment. And if any minister of the gospel, justice of the supreme court, judge, or any other officer or person, except as hereinbefore excepted, shall solemnize and join in marriage any couple without a license, as afore-

said, he shall, for every such offense, forfeit and pay one hundred dollars, to the use of the county, to be recovered by indictment.

"SEC. 9. No person shall be joined in marriage, as aforesaid, unless their intention to marry shall have been published at least two weeks previous to such marriage, in the church or congregation to which the parties or one of them belong, or unless such persons have obtained a license, as herein provided.

"SEC. 10. In all cases when publication of such intention to marry has not been made as before described, the parties wishing to marry shall obtain a license from the clerk of the county commissioners' court of the county where such marriage is to take place, which license shall authorize any regular minister of the gospel, authorized to marry by the church or society to which he belongs, any justice of the supreme court, judge, or justice of the peace, to celebrate and certify such marriage; but no such license shall be granted for the marriage of any male under twenty-one years of age, or female under the age of eighteen years, without the consent of his or her father, or if he be dead or incapable, of his or her mother or guardian, to be noted in such license. And if any clerk shall issue a license for the marriage of any such minor without consent as aforesaid, he shall forfeit and pay the sum of three hundred dollars to the use of such father, mother, or guardian, to be sued for and recovered in any court having cognizance thereof; and for the purpose of ascertaining the age of the parties, such clerk is hereby authorized to examine either party or other witness on oath."

Form of Marriage Ceremony.

(*The man and woman rising, the justice will say to the man,*) Will you have this woman to be your wedded wife, to live together after God's ordinance, in the holy estate of matrimony; to love her, comfort her, honor and keep her in sickness and in health; and forsaking all others, keep thee only unto her, so long as you both shall live?

(*Then addressing the woman, the justice will say,*) Will you have this man to be your wedded husband, to live together after God's ordinance, in the holy estate of matrimony; to obey him and serve him, love, honor and keep him in sickness and in health; and forsaking all others, keep thee only unto him, so long as you both shall live?

(*The parties answering in the affirmative, the justice will then instruct them to join hands, and say,*) By this act of joining hands,

you take upon yourselves the relation of husband and wife; and forasmuch as you have consented together in holy wedlock, in the presence of these witnesses, I do, in accordance with the laws of the State of Illinois, pronounce you husband and wife.

A short form of Marriage Ceremony.

(*The justice will direct the parties to rise and join hands, and then say,*) By this act of joining hands, you do take upon yourselves the relation of husband and wife; and solemnly promise and engage, in the presence of these witnesses, to love and honor, comfort and cherish each other as such, so long as you both shall live: therefore, in accordance with the laws of the State of Illinois, I do hereby pronounce you husband and wife.

Form of Certificate of Marriage.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

I, the subscriber, a justice of the peace in and for the said county, do hereby certify that the marriage of A. B. and C. D., the persons in the within license named, was solemnized by me on the ——— day of ———, 18—.

L. M.,
Justice of the Peace.

CHAPTER XI.

OF TRIAL OF THE RIGHT OF PROPERTY.

Rev. Stat. 474, Sec. 1. "Whenever an execution or writ of attachment shall be levied by any sheriff or coroner upon any personal property, and such property shall be claimed by any person or persons, other than the defendant in such execution or attachment, by giving to the sheriff or coroner, notice in writing, of his, her, or their claim and intention to prosecute the same, it shall be the duty of such sheriff or coroner, forthwith to summon a jury of twelve respectable householders of the county, to meet at a place to be designated by him, before the day appointed for the sale of such property; and then and there proceed to inquire by the oath of said jury, whether the right of such property be in such claimant or not.

"Sec. 2. It shall be the duty of such sheriff or coroner, to notify the plaintiff in the execution or attachment, of such claim, and the time and place of trial; and on the day appointed, the sheriff or coroner shall swear the jury, and such witnesses as may be produced, by either party, or may postpone the trial such reasonable time, on the application of either party, as he shall think proper, for the purpose of procuring testimony.

"Sec. 3. In all cases of the trial of the right of property before any sheriff or coroner, it shall be the duty of such sheriff or coroner to subpœna such witnesses as shall be required by either party to such trial, to attend at the time and place at which such trial shall be held.

"Sec. 4. In all cases where a witness shall be so subpœnaed, and shall fail to attend at such trial conformably thereto, and in all cases where a juror shall fail to attend the same when subpœnaed by such sheriff or coroner, such sheriff or coroner shall have power to compel

their attendance, in the same manner as may be done in the trial of causes before justices of the peace, and in the circuit courts of this State.

"Sec. 5. And any fine which such sheriff or coroner may impose for such contempts, may be collected in the manner provided for the collection of costs by the seventh section of this chapter.

"Sec. 6. After the jury shall have agreed on their verdict, the sheriff or coroner shall reduce the same to writing, and it shall be signed by all the jurors, and the sheriff or coroner shall thereupon restore the property, if found to belong to the person or persons claiming, or shall proceed on such execution or attachment, if the property shall not be found to be in the claimant, in the same manner as if no claim had been made.

"Sec. 7. The sheriff or coroner shall make up a bill of all the costs accruing on such trial, according to the provisions of law regulating the fees of officers for similar services, and annex the same to the verdict of the jury; and shall have power to collect the same from the claimant of such property, if the verdict be against him, or from the plaintiff or plaintiffs in the execution, if such verdict be for the claimant, in the same manner that bills of fees in other cases are authorized by law to be collected.

"Sec. 8. In case either party shall think himself or herself aggrieved by the verdict of the jury, he or she may appeal to the circuit court, in which case the party appealing shall give bond, with sufficient security, to prosecute such appeal without delay, and to pay all costs that have accrued or may accrue on such appeal, if judgment be given against him, in the circuit court; which bond shall be in a sum sufficient to cover all costs, and be payable to the opposite party; and the sheriff or coroner shall thereupon deliver to the clerk of the circuit court, the bond aforesaid, and all the papers relating to such trial, and the clerk shall enter said appeal on his docket, and the court shall proceed to try the right to such property, in the same manner as is before directed in this chapter: and in all such cases, judgment shall be given against the party failing, for all costs, and the clerk shall issue execution for the same.

"Sec. 9. In all cases where any personal property shall be taken by virtue of an execution or attachment, issued by any justice of the peace, which shall be claimed by any person or persons, other than the defendant, in such execution or attachment; and such claimant shall give notice in writing of his or their claim and intention to prosecute

the same, it shall be the duty of the constable to notify the plaintiff in execution or attachment, of such claim, and the time and place of trial; and if the justice who issued such execution or attachment reside in another county, be absent from the county, or unable to attend to such trial, it shall be the duty of the constable serving such execution or attachment, to notify the plaintiff in execution, that he will attend before some other justice of the peace of the county, (naming him,) and shall also designate some day and hour for the trial of the right of said property, of which time and place, the claimant shall also have notice.

"Sec. 10. The same proceedings shall be had before the constable serving such execution or attachment, together with the justice before whom the trial of the right of property may be had, as are in this chapter provided for the trial of the right of property before sheriffs and coroners; but the justice shall issue all process necessary in such trials. He shall also administer the oaths to the jury and witnesses, and retain the papers relating to the proceedings; and in case the property shall appear to belong to the claimant, the justice shall enter judgment against the plaintiff in execution or attachment, for the costs that may have accrued on such suit; and on failure of the plaintiff to pay the same, the justice may issue execution therefor; but in all cases where it shall appear that the property claimed belongs to the defendant in execution, the justice shall enter judgment against the claimant of the property for the amount of costs that shall have accrued, and issue execution therefor as in other cases; and in case of an appeal, shall take the bond and transmit the same, with the other papers, to the clerk, as aforesaid.

"Sec. 11. It shall be the duty of any justice of the peace, other than the one issuing the execution or attachment under which a levy has been made, when notified by any constable, of any person or persons claiming property levied upon as hereinbefore provided, to enter such case on his docket, and to proceed in all cases, to have the right of such property tried as if the execution had been issued by him.

"Sec. 12. In no case of the trial of the right of property under this chapter, shall the defendant in execution be a competent witness, and all appeals from the judgments on the trial of the right of property, shall be demanded on the day of such trial, and bond entered into before the clerk of the circuit court within five days from such trial; and in all cases of the trial of the right of property before a justice of the peace, either party may take the case into the circuit court by writ of certiorari, as in other trials before justices of the peace: *Provided*, That

in all cases of said appeals, the praying thereof shall be a supersedeas, and stay all further proceedings until the expiration of five days.

"Sec. 13. In all cases when the plaintiff in the execution neither resides in the county where judgment was rendered, nor in the county in which such trial of the right of property is had, it shall not be necessary for the constable to give said plaintiff notice; but the trial shall be conducted in the same manner as if actual notice had been given; and in case the property shall be found to be the property of the claimant, the plaintiff in the execution shall be bound for all costs that may have accrued.

"Sec. 14. The verdict of the jury in all cases under this chapter, shall be a complete indemnity to the sheriff or other officer, in proceeding to sell or restore any such property according to the verdict; and in case of an appeal, the sheriff or other officer shall retain such property, unless the party claiming, or the defendant in the execution shall enter into a bond, with sufficient security, for the delivery of such property to the sheriff or other officer, if the judgment of the court shall be against the claimant.

"Sec. 15. In trials of the right of property taken on execution, attachment or other process, by constables, the number of jurors shall be six instead of twelve, unless all the parties to the trial shall agree upon a larger number, not exceeding twelve; in which case the number agreed on shall constitute the jury: *Provided*, That either party shall have the right to require twelve jurors, upon advancing the additional costs and fees accruing in consequence of increasing the number over six; such additional costs and fees not being in any event chargeable against the other party."

On the trial of the right of property between a mortgagee of chattels, and an execution creditor of the mortgagor, evidence may be introduced to prove what a deceased witness testified upon a former trial, between the same parties.[1]

A justice of the peace, before whom a trial of the right of property is had, may proceed with the hearing, and render judgment upon the finding of the jury, when he has been notified by the constable that the property levied upon has been claimed, and that the time and place have been named.[2]

The giving of the notices for trial in such a case, is exclusively the duty of the constable, and he will be held responsible for any damages

(1) 4 Scam. 575. (2) 14 Ill. 62.

which may arise. The justice acts upon the return of the officer, and it matters not to him whether it be true or false.[1]

In an action of trespass, *de bonis asportatis*, against others than the constable who made the levy and sale, the plaintiff should show title to the property sold. It is not a legal presumption, because the property was seized and sold under an execution against him, that it was his property.[2]

The provision of the statute which excludes the defendant in execution from being a witness, is confined exclusively to trials of the right of property.[3]

A landlord who has distrained upon the goods of his tenant, has a sufficient interest in them to enable him to be the claimant of the same, on a trial of the right of property, if they are subsequently taken in execution.[4]

The statute does not require the claimant, in the notice he serves on the constable, to state on whose execution the levy has been made. It is sufficient to notify the constable that he claims the goods levied on, forbids the sale, and intends to prosecute his claim. Anything more is surplusage, and could not vitiate the notice.[5]

A trial of the right of property, which results in a verdict against the claimant, does not establish or confirm a right to the property in the defendant in execution.[6]

In a trial of the right of property, the only question is, whether the property levied on belongs to the claimant, and the verdict will be against him, unless he affirmatively show that it belongs to him, and is not subject to sale on execution.[7]

On the trial of the right of property in the circuit court, the claimant cannot object to the execution on which the levy has been made, on the ground that it was a nullity and had been issued by a court not having jurisdiction. By proceeding in this manner he admits the validity of the execution, and only claims that it has been levied on his property, and not on the property of the defendant in execution.[8]

Form of Notice to Constable of Claim of Property and intention to prosecute the trial of the right thereto under the Statute.

To R. S., Constable:

Sir:—I hereby claim property in the following goods and chattels, to wit: (*describe the articles particularly,*) levied upon by you, by

(1) 14 Ill. 62. (2) Ibid. (3) Ibid.; 1 Gil. 572. (4) 1 Scam. 343.
(5) 1 Scam. 268. (6) 12 Ill. 387. (7) 13 Ill. 20. (8) 2 Scam. 22.

virtue of an execution (*or* "attachment,") issued by L. M., Esquire, a justice of the peace of ——— county, and to you delivered in favor of A. B., against the goods and chattels of C. D., and intend to prosecute my claim to the same, according to the statute in such case made and provided.

Dated this ——— day of ———, 18—. E. F.

Form of Notice of Trial to the Plaintiff.

A. B. }
vs. }
C. D. }

Sir:—Please take notice that the following described property, to wit: (*describe the property,*) levied upon by virtue of an execution, (*or* "attachment,") issued by L. M., a justice of the peace of ——— county, and in favor of A. B., against the goods and chattels of C. D., to me delivered, has been claimed by E. F., who has notified me that he intends to prosecute his claim to the same, according to the statute in such case made and provided.

You are, therefore, notified that the said claim will be tried before the said justice (*or, if he is absent from the county or unable to attend, then say,* "before G. H., a justice of the peace of the county of ——, the said L. M. being absent from said county," *or,* "unable to attend,") and the subscriber and a jury then and there to be summoned and sworn, at the office of ——— in ———, in said county, on the ——— day of ———, 18—, at — o'clock in the —— noon.

Dated this ——— day of ———, 18—.

R. S., Constable.

Form of Subpœna for Witness on trial of right of property.

STATE OF ILLINOIS, }
——— COUNTY, } ss.

The People of the State of Illinois to J. K., &c.:

You are hereby commanded to appear before L. M., a justice of the peace of the said county, and R. S., constable of the said county, at the office of the said ——, in ——, on the —— day of ——, instant, (*or* "next,") at —— o'clock in the —— noon, to testify before them and a jury of the county, on a claim of property made by E. F., to the goods and chattels levied upon by the said constable, by virtue of an execution, (*or* "attachment,") to him delivered in favor of A. B.,

against the goods and chattels of C. D.; and this you are not to omit under the penalty of the law.

Given under the hand and seal of the said justice, this —— day of ———, 185–.

L. M., *J. P.* [SEAL].

Form of Finding of the Jury on a trial of the right of property.

A. B. }
vs } Before L. M., Esquire, Justice, and R. S., Constable.
C. D. }

We, whose names are hereunto subscribed, being the jury called to try the right of property on a claim made by E. F. to the following described goods and chattels, to wit: (*describe them accurately,*) levied upon by R. S., constable, by virtue of an execution, (*or* "attachment,") issued by L. M., Esquire, a justice of the peace of the county of ——, in favor of A. B., against the goods and chattels of C. D., do upon our oaths say that the property of the said goods and chattels so claimed is (*or* " is not ") in said claimant. (*Or, if part only, say,* " of the following described articles, to wit: [*describe them,*] part of the above so claimed, is in said claimant."

Witness our hands this —— day of ———, 18—.

[To be signed by all the jurors.]

Form of Execution for Costs.

STATE OF ILLINOIS, }
—— COUNTY, } ss.

The People of the State of Illinois to any Constable of said County, GREETING:

We command you that of the goods and chattels of C. D., in your county, you make the sum of —— dollars and —— cents, which E. F. lately recovered before the undersigned, a justice of the peace of the said county, for his costs by him laid out and expended, in a certain trial of the right of property, before the said justice and R. S., constable of the said county, and a jury for that purpose summoned and sworn, wherein the said E. F. was claimant, and the said C. D. was defendant.

Given under the hand and seal of the said justice, the ——— day of ———, 185–.

L. M., *J. P.* [SEAL.]

Forthcoming Bond to Constable in case of Appeal.

Know all men by these presents, that we, A. B. and C. D., are held and firmly bound unto E. F., a constable of the county of ———, in the sum of ——— dollars, (*double the amount in the execution,*) to be paid to the said E. F., constable, as aforesaid, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the —— day of ———, 18—.

Whereas, an execution has been issued by L. M., Esquire, a justice of the peace of the county of ———, and delivered to the above named constable, in favor of G. H., against the goods and chattels of I. J., under and by virtue of which the said constable has levied upon the goods and chattels following, to wit: (*here describe the property.*)

Now, therefore, the condition of this obligation is such, that if the said I. J. shall deliver the said goods and chattels to the said constable, on the first day of ——— next, at —— o'clock in the —— noon, at the dwelling house of the said A. B., so that the said goods and chattels may be then and there sold to satisfy the said execution, then this obligation to be void, otherwise to remain in full force.

Sealed and delivered in presence of

A. B. [SEAL.]
C. D. [SEAL.]

PART FOURTH.

OF THE CONSTABLE, HIS ELECTION AND QUALIFICATION, AND THE POWERS AND DUTIES OF CONSTABLES IN BOTH CIVIL AND CRIMINAL CASES.

CHAPTER I.

OF THE OFFICE OF CONSTABLE.

I. OF THE CONSTABLE.

The office of constable is one of great antiquity; so old, indeed, that in the statute of Winchester, which was enacted in 1276, it is mentioned as having long existed. The word *constable* has afforded matter of much disquisition among the learned. Some trace it to the Hebrew, others to the Greek, and many derive it from the German.[1]

"The word *constable*," says Sir William Blackstone, "is frequently said to be derived from the Saxon, *koning-stapel*, and to signify the support of the king. But as we borrowed the name as well as the office of constable from the French, I am rather inclined to deduce it, with Sir Henry Spelman and Dr. Cowel, from that language; wherein it is plainly derived from the Latin, *comes stabuli*, an officer well known in

(1) Constables' Manl. 5.

the empire; so called, because, like the great constable of France, as well as the lord high constable of England, he was to regulate all matters of chivalry, tilts, tournaments, and feats of arms, which were performed on horseback."[1]

This great office of lord high constable has been disused in England, except only upon great and solemn occasions, as the king's coronation and the like, since the attainder of Stafford, Duke of Buckingham, under King Henry VIII.; and in France it was suppressed about a century after, by an edict of Louis XIII.;[2] but from his high office, as it is said,[3] this lower constableship was first drawn and fetched, and is, as it were, a very finger of that hand. For the statute of Winchester, which first appoints them, directs that for the better keeping of the peace, two constables, in every hundred and franchise, shall inspect all matters relating to *arms* and *armor*.

In England, from whence the office of constable has been borrowed in this country, constables are of two sorts, high constables and petty constables. The former are appointed at the court leets of the franchise or hundred over which they preside, or in default of that, by the justices at their quarter sessions. The petty constables are inferior officers in every town and parish, subordinate to the high constable of the hundred. These petty constables have two offices united in them, the one ancient, the other modern. Their ancient office is that of headborough, tithingman or borsholder, and who are as ancient as the time of King Alfred, A. D. 871; their more modern office is that of constable merely, which was appointed so lately as the reign of Edward III., in order to assist the high constable.

By the common law, the general duty of all constables, both high and petty, is to keep the peace in their several districts; and to that purpose they are armed with very large powers, of arresting and imprisoning, of breaking open houses, and the like.[4]

By various legislative enactments, the duties of constables have been materially extended from that of the common law, which has occurred in consequence of the increased powers of justices of the peace. Constables are, by the common law, it is said, regarded as the proper and known officers of justices of the peace;[5] and it is laid down, that, in England, if an act of parliament direct that a justice shall issue a warrant, and do not state to whom it shall be directed, it must be directed to the constable and not the sheriff.[6]

(1) 1 Bl. Com. 355. (2) Ibid. (3) Lambard.
(4) 1 Bl. Com. 356. (5) 1 Salk. 381. (6) 1 Chit. Crim. L. 38.

Constables, by the laws of this State, are chosen by the people. In counties not adopting township organization, they are chosen by the electors of each precinct. In counties adopting township organization, they are chosen by the electors of each town, and when elected and qualified, they have jurisdiction in their respective counties.[1]

II. OF THE ELECTION OF CONSTABLE.

1. *In Counties not adopting Township Organization.*

In counties not adopting township organization, two constables are allowed to be elected in each election precinct in each county, except that precinct in which the county seat is located, in which three constables are allowed.[2] And this number may be increased to five, whenever the county court may deem it necessary.[3]

By section 16 of the act to establish county courts, and provide for the election of justices of the peace and constables, and for other purposes, approved February 12, 1849,[4] it is provided, that the election of constables shall be on Tuesday after the first Monday in November; the first election being in the year eighteen hundred and forty-nine, and to take place on the Tuesday after the first Monday in November, every four years forever thereafter.[5]

Vacancies occurring in the office of constable in counties not adopting township organization, are to be filled in the same manner as in cases of justices of the peace in such counties.[6] Whenever there shall be no constable in any precinct, any justice of the peace in such precinct may appoint one, who will be qualified as in other cases, and hold his office until superseded by an election.[7]

2. *In Counties adopting Township Organization.*

The act to provide for township organization, approved February 17, 1851, Art. 3, Sec. 2,[8] provides for the election of two constables at the annual town meeting in each town, once in four years, except to fill vacancies, and that such constables shall be successors to precinct constables. By the act above mentioned,[9] constables hold their offices

(1) Rev. Stat. 314, Sec. 7. (2) Rev. Stat. 313, Sec. 2. (3) Id. 314, Sec. 5.
(4) Sess. Laws, 1849, p. 62. (5) See *ante*, page 20. (6) See *ante*, page 21.
(7) Rev. Stat. 315, Sec. 16. (8) See Sess. Laws, 1851. (9) Art. 6, Sec. 15.

for four years, or until others are chosen and qualified. The act amendatory to the act above mentioned, approved February 27, 1854, Sec. 15,[1] provides, that in all towns having a population of more than two thousand inhabitants, it shall be lawful for the qualified voters thereof, to elect one constable for each and every thousand of its inhabitants, until the population shall reach five thousand; after which the number is not to be increased; which constables are to be elected in the same manner, and are to hold their offices for the same term of time as other constables.[2]

When a vacancy occurs in the office of constable, it is lawful in certain cases, for the justices of the peace, together with the supervisor and town clerk of the town, by warrant under their hands and seals, to appoint some person to fill such vacancy, and the person so appointed will hold his office until another shall be chosen or appointed in his stead.[3]

III. OF QUALIFICATION.

1. *In Counties not adopting Township Organization.*

Constables before entering upon the duties of their respective offices, are required to be sworn, faithfully to perform the duties of their respective offices according to law, and to the best of their understanding.[4]

Rev. Stat. 315, Sec. 11. "Every constable, before he shall enter upon the duties of his office, shall execute and deliver to the clerk of the county commissioners' court[5] of the proper county, a bond to be approved by said clerk, with one or more good and sufficient freeholders as his securities, in the sum of one thousand dollars, conditioned that he will faithfully discharge the duties of his office of constable; and that he will justly and fairly account for, and pay over all moneys that may come to his hands, under any process or otherwise, by virtue of his office. The said bond shall be made payable to the county commissioners of the county in which such constable shall be appointed, and their successors, for the use of the people of the State of Illinois, and shall be held for the security and benefit of all suitors and other persons who may be interested in, or become injured by, the official conduct of such constable."

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(1) Sess. Laws, Special Sess. 1854. (2) See *ante*, p. 21, 22. (3) Sess. Laws. 1851, p. 43.
(4) Rev. Stat. 314, Sec. 9. (5) Now County Court.

The county commissioners being now superseded by the county court,[1] the bond of the constable should perhaps be made payable to the county court, as has already been suggested in relation to justices of the peace;[2] yet perhaps it would be more proper, in the absence of any express statute on the subject, that it should be made payable to the people of the State of Illinois.

It has been held in New York that the bond of a constable, in the absence of any statutory direction, should properly be made to the people of the State,[3] upon which bond an action might be maintained in the name of the people for the use of the party aggrieved, and that covenant might be maintained by the party aggrieved in his own name upon the condition of such bond.[4]

Form of Constable's official Bond.

Know all men by these presents, That we, A. B., as principal, and C. D. and E. F. as sureties, are held and firmly bound unto the people of the State of Illinois, in the sum of one thousand dollars, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, and administrators, and each of them, firmly by these presents.

Sealed with our seals, and dated this —— day of ——, 18—.

Whereas at an election lately held in —— precinct, in the county aforesaid, the above bounden A. B. was duly elected a constable for said county:

Now, therefore, the condition of this obligation is such, that if the above bounden A. B. shall faithfully discharge the duties of his said office of constable, and shall justly and fairly account for and pay over all moneys that may come to his hands under any process or otherwise by virtue of his said office, then the above obligation to be void, otherwise to remain in full force and effect.

A. B. [SEAL.]
C. D. [SEAL.]
E. F. [SEAL.]

Form of Constable's Oath of Office.

STATE OF ILLINOIS, } ss.
—— COUNTY, }

I, A. B., being elected a constable in and for the county of ——— in the State of Illinois, do solemnly swear that I will support the Con-

(1) See Sess. Laws, 1849, Sec. 15.
(2) See *ante*, p. 22.
(3) 2 Wend. 281; 5 Id. 191—197; 20 Johns. 74.
(4) 5 Wend. 191; 4 Id. 414; 9 Id. 233.

stitution of the United States, and of the State of Illinois, and that I will faithfully perform the duties of my said office, according to law and to the best of my understanding. (*Here add the dueling clause, as in the oath of Justice of the Peace, ante, p.* 23.)

A. B.

Subscribed and sworn to before me, this —— day of ——, 18—.

CHAS. B. FARWELL,
Clerk of the County Court.

Constables, as well as justices, are required, in addition to oaths to support the Constitution of the United States and of this State, and an oath for the faithful and prompt discharge of the duties of their respective offices, to take the oath prescribed in the twenty-sixth section of the thirteenth article of the constitution of the State, in relation to dueling,[1] which applies equally to counties adopting township organization.

The oath of office of constable is required to be certified by the county clerk, upon the certificate of election of such constable. The same hints already given,[2] in relation to justices of the peace, in steps for qualification, will apply with equal force to that of constables.

Rev. Stat. 331, Sec. 114. "All bonds given by justices of the peace and constables shall remain in force five years after the expiration of their respective terms of office, and when such bonds are renewed, or new bonds are given, such renewal or giving of a new bond shall not satisfy or vacate any such previous bond, but each bond shall stand good in relation to all matters and things done, or omitted to be done, within the term of office for which such bond shall have been given: *Provided*, That where by law, any justice or constable shall be authorized or required to complete any business, or perform any duties growing out of business commenced, and in their hands previous to going out of office, the bond shall apply to such cases until such business is concluded by such justice or constable."

Resignations of the office of constable, in counties not adopting township organization, must be made to the clerk of the county court.[3]

2. *In Counties adopting Township Organization.*

In counties adopting township organization, every person chosen to the office of constable, is required, before he enters upon the duties of

(1) Sess. Laws, 1849, page 66, Sec. 20. (2) *Ante*, p. 24. (3) Rev. Stat. 315, Sec. 15.

his office, and within eight days after he shall be notified of his election or appointment, to execute, in the presence of the supervisor or town clerk of the town, with one or more sureties, to be approved of by such supervisor or town clerk, an instrument in writing, in which such constable and his sureties shall jointly and severally agree to pay to each and every person who may be entitled thereto, all such sums of money as the said constable may become liable to pay, on account of any executions which shall be delivered to him for collection, by virtue of his office.[1]

The oath prescribed by law, is that prescribed by Art. III, Sec. 30, and Art. XIII, Sec. 26, of the constitution; Rev. Stat. 314, Sec. 9, and Sec. 20 of the Act to establish county courts, &c.[2]

The law is silent as to what officer shall administer the oath of office to constables elect, in counties adopting township organization. The revised statute, by which it would be the duty of the county clerk, to administer the oath,[3] has not been changed by the act to provide for township organization; and it is, therefore, doubtful whether the oath of office of constable in this case, should not still be administered by the clerk of the county court, the same as in case of justices of the peace.

By the Rev. Stat., chapter 76, title "*Oaths and Affirmations*," Sec. 3, all courts in the State, the judges, justices, notaries public and clerks of said courts, within their respective districts, circuits or counties, and the justices of the peace within their counties respectively, have power to administer all oaths of office, and other oaths required to be taken by any person before entering upon the discharge of the duties of any office, appointment, place or business. In view of this provision of the law, it is contended also, that it will be proper for justices of the peace of the several towns, to administer the oath of office to constables, notwithstanding the former provision of the statute, placing this duty upon the clerk of the county court, and which practice has very generally prevailed. The form of the oath of office in this case, will be the same as that heretofore given.[4]

As to the instrument to be executed by the constable and sureties for the faithful discharge of his duties, it may be in the form of a penal bond, to the people of the State for the use of the party injured.[5] The approved form, however, is a simple agreement, without any penalty, to pay any person who may be aggrieved by the constable's neglect of duty.[6]

(1) Sess. Laws, 1851, page 42, Sec. 8.
(2) Id. 1849, page 66, Sec. 20.
(3) See Rev. Stat. 315, Sec. 14.
(4) *Ante*, page 371.
(5) 20 Johns. 74; 2 Wend. 281.
(6) 5 Wend. 191—197.

Our law upon the subject of qualification of constables in counties adopting township organization, is a literal re-enactment of the statute of New York, under which it was held, that the following form of instrument to be executed by the constable, was a substantial compliance with the statute, and was held to be good.[1]

Form of Instrument to be executed by a Constable and his Sureties for performance of duties.

A. B. chosen (*or* "appointed") constable of the town of ———, in the county of ——, and C. D. and E. F. as sureties, do hereby jointly and severally agree to pay to each and every person who may be entitled thereto, all such sums of money as the said constable may become liable to pay on account of any execution which shall be delivered to him for collection, by virtue of his said office.

Dated the ——— day of ———, 18—.

Executed in the presence of JOHN DOE, Supervisor of the town of ———.

A. B. [SEAL.]
C. D. [SEAL.]
E. F. [SEAL.]

The supervisor or town clerk, will, if approved, endorse such approval on such instrument, which will be his approval of the sureties therein named, and will then cause the same to be filed in the office of the town clerk, and a copy of such instrument, certified by the town clerk, will be presumptive evidence in all courts of the execution thereof by such constable and his sureties.[2]

Form of Supervisor's (*or* town clerk's) *approval, to be indorsed on Constable's instrument of security.*

I hereby approve the within instrument and the sureties therein named, this —— day of ———, 18—.

JOHN DOE,
Supervisor of the town of ———.

The omission of the constable to file his instrument of security within the eight days, as prescribed by law, does not affect its validity, as to persons injured; in this respect the statute is merely directory.[3] Nor can the constable, or his sureties, object that the instrument is not un-

(1) 2 Wend. 615. (2) Sess. Laws, 1851, page 43, Sec. 9. (3) 2 Wend. 615.

der seal; nor in the form prescribed by the statute; nor that the sureties were not approved of by the town clerk or supervisor.[1]

All actions against a constable or his sureties upon his instrument of security, must be prosecuted within two years after the expiration of the term of his office;[2] this is only, however, when the suit is brought upon the instrument. There can be no doubt that the constable himself would be held liable in an action for money had and received, brought by the party on whose execution he had collected money, if the suit is brought before the claim become barred by the statute of limitations.[3]

When the instrument of security is in the form of a bond to the people, an action of debt in the name of the people, but not in the name of the party aggrieved, may be maintained by any person to whom the constable has become liable; although covenant may be brought by such person on the condition of the bond, in his own name.[4]

Resignations of the office of constable, in counties adopting township organization, should be made to the justices of the peace of the town, who are authorized to accept the same for sufficient cause shown to them; and justices accepting any such resignation, should forthwith give notice thereof to the town clerk of the town.[5]

IV. SPECIAL CONSTABLES, WHEN AND HOW APPOINTED.

Rev. Stat. 327, Sec 86. "Any justice of the peace may appoint a suitable person to act as constable in a criminal or other case, where there is a probability that a person charged with any indictable offense, will escape, or that goods and chattels will be removed before application can be made to a qualified constable; and the person so appointed shall act as constable in that particular case, and no other; and any temporary appointment so made, as aforesaid, shall be made by a written indorsement, under the seal of the justice deputing, on the back of the process, which the person receiving the same shall be deputed to execute."

The statute requires that the appointment of a special constable should be made by a written indorsement on the back of the process, under

(1) 12 Wend. 306; 14 Johns. 401. (2) Sess. Laws, 1851, p. 43, Sec. 10.
(3) Cowen's Tr. 3d. ed. 561; 4th ed. Sec. 1641.
(4) 5 Wend. 191; 4 Id. 414; 9 Id. 233; see also, 2 Id. 281.
(5) Sess. Laws, 1851, p. 44.

the seal of the justice. An appointment upon a separate piece of paper, is not a compliance with the statute.[1]

But two cases are specified by the statute in which a justice is authorized to appoint a constable *pro tem.* The one is to execute criminal process where the accused is likely to escape; and the other is to execute civil process, where goods and chattels are about to be removed, before application can be made to a qualified constable.[2]

The indorsement upon the process, therefore, should always show the reason why the appointment is made. The form given in cases of attachments,[3] may be used for all occasions, by being varied to suit the case.

Judges of elections are authorized and empowered to appoint one or more special constables, to assist in preserving order during elections, in case no constable shall be in attendance at such election.[4]

(1) 1 Scam. 489. (2) 1 Id. 489; Breese, 145. (3) *Ante*, p. 288. (4) Rev. Stat. 218, Sec. 21.

CHAPTER II.

POWERS AND DUTIES OF CONSTABLES IN CIVIL PROCEEDINGS.

I. OF THE SERVICE AND RETURN OF PROCESS, AND HEREIN
1. *Of the Summons.*
2. *Of the Warrant.*
3. *Of the Venire.*
4. *Of the Writ of Attachment.*
5. *Of the Execution.*

1. *Service and Return of Summons.*

Constables are the ministerial officers of courts held by justices of the peace, and are required, as we have already seen,[1] to execute all process emanating therefrom, unless the statute shall otherwise direct.

The most usual process for the commencement of suit, is that of a summons, which, upon being placed in the hands of the constable, must be served at least three days before the time of trial mentioned therein, by reading the same to the defendant or defendants.[2]

Form of Constable's Return on Summons.

Personally served the within, by reading the same to the within named defendant. Sept. 18th, 1855.

Fees. Mileage, 10 miles, ...50 cents.
Service,.....25 "
75 cents.
PARNELL MUNSON, Constable.

1) *Ante*, p. 368.] (2) Rev. Stat. 317, Sec. 21. See *ante*, p. 41.

Form of Constable's Return when Summons is against two or more, and some are not found.

Personally served the within by reading the same to the within named C. D., the —— day of ——, 18—. The within named E. F. not found in my county. Fees, &c. G. H., Constable.

Form of Constable's Return when defendant is not found.

The within named defendant not found in my county.
G. H., Constable.

Rev. Stat. 327, Sec. 85. "When any defendant shall evade the service of process, and not listen to the same, or secrete himself, then the officer shall serve the same by leaving a copy at his place of residence, with some white person of the age of ten years or upwards; and in all such cases the constable shall make a special return, when and how served, and the circumstances attending the same; and if the justice shall be satisfied that the defendant evaded the service by reading, and that the party is sufficiently notified and summoned, he shall proceed to hear and determine the case."

Form of Constable's Return on Summons, when served by copy.

Served the within, by leaving a copy thereof at the place of residence of the within named defendant, with a white person, upwards of the age of ten years, the defendant having evaded the service of the same. September 18th, 1855.
Fees, &c. NORMAN BROWN, Constable.

2. *Of the Service and Return of Warrant.*

The rules which govern the service of this process, have been already noticed to some extent in PART FIRST hereof,[1] but it may be proper here to add, that for the service of all civil process, every man's dwelling house is inviolable, or, as the early writers express it, is his *castle*, and an officer has no right to break its outer door, to open it if shut, to lift a latch in order to enter it, or to enter against the owner's command, in order to arrest him, or to levy upon his property: and it makes no difference whether the owner be at home or absent. This privilege is intended for the protection of himself and his family, and

(1) See *ante*, pages 48, 49.

is therefore confined to the dwelling house occupied by them, and does not extend to a barn, store, shop or warehouse.[1] And when the constable has once made the arrest, if the defendant escape without the constable's consent, his own or any other dwelling house forms no protection against a reception; but the officer may break outer doors to seize his body, without a previous demand and refusal, where the pursuit is fresh; or may retake him on any day, or at any place, or on any business which would otherwise operate as a privilege from arrest; for the party is still considered in custody, and it is not an original taking.[2] As to persons privileged from arrest, see *ante*, page 49. When the defendant is arrested on a warrant, he has the right to release his body, by giving special bail to the constable.[3]

Form of Special Bail to be indorsed on Warrant.

I, G. F., acknowledge myself special bail for the within named C. D. Witness my hand, this —— day of ——, 18—. G. F.

Form of Constable's Return on Warrant.

Executed the within, by arresting the within named defendant, and he is now in custody. September 24, 1855.
Fees, &c. G. H., Constable.

In case of several defendants, when part only are arrested, or in case the defendant is not found, the return in this respect will be the same as in case of summons.

3. *Of the Service and Return of Venire.*

The constable on receiving a venire or jury warrant, will summon the number of persons therein required, who are not exempt from such service, or rendered incompetent.[4] He will then make the following return upon the venire.

Form of Return on Venire.

Executed the within by summoning the following panel of jurors. (*Here give the names of the persons so summoned.*) September 25, 1855. Fees, &c. J. K., Constable.

(1) I Hill, 336; 16 Johns. 287; 13 Mass. 520.
(2) 10 Wend. 300; 2 Ld. Raym. 1028.
(3) Rev. Stat. 317, Sec. 22; see *ante*, page 49.
(4) See *ante*, page 98.

When any juror shall be discharged by the justice for any cause, or shall fail to attend, it becomes the duty of the constable, on direction of the justice, to complete the panel at once from among the bystanders, or elsewhere in his bailiwick, which summons will be verbal.[1] The names of the persons so summoned, need not be indorsed on the jury warrant, but the justice should note the facts upon his docket, that the transaction may there regularly appear.

4. *Of the Service and Return of Writs of Attachment.*

The constable, on receiving a writ of attachment, must proceed to levy the same without delay upon the personal property of the defendant. He will also read the writ to the defendant, if found in the county.[2] In case the constable shall be unable to find property of the defendant sufficient to satisfy the attachment, he will notify all persons within his county, whom the creditor shall designate, as garnishees, requiring them to appear on the return day of said writ, and answer upon oath as to their indebtedness, &c., to the defendant.[3]

Form of Return on Writ of Attachment.

Executed the within writ, by levying upon the following personal property: (*here describe the property,*) which being insufficient to satisfy said writ, I have notified the following persons, designated by the plaintiff, to appear as garnishees. (*Here give the names.*) The defendant not found in my county. September 26, 1855.

Fees, &c. E. F., Constable.

Form of Return when no property is found.

No property of the within named defendant found in my county. I have notified C. and D., persons designated by the plaintiff, to appear as garnishees. The defendant not found in my county. September 26th, 1855.

E. F. Constable.

When the defendant is not served, and no appearance is entered for him, the cause is to be continued by the justice ten days, and who will immediately prepare a notice to the defendant in the suit, and deliver the same to the constable, whose duty it is to post three copies thereof at

(1) Rev. Stat. 322, Sec. 49. (2) Rev. Stat. 59, Sec. 5. (3) Rev. Stat. 60, Sec. 9.

three public places in the neighborhood of the justice, at least eight days before the day of trial.[1] The constable will post copies of the notice delivered him by the justice, and return the original with an indorsement thereon, stating the time when, and the place where, he posted copies.[2]

Form of Indorsement of Constable on Attachment Notice.

I have posted three copies of the within notice as follows: (*state the places where the notices were posted,*) which were posted on the ——— day of ———, 18—. E. F., Constable.

5. *Of the Service and Return of Execution.*

Rev. Stat. 326, Sec. 79. "Every constable to whom an execution shall be delivered, shall indorse on the back of the same, an exact memorandum of the day and hour when the same shall have come to his hands, and shall immediately proceed to levy the same; indorsing also on the back of the execution, the date of such levy, and making an exact inventory of the property on which the same shall have been levied, and shall appoint a day and hour for the sale of said property, giving ten days' previous notice of such sale, by advertisement in writing, to be posted up at three of the most public places in the county; and on the day so appointed, the said constable shall sell the property so levied on, or so much thereof as may be necessary to pay the debt, interest and costs, to the highest bidder."

Form of Constable's Indorsement on receiving Execution.

Received this execution this ——— day of ———, 18—, at — o'clock, — M. E. F., Constable.

The personal property of the defendant in a judgment before a justice of the peace, is bound for the payment of such judgment from the delivery of the execution issued thereon to the constable.[3]

Any constable has authority to remove property levied on by him, when it shall be necessary for the safe keeping of the same. But if the defendant shall desire to retain the property so levied on, until the day of sale, it will be lawful for the constable to allow the defendant so to keep the same, if said defendant shall give bond to the constable in

(1) Rev. Stat. 60, Sec. 7; see *ante*, p 275, title, "Attachments," &c. (2) Ibid.
(3) Rev. Stat. 326, Sec. 78.

double the amount of the execution, with good security, conditioned for the delivery of said property to such constable, at the time and place of sale to be named in said bond; and if the said property shall not be delivered as aforesaid, at the time and place of sale, the constable having the execution may proceed to levy the same, upon the same or any other property of the defendant, or upon the property of the security in such bond, and shall sell the same, giving two days' public notice of such sale by advertisement, to be posted in one public place.[1]

Any constable to whom an execution shall have been delivered, and whose term of office shall expire before the expiration of the time within which the return of such execution is required by law, is authorized to proceed in all matters relating to said execution; and in the same manner to collect the same, that he might have done, had the term of office of such constable not expired.[2]

Form of Indorsement of Levy and Inventory of Property.

By virtue of the within, I have this day levied on the following personal property of the within named defendant: (*here describe the property particularly,*) this —— day of ———, 18—.

E. F., Constable.

614 Rev. Stat. 306, Sec. 32. "The necessary wearing apparel of every person shall be exempt from execution, writ of attachment and distress for rent.

"Sec. 33. The following property, when owned by any person being the head of a family and residing with the same, shall be exempt from levy and sale on any execution, writ of attachment, or distress for rent; and such articles of property shall continue so exempt, while the family of such person, or any of them, are removing from one place of residence to another in this State, viz: *First*, necessary beds, bedsteads and bedding; the necessary utensils for cooking; necessary household furniture, not exceeding in value fifteen dollars; one pair of cards, two spinning wheels, one weaving loom and appendage; one stove and the necessary pipe therefor, being in use, or put up for ready use, in any house occupied by such family. *Second*, one milch cow and calf, two sheep for each member of the family, and the fleeces taken from the same, or the fleeces of two sheep for each member of a family which may have been purchased

(1) Rev. Stat. 326, Sec. 80. (2) Rev. Stat. 331, Sec. 113.

by any debtor not owning sheep, and the yarn and cloth that may be manufactured from the same, and sixty dollars' worth of property suited to his or her condition or occupation in life, to be selected by the debtor. *Third*, necessary provisions and fuel for the use of the family for three months, and necessary food for the stock hereinbefore exempted from sale, or that may be held under the provisions of this chapter.

"Sec. 34. Whenever, in any case, the head of a family shall die, desert, or cease to reside with the same, the said family shall be entitled to and receive all the benefits and privileges which are, in this chapter, conferred upon the head of a family residing with the same."

If a defendant, after notice from an officer having an execution against him, neglect or refuse to make a selection of property allowed him by statute, the officer may proceed to levy upon any of his property, not specifically exempt from execution, and sell the same, regardless of any subsequent claim of such defendant to such property as having been selected by him. But if the defendant make his selection and notify the officer thereof, and the officer should then proceed to take or seize such property on execution, he thereby becomes a trespasser.

If an officer proceed to seize or take the defendant's property on execution, without giving the requisite notice, the defendant may make his selection after the levy, of the very property levied on, (if it be such in quality and value, as before the levy he might have selected,) precisely as before the levy he could have done. But in such case, he should, on notifying the officer, surrender, or offer to surrender, a sufficient amount of other property to satisfy the execution; and if he neglects to surrender, or offer so to do, the officer may proceed with the sale, unless the aggregate of the property levied on and afterwards selected, and that still retained by the defendant and not specifically exempt from execution, does not exceed sixty dollars, in which case the officer will be liable to the penalty of the statute, if he sells such property. If, however, a defendant aliens, conceals, or otherwise disposes of all his property, except such as he desires to select, for the purpose of delaying or hindering his creditors, he will not be entitled to the benefit of the statute.[1]

Property which is indivisible, and of greater value than sixty dollars, cannot be claimed by a judgment debtor, as being exempt from execu-

(1) 1 Gil. 757, 758.

tion, and he cannot retain such property by paying to the constable the excess of value in money.[1]

In the sale of personal property on execution, the property itself must be present or the sale will be void.[2]

Form of Notice of Constable's Sale.

CONSTABLE'S SALE.

Notice is hereby given, that by virtue of an execution issued by E. F., Esquire, a justice of the peace of ——— county, in favor of A. B., and against the goods and chattels of C. D., and to me delivered, I have levied on the following described goods and chattels, to wit: (*here describe the property,*) which I shall expose for sale at public vendue, at ——, in said county, on the —— day of ——, 18—, at — o'clock — M., to the highest bidder therefor.

Dated this —— day of ——, 18—. G. H., Constable.

Form of Constable's Return on Execution, in case of levy and sale.

Executed the within by sale of the property hereon indorsed, the proceeds of which amount to $——. My fees retained. Dated, &c.

G. H., Constable.

Whatever sum is made on sale, he should pay over to the justice on return of the execution; he may, however, pay to the plaintiff the amount of his judgment, and take his receipt therefor. Should the property sell for more than the amount of the execution, the constable should pay the excess to the defendant in execution, and make return accordingly.

Form of Constable's Return, when no property is found.

No property of the within named C. D., subject to levy, found in my county.

Dated, &c. G. H., Constable.

(1) 14 Ill. 84. (2) 15 Ill. 58.

CHAPTER III.

OF THE LIABILITY OF CONSTABLES AND SURETIES.

Upon the failure of the constable to pay over any money by him collected or received as provided by the statute, to any person entitled to receive the same, his or her agent, or attorney, such person may proceed against such justice or constable in a summary way, either before the circuit court or some justice of the peace of the proper county, by motion, upon giving to such constable five days' notice of the application; and recover the amount so neglected or refused to be paid, with twenty per cent. damages thereon, for such detention, and shall have execution therefor.[1]

If any constable shall neglect or fail to return an execution within ten days after its proper return day, or if the demand, debt, or claim, be wholly or in part lost, or if any special damage shall arise to any party by reason of the neglect or refusal to act, or the misfeasance or nonfeasance of any constable in the discharge of any official duty, the party aggrieved may have his action in the circuit court, or, when the amount claimed does not exceed one hundred dollars, before any justice of the peace of the proper county, against such constable and his sureties on the official bond of such constable, and shall recover thereon the amount of said execution, with interest from the date of the judgment upon which the original execution issued.[2]

The responsibility of the sureties is held to be co-extensive with that of the constable, and that they are liable whenever he is liable to a party in whose favor an execution has been delivered to him; hence an action lies upon the constable's bond or instrument of security, against the constable and his sureties, for the mere neglect to return an execution within the time prescribed by the statute after the return day thereof, and this without showing any moneys collected.[3]

(1) Rev. Stat. 332, Sec. 116. (2) Id. Sec. 118. (3) 10 Wend. 370.

The remedy provided by the statute, does not deprive a party of his common law remedy.[1] Therefore, where a constable has collected the money on an execution, and neglects to pay it over to the person entitled to receive the same, or to the justice who issued the execution, an action of assumpsit for money had and received, will lie against the constable to recover the amount collected, without any previous demand being made.[2] So assumpsit lies against a constable for the amount of goods sold by him, though the purchaser to whom they are delivered refuses to pay for them.[3]

Where a constable or other officer neglects his duty, or abuses the trust reposed in him by law, to the injury or damage of another, an action on the case lies against him in the circuit court, at the suit of the party sustaining the injury.[4] Thus, if a constable neglect to serve a writ or precept delivered to him, this action lies for the injury suffered by such neglect or refusal.[5]

(1) 10 Johns. 390.
(2) 3 Johns. 182; 1 Wend. 534; 16 East, 274.
(3) 9 Johns. 96.
(4) 1 Scam. 237.
(5) 1 Scam. 200.

CHAPTER IV.

OF THE POWERS AND DUTIES OF CONSTABLES IN CRIMINAL CASES.

I. HIS POWERS GENERALLY.
II. OF ARRESTS.

I. HIS POWERS GENERALLY.

Rev. Stat. 328, Sec. 88. "It shall be the duty of every constable, when any felony or breach of the peace shall be committed in his presence, forthwith to apprehend the person committing the same, and bring him before some justice of the peace, to be dealt with according to law; to suppress all riots and unlawful assemblies, and to keep the peace, and also to serve and execute all warrants, writs, precepts, and other process to him lawfully directed; and generally to do and perform all things appertaining to the office of constable within this State."

The office of constable is either ministerial in obeying warrants and precepts, or is original as a conservator of the peace, at common law, or by virtue of particular acts of the legislature. By the original and inherent power which he possesses, he may, for treason, felony, breach of the peace, and some misdemeanors less than felony, committed in his view, apprehend the supposed offender, without warrant.[1] So if a felony has been committed, a constable, or any peace officer, may lawfully apprehend a supposed offender, upon the information of others, without any positive charge, or his own knowledge of the circumstances on which the suspicion is founded.[2] In general, however, a constable cannot of his own accord, and without an express charge or warrant, justify

(1) 1 Hale, 587.

(2) 1 East's P. C. 301; 6 T. R. 315; 6 Bin. 316.

the arrest of a supposed offender, upon suspicion of his guilt, unless he can show that a felony was committed by some person, as well as the reasonableness of the suspicion that the party imprisoned is guilty.[1]

So a constable may, without warrant, apprehend any one for a breach of the peace, in his presence, and detain him until he can bring him before a magistrate.[2] A constable may, also, upon his own view, lawfully interpose to prevent a breach of the peace, or to quiet an affray; and if he or any of his assistants, whether commanded or not, be killed, it will be murder in all who take part in the assistance, there being either express or implied notification of the character in which he interposed.[3]

II. OF ARRESTS.

An *arrest*, in criminal cases, is the apprehending or detaining a person, in order that he may be forthcoming to answer to a crime alleged against him, or of which he is suspected to be guilty.[4] To this arrest all persons without distinction are liable, when accused of a criminal offense. The exemptions which exist in civil cases, here cease to operate. It is laid down that no person can be arrested unless charged with such a crime as will at least justify holding him to bail when taken.[5]

To constitute an arrest, the party must be actually touched by the officer, or confined in a room, or submit himself, by words or actions, to be in custody. The mere giving in charge, or causing him voluntarily to appear before a magistrate, without the person being taken into actual custody, will not amount to an arrest; for bare words in this respect, will not be of any avail.[6] But no manual touching of the body, or actual force, is necessary, in order to constitute an arrest; it is sufficient if the party is within the power of the officer, and submits to the arrest.[7] Yet, it is said to be better in all cases to touch the prisoner's person, in order to complete the arrest; taking care, at the same time, to use no greater force or constraint than is necessary for his safe custody; the degree of which will depend upon the particular circum-

(1) 4 Esp. 80; 1 Chit. Crim. L. 18.
(2) Hale's P. C. 587; 3 Wend. 384.
(3) 1 East's P. C. 303.
(4) 4 Bl. Com. 288; 1 Chit. Crim. L. 12.
(5) 4 Bl. Com. 289.
(6) 1 Chit. Crim. L. 48; Davis' Just. 64; 1 East's P. C. 330.
(7) Barb. Crim. L. 531, and authorities cited.

stances of the case—as, the character of the party, the nature of the offense charged, the state of the country, &c.[1]

As no time is prescribed in the warrant within which it is to be executed, it continues in force until fully executed, during the term of office of the magistrate who granted it. And it is said that a person may be twice apprehended under it, if the purposes of justice have not been effected. In case of a negligent escape, the prisoner may be retaken. Otherwise, however, if the escape be voluntary. It is unquestionably the duty of the officer to act according to the exigency of his process, which is, "*forthwith* to take the person accused," if practicable. If the officer should willfully neglect his duty in this respect, he would doubtless render himself liable to be punished criminally. And should any person having charge of such process, misconduct himself by keeping it back, to be afterwards made use of for vexatious or improper purposes, he may subject himself to an action for a malicious prosecution, at the suit of the party aggrieved.[2]

(1) 1 Nun. & Walsh, 203.

(2) See Barb. Crim. L. 532.

CHAPTER V.

OF FEES AND COMPENSATIONS ALLOWED TO CONSTABLES IN BOTH CIVIL AND CRIMINAL CASES.

CONSTABLE'S FEES IN CRIMINAL CASES.

Rev. Stat. 247, Sec. 18. "For serving a warrant on each person named therein, twenty-five cents.

Mileage, to be computed from the office of the justice who may have issued the same, to the place of service, for each mile, six and a fourth cents.

Serving each subpœna, twelve and a half cents.

Mileage from the justice's office to the residence of the witness, per mile, six and a fourth cents.

Taking each person to jail when committed, twenty-five cents.

Mileage from the justice's office to the jail, per mile, six and a fourth cents.

For summoning jury in case of assault and battery, fifty cents.

But in all cases where the defendant shall be acquitted, or otherwise discharged, without the payment of costs, the constable shall not be entitled to any fees."

CONSTABLE'S FEES IN CIVIL CASES.

Rev. Stat. 247, Sec. 19. "Serving and returning each warrant or summons, twenty-five cents.

Serving and returning each subpœna, twelve and a half cents.

Serving and returning execution, fifty cents.

Advertising property for sale, twenty-five cents.

Commission on sales not exceeding ten dollars, ten per centum, and on all sales exceeding that sum, six per centum.

Attending trial before a justice in each jury cause, twenty-five cents.

Serving jury warrant in each case, fifty cents.

Each day's attendance on the circuit court, when required to be paid out of the county treasury, one dollar.

Mileage, when serving a warrant, summons or subpœna, from the justice's office to the residence of the defendant or witness, per mile, five cents.

For serving warrant on appraisers in cases of estrays, &c., twenty-five cents."

PART FIFTH.

COMMON FORMS FOR THE TRANSACTION OF BUSINESS.

I. APPRENTICES.

Indenture of Apprenticeship of a Minor, with the consent of the father.

THIS INDENTURE, made and entered into this *first* day of *June*, A. D. 1855, by and between A. B. a minor, of the age of *eighteen* years on the *eighth* day of *March* last, of his own free will and accord, and by and with the consent of E. B., his father, of the county of *McHenry*, and State of Illinois, of the one part, and C. D. of *Waukegan*, in the county of *Lake* and State aforesaid, of the other part, witnesseth:

That the said A. B. hath placed and bound himself apprentice to the said C. D., to learn the trade of a *Painter*, and to dwell with the said C. D., continue with and serve him for the term of three years from the date hereof, until the said A. B. shall have attained the age of twenty-one years, to wit, until the *eighth* day of *March*, A. D. 1858. And the said A. B. on his part, hereby agrees, that during the said term, he

will well and faithfully serve the said C. D., keep his secrets, and obey his lawful commands; that he will do no hurt or damage to his said master in his goods, estate, or otherwise, nor willingly suffer any to be done by others, and whether prevented or not, shall forthwith give notice thereof to his said master; that he will not inordinately embezzle or waste the goods of his said master, nor lend them without his consent, to any person or persons whatsoever; that he will not play at cards, dice, or any other unlawful games; that he will not contract matrimony during said term, or haunt or frequent groceries, tippling houses, or places of gaming; and that he will not at any time, by day or night, depart or absent himself from the service of his said master, without his leave, but will, in all things, as a good and faithful apprentice, demean and behave himself to his said master during said term.

And the said C. D. on his part, hereby agrees, in consideration of one dollar to him paid, the receipt whereof is hereby acknowledged, to teach and instruct the said A. B. in the art of *Painting*, or otherwise cause him to be well and sufficiently instructed in said art; that he will find and allow unto the said A. B., meat, drink, washing, lodging and apparel, both linen and woolen, and all other things necessary in sickness and in health, meet and convenient for such an apprentice, during the term aforesaid.

And the said C. D. hereby further agrees, in pursuance of the statute in such case made and provided, that he will teach, or cause to be taught, the said A. B., within said term, to read and write, and the ground rules of arithmetic; and at the expiration of said term of service, will give unto the said A. B., a new bible, and two new suits of clothes suitable to his condition in life.

In witness whereof, the said A. B. and the said E. B., father of the said A. B. and the said C. D., have to this and one other indenture of the same tenor and date, set their hands and seals the day and year first above written.

Signed and sealed in presence of

A. B. [SEAL.]
E. B. [SEAL.]
C. D. [SEAL.]

Form of Indorsement on Indenture of Apprenticeship, when father covenants for faithful performance of his son.

In consideration of the within mentioned agreements of the said C. D., I do hereby separately covenant and agree with the said C. D.,

that the within named A. B. shall well and faithfully perform and observe all the stipulations on his part within mentioned, to which true and faithful performance and observance, I bind myself firmly by these presents.

In witness whereof, I have hereunto set my hand and seal, the day and year first within mentioned.

Signed and sealed in presence of S. C. } E. B. [SEAL.]

Form of Indenture binding poor child, by Overseer of Poor, under township organization.

THIS INDENTURE, made and entered into on the *first* day of *June*, A. D. 1855, by and between *Francis H. Porter*, Overseer of the Poor of the town of *Waukegan*, in the county of *Lake*, for the year 1855, of the first part, and *Samuel I. Bradbury*, of said town, of the second part, witnesseth:

Whereas it hath been made to appear to said overseer of the poor, that *John Jones* is the minor child of poor parents, who have become chargeable to said town, as having a lawful settlement therein, (*or*, "who are supported," &c., *stating such a case as comes within the law*,) therefore the said overseer of the poor, by virtue and conformity to the law in such case made and provided, hath bound the said *John Jones*, who is now of the age of *fifteen* years, to the said *Samuel I. Bradbury*, as an apprentice to learn the art or trade of a *Printer;* and as such apprentice to dwell with and serve the said *Samuel I. Bradbury*, from the date hereof, until the said *John Jones* shall have attained the age of twenty-one years, which will be on the *ninth* of *May*, 1861. And it is hereby agreed and understood, that the said *John Jones* shall well and faithfully serve the said *Samuel I. Bradbury* during the said term, and shall obey all his lawful and reasonable commands; that he will not willingly do or suffer to be done, any harm or damage to the goods, property or interest of the said master; that he will not, without leave, absent himself from the service of his said master, but that he will in all things during the said term, demean and behave himself as a good and faithful apprentice to his said master.

And the said *Samuel I. Bradbury* doth, on his part, hereby covenant and agree, in consideration of the undertaking and binding aforesaid, to teach and instruct the said *John Jones* in the trade of a *Printer*, or otherwise cause him to be well and sufficiently taught and instructed

in said trade; that he will furnish and provide, or cause to be found, furnished, and provided unto the said *John Jones*, meat, drink, lodging, and suitable and proper clothing, in sickness and in health, and medicine, medical attendance and nursing, in sickness, during the said term.

And the said *Samuel I. Bradbury* further covenants and agrees that he will teach, or cause to be taught, the said *John Jones* to read and write, and the ground rules of arithmetic; and at the expiration of said term, will pay to him, the said *John Jones*, the sum of one hundred dollars, a new bible, and two complete suits of new wearing apparel suitable to his condition in life, (*or such other instruction, benefit or allowance as may be agreed upon.*)

In witness whereof, the said parties have hereto set their hands and seals, the day and year first above written.

FRANCIS H. PORTER, [SEAL.]
Overseer of the Poor of the town of *Waukegan*.
SAMUEL I. BRADBURY. [SEAL.]

Certificate of Approbation of County Judge, of the binding of an infant who has no parents or guardian in the State.

I, the undersigned, judge of the county court, within and for the county of *Randolph*, and State of Illinois, do hereby approve of the binding of A. B., the within named infant, by himself to the within named C. D., according to the statute in such case made and provided.

Given under my hand this *first* day of *June*, A. D. 1855.

J. M., County Judge.

Indenture of Apprentice by two Overseers of the Poor, of a minor.

THIS INDENTURE, made and entered into this *first* day of *June*, A. D. 1855, by and between A. B. and C. D., overseers of the poor, (*or* "justices of the peace,") of the county of *Randolph*, in the State of Illinois, of the one part, and E. F. of the same county, of the other part, witnesseth:

That the said overseers of the poor, (*or* "justices of the peace,") by virtue of the sixth section of the sixth chapter of the revised statutes relating to apprentices, and by and with the consent of the judge of probate of said *Randolph* county, have placed, and by these presents do place and bind out as an apprentice, a poor child, named G. H., of

said county, of the age of *fifteen* years, the said G. H. being, &c.,[1] to the said E. F., to learn the *Blacksmiths'* trade, in which the said E. F. is engaged, and after the manner of an apprentice to dwell with, and serve the said E. F. from the date hereof, until the said G. H. shall have attained the age of twenty-one years, to wit, on the *ninth* day of *May*, 1861.

And it is hereby agreed and understood, that the said G. H. shall well and faithfully serve the said E. F., during the said term, keep his secrets, and obey his lawful commands; shall do no hurt or damage to his said master in his goods, estate or otherwise, nor willingly suffer any to be done by others, and whether prevented or not, shall forthwith give notice thereof to his said master; shall not inordinately embezzle or waste the goods of his said master, nor lend them, without his consent, to any person or persons whatsoever; shall not play at any unlawful game, contract matrimony, haunt or frequent any grocery, tippling or gaming house; nor at any time by day or night depart or absent himself from the service of his said master, without his leave, but shall in all things, as a good and faithful apprentice, demean and behave himself to his said master.

And the said E. F. on his part, hereby agrees, in consideration of one dollar to him paid, the receipt whereof is hereby acknowledged, to teach and instruct the said G. H. in the *Blacksmiths'* trade, or otherwise cause him to be well and sufficiently instructed in said trade; that he will find and allow unto the said G. H., meat, drink, washing, lodging, and apparel suitable for working and holy-days, and all other things necessary in sickness and in health, and meet and convenient for such an apprentice, during the term aforesaid.

And the said E. F. hereby further agrees, in pursuance of the statute in such case made and provided, that he will teach or cause to be taught the said G. H., within said term, to read and write, and the ground rules of arithmetic; and at the expiration of said term of service, will give unto the said G. H. a new bible, and two new suits of clothes, suitable to his condition in life.

In witness whereof, the said A. B. and C. D., and the said E. F., have to this, and one other indenture of the same tenor and date, set their hands and seals, the day and year first above written.

Signed and sealed in presence of

A. B. [SEAL.]
C. D. [SEAL.]
E. F. [SEAL.]

(1) See Rev. Stat. p. 52, Sec. 6.

II. ARBITRATIONS AND AWARDS.

All persons having the requisite legal capacity, may, by an instrument in writing, to be signed and sealed by them, and attested by at least one witness, submit to one or more arbitrators, any controversy existing between them, not in suit, and may in such submission agree that a judgment of any court of record, competent to have jurisdiction of the subject matter, to be named in such instrument, shall be rendered upon the award made pursuant to such submission.[1]

General Form of a Submission, to be made a Rule of Court.

WHEREAS divers disputes and controversies have arisen and are now depending and unsettled, between A. B., of *Waukegan*, in the county of *Lake*, and State of Illinois, of the one part, and C. D., of said *Waukegan*, of the other part: Now, therefore, for the purpose of settling and determining such disputes and controversies, it is hereby mutually agreed and understood by and between the said parties, that the same shall be referred and submitted to the arbitrament and determination of E. F., G. H. and J. K., all of said county and State, or any two of them; and the said arbitrators, or any two of them, shall make and publish their award in writing, under their hands and seals, and deliver the same to the parties, or to either of them, who shall desire the same on or before the *first* day of *July* next; and it is hereby further agreed and understood by and between the said parties, that this submission shall be made a rule of the circuit court within and for the county of *Lake* aforesaid.

In witness whereof, the said parties have to this and one other instrument of the same tenor and date, set their hands and seals, this *first* day of *June*, A. D. 1855.

Signed and sealed in presence of

A. B. [SEAL.]
C. D. [SEAL.]

Short Form of General Submission.

We, the undersigned, hereby mutually agree to submit all our matters in difference, of every name or nature, to the award and determi-

(1) Rev. Stat. 56, Sec. 1.

nation of E. F., L. M. and S. T., for them to hear and determine the same, and make their award in writing, on or before the —— day of ——— next.

Witness our hands, this —— day of ———, 18—.

In presence of } A. B.
G. H. } C. D.

Arbitration Bond, to be mutual.

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of *Waukegan*, in the county of *Lake*, and State of Illinois, am held and firmly bound unto C. D., of said *Waukegan*, in the sum of *one thousand* dollars, to be paid to the said C. D., his executors, administrators and assigns, to which payment well and truly to be made, I do bind myself, my heirs, executors and administrators, and every of them firmly by these presents.

Sealed with my seal, dated the *first* day of *June*, A. D. 1855.

The condition of this obligation is such that if the above bound A. B., his heirs, executors and administrators, shall in all things well and truly stand to, abide, perform, observe, fulfill, and keep the award, order, arbitrament and determination of E. F., G. H, and J. K., all of said county and State, arbitrators indifferently selected as well on the part and behalf of the above bound A. B. as of the above named C. D., to arbitrate, award, order, adjudge, and determine, of, and concerning all, and all manner of actions, suits, cause and causes of action, bills, bonds, specialties, covenants, contracts, promises, judgments, executions, accounts, debts, quarrels, controversies, damages, trespasses and demands whatsoever, both in law, equity, or otherwise, which, at any time or times heretofore, have been had, made, moved, brought, commenced, sued, prosecuted, committed, done, suffered, or depending and unsettled by or between the said parties; so that the said award be made in writing, under the hands and seals of the said arbitrators, or any two of them, and ready to be delivered to the said parties in difference, or such of them as shall desire the same, on or before the *first* day of *August* next; then this obligation to be void, otherwise to remain in full force and effect. And the above named A. B. doth agree and desire that this his submission may be made a rule of the circuit court within and for the county of *Lake*, and State aforesaid.

Signed and sealed in presence of } A. B. [SEAL.]
}

Certificate of Oath of Arbitrators.

STATE OF ILLINOIS, } ss.
Lake COUNTY, }

I, *Amos S. Waterman*, a justice of the peace of said county, do certify that E. F., G. H., and J. K., named as arbitrators in the foregoing arbitration bond, before proceeding to hear any testimony in the cause therein mentioned, made oath that they would faithfully and fairly hear, examine and determine the cause according to the principles of equity and justice, and make a just and true award to said court according to the best of their understanding.

Given under my hand and seal this *tenth* day of *June*, A. D. 1855.

AMOS S. WATERMAN. [SEAL.]

Award of Arbitrators.

We, the subscribers, arbitrators appointed by submission, (*or* "rule of court," *or* "arbitration bond,") hereunto annexed, having notified and met the parties, and heard their several allegations, proofs and arguments, and duly considered the same, do award and determine that the within named A. B. shall recover of the within named C. D., the sum of ——— dollars, and that the same shall be in full of all matters within referred to us.

E. F.
G. H.
J. K.

Notice to the adverse party before Judgment is entered upon an award in the Circuit Court.

To A. B.:

Sir:—I send you herewith a copy of the award made the *first* day of *July*, A. D. 1855, by E. F., G. H. and J. K., of the county of *Lake*, and State of Illinois, on a reference to them of all disputes and controversies existing between us prior to the *first* day of *June*, A. D. 1855, by our submission of that date; and I hereby notify you to appear on the first day of the next term of the *Lake* county circuit court, to be holden at *Waukegan*, within and for said *Lake* county, at the court house, on the *second Monday of October* next, and show cause, if you can, why judgment should not then and there be entered by said circuit court against you on the said award, agreeably to the tenor and effect thereof.

July 1, 1855. C. D.

III. AGREEMENTS.

General Form of Agreement.

THIS AGREEMENT, made this *twenty-fourth* day of *September*, one thousand eight hundred and *fifty-five*, between A. B., of the town of *Waukegan*, and State of Illinois, of the first part, and C. D., of the *village* of *Hainesville* in said county and State, of the second part—

Witnesseth, that the said A. B., in consideration of the covenants on the part of the party of the second part hereinafter contained, doth covenant and agree to and with the said C. D., that (*here insert the agreement on the part of A. B.*)

And the said C. D., in consideration of the covenants on the part of the party of the first part, doth covenant and agree to, and with the said A. B., that (*here insert the agreement on the part of C. D.*)

In witness whereof, we have hereunto set our hands and seals, the day and year first above written.

Signed, sealed and delivered in the presence of L. M. } A. B. [SEAL.] C. D. [SEAL.]

Agreement to Sell Land.

ARTICLES OF AGREEMENT, made and entered into the *tenth* day of *June*, A. D. 1855, between A. B. of, &c., of the first part, and C. D. of, &c., of the second part, witnesseth:

That the said party of the first part, in consideration of the covenants and agreements hereinafter contained on the part of the said party of the second part, agrees to sell unto the said party of the second part, all that piece or parcel of land bounded and described as follows: (*here describe the premises*) for the sum of *eight hundred* dollars, in manner following, to wit: *three hundred* dollars on the execution of these presents, *two hundred and fifty* dollars on the *tenth* day of *December* next, and the remaining sum of *two hundred and fifty* dollars on the *tenth* day of *June*, A. D. 1856, with the lawful interest from this date on each payment at the time of making the same; and to pay all taxes assessed on said premises during the continuance of this contract.

And the said party of the first part also agrees that on receiving the said sum of *eight hundred* dollars at the time, and in the manner above mentioned, he will execute and deliver to the said party of the second part, at his own proper cost and expense, a good and sufficient deed,

CHAPTER III.

OF THE LIABILITY OF CONSTABLES AND SURETIES.

Upon the failure of the constable to pay over any money by him collected or received as provided by the statute, to any person entitled to receive the same, his or her agent, or attorney, such person may proceed against such justice or constable in a summary way, either before the circuit court or some justice of the peace of the proper county, by motion, upon giving to such constable five days' notice of the application; and recover the amount so neglected or refused to be paid, with twenty per cent. damages thereon, for such detention, and shall have execution therefor.[1]

If any constable shall neglect or fail to return an execution within ten days after its proper return day, or if the demand, debt, or claim, be wholly or in part lost, or if any special damage shall arise to any party by reason of the neglect or refusal to act, or the misfeasance or nonfeasance of any constable in the discharge of any official duty, the party aggrieved may have his action in the circuit court, or, when the amount claimed does not exceed one hundred dollars, before any justice of the peace of the proper county, against such constable and his sureties on the official bond of such constable, and shall recover thereon the amount of said execution, with interest from the date of the judgment upon which the original execution issued.[2]

The responsibility of the sureties is held to be co-extensive with that of the constable, and that they are liable whenever he is liable to a party in whose favor an execution has been delivered to him; hence an action lies upon the constable's bond or instrument of security, against the constable and his sureties, for the mere neglect to return an execution within the time prescribed by the statute after the return day thereof, and this without showing any moneys collected.[3]

(1) Rev. Stat. 332, Sec. 116. (2) Id. Sec. 118. (3) 10 Wend. 370.

The remedy provided by the statute, does not deprive a party of his common law remedy.[1] Therefore, where a constable has collected the money on an execution, and neglects to pay it over to the person entitled to receive the same, or to the justice who issued the execution, an action of assumpsit for money had and received, will lie against the constable to recover the amount collected, without any previous demand being made.[2] So assumpsit lies against a constable for the amount of goods sold by him, though the purchaser to whom they are delivered refuses to pay for them.[3]

Where a constable or other officer neglects his duty, or abuses the trust reposed in him by law, to the injury or damage of another, an action on the case lies against him in the circuit court, at the suit of the party sustaining the injury.[4] Thus, if a constable neglect to serve a writ or precept delivered to him, this action lies for the injury suffered by such neglect or refusal.[5]

(1) 10 Johns. 390.
(2) 3 Johns. 182; 1 Wend. 534; 16 East, 274.
(3) 9 Johns. 96.
(4) 1 Scam. 237.
(5) 1 Scam. 200.

CHAPTER IV.

OF THE POWERS AND DUTIES OF CONSTABLES IN CRIMINAL CASES.

I. HIS POWERS GENERALLY.

Rev. Stat. 328, Sec. 88. "It shall be the duty of every constable, when any felony or breach of the peace shall be committed in his presence, forthwith to apprehend the person committing the same, and bring him before some justice of the peace, to be dealt with according to law; to suppress all riots and unlawful assemblies, and to keep the peace, and also to serve and execute all warrants, writs, precepts, and other process to him lawfully directed; and generally to do and perform all things appertaining to the office of constable within this State."

The office of constable is either ministerial in obeying warrants and precepts, or is original as a conservator of the peace, at common law, or by virtue of particular acts of the legislature. By the original and inherent power which he possesses, he may, for treason, felony, breach of the peace, and some misdemeanors less than felony, committed in his view, apprehend the supposed offender, without warrant.[1] So if a felony has been committed, a constable, or any peace officer, may lawfully apprehend a supposed offender, upon the information of others, without any positive charge, or his own knowledge of the circumstances on which the suspicion is founded.[2] In general, however, a constable cannot of his own accord, and without an express charge or warrant, justify

(1) 1 Hale, 587. (2) 1 East's P. C. 301; 6 T. R. 315; 6 Bin. 316.

the arrest of a supposed offender, upon suspicion of his guilt, unless he can show that a felony was committed by some person, as well as the reasonableness of the suspicion that the party imprisoned is guilty.[1]

So a constable may, without warrant, apprehend any one for a breach of the peace, in his presence, and detain him until he can bring him before a magistrate.[2] A constable may, also, upon his own view, lawfully interpose to prevent a breach of the peace, or to quiet an affray; and if he or any of his assistants, whether commanded or not, be killed, it will be murder in all who take part in the assistance, there being either express or implied notification of the character in which he interposed.[3]

II. OF ARRESTS.

An *arrest*, in criminal cases, is the apprehending or detaining a person, in order that he may be forthcoming to answer to a crime alleged against him, or of which he is suspected to be guilty.[4] To this arrest all persons without distinction are liable, when accused of a criminal offense. The exemptions which exist in civil cases, here cease to operate. It is laid down that no person can be arrested unless charged with such a crime as will at least justify holding him to bail when taken.[5]

To constitute an arrest, the party must be actually touched by the officer, or confined in a room, or submit himself, by words or actions, to be in custody. The mere giving in charge, or causing him voluntarily to appear before a magistrate, without the person being taken into actual custody, will not amount to an arrest; for bare words in this respect, will not be of any avail.[6] But no manual touching of the body, or actual force, is necessary, in order to constitute an arrest; it is sufficient if the party is within the power of the officer, and submits to the arrest.[7] Yet, it is said to be better in all cases to touch the prisoner's person, in order to complete the arrest; taking care, at the same time, to use no greater force or constraint than is necessary for his safe custody; the degree of which will depend upon the particular circum-

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(1) 4 Esp. 80; 1 Chit. Crim. L. 18.
(2) Hale's P. C. 587; 3 Wend. 384.
(3) 1 East's P. C. 303.
(4) 4 Bl. Com. 288; 1 Chit. Crim. L. 12.
(5) 4 Bl. Com. 289.
(6) 1 Chit. Crim. L. 48; Davis' Just. 64; 1 East's P. C. 330.
(7) Barb. Crim. L. 531, and authorities cited.

stances of the case—as, the character of the party, the nature of the offense charged, the state of the country, &c.[1]

As no time is prescribed in the warrant within which it is to be executed, it continues in force until fully executed, during the term of office of the magistrate who granted it. And it is said that a person may be twice apprehended under it, if the purposes of justice have not been effected. In case of a negligent escape, the prisoner may be retaken. Otherwise, however, if the escape be voluntary. It is unquestionably the duty of the officer to act according to the exigency of his process, which is, "*forthwith* to take the person accused," if practicable. If the officer should willfully neglect his duty in this respect, he would doubtless render himself liable to be punished criminally. And should any person having charge of such process, misconduct himself by keeping it back, to be afterwards made use of for vexatious or improper purposes, he may subject himself to an action for a malicious prosecution, at the suit of the party aggrieved.[2]

(1) 1 Nun. & Walsh, 203.

(2) See Barb. Crim. L. 532.

CHAPTER V.

OF FEES AND COMPENSATIONS ALLOWED TO CONSTABLES IN BOTH CIVIL AND CRIMINAL CASES.

CONSTABLE'S FEES IN CRIMINAL CASES.

Rev. Stat. 247, Sec. 18. "For serving a warrant on each person named therein, twenty-five cents.

Mileage, to be computed from the office of the justice who may have issued the same, to the place of service, for each mile, six and a fourth cents.

Serving each subpœna, twelve and a half cents.

Mileage from the justice's office to the residence of the witness, per mile, six and a fourth cents.

Taking each person to jail when committed, twenty-five cents.

Mileage from the justice's office to the jail, per mile, six and a fourth cents.

For summoning jury in case of assault and battery, fifty cents.

But in all cases where the defendant shall be acquitted, or otherwise discharged, without the payment of costs, the constable shall not be entitled to any fees."

CONSTABLE'S FEES IN CIVIL CASES.

Rev. Stat. 247, Sec. 19. "Serving and returning each warrant or summons, twenty-five cents.

Serving and returning each subpœna, twelve and a half cents.

Serving and returning execution, fifty cents.

Advertising property for sale, twenty-five cents.

Commission on sales not exceeding ten dollars, ten per centum, and on all sales exceeding that sum, six per centum.

Attending trial before a justice in each jury cause, twenty-five cents.

Serving jury warrant in each case, fifty cents.

Each day's attendance on the circuit court, when required to be paid out of the county treasury, one dollar.

Mileage, when serving a warrant, summons or subpœna, from the justice's office to the residence of the defendant or witness, per mile, five cents.

For serving warrant on appraisers in cases of estrays, &c., twenty-five cents."

PART FIFTH.

COMMON FORMS FOR THE TRANSACTION OF BUSINESS.

I. APPRENTICES.

Indenture of Apprenticeship of a Minor, with the consent of the father.

THIS INDENTURE, made and entered into this *first* day of *June*, A. D. 1855, by and between A. B. a minor, of the age of *eighteen* years on the *eighth* day of *March* last, of his own free will and accord, and by and with the consent of E. B., his father, of the county of *McHenry*, and State of Illinois, of the one part, and C. D. of *Waukegan*, in the county of *Lake* and State aforesaid, of the other part, witnesseth:

That the said A. B. hath placed and bound himself apprentice to the said C. D., to learn the trade of a *Painter*, and to dwell with the said C. D., continue with and serve him for the term of three years from the date hereof, until the said A. B. shall have attained the age of twenty-one years, to wit, until the *eighth* day of *March*, A. D. 1858. And the said A. B. on his part, hereby agrees, that during the said term, he

will well and faithfully serve the said C. D., keep his secrets, and obey his lawful commands; that he will do no hurt or damage to his said master in his goods, estate, or otherwise, nor willingly suffer any to be done by others, and whether prevented or not, shall forthwith give notice thereof to his said master; that he will not inordinately embezzle or waste the goods of his said master, nor lend them without his consent, to any person or persons whatsoever; that he will not play at cards, dice, or any other unlawful games; that he will not contract matrimony during said term, or haunt or frequent groceries, tippling houses, or places of gaming; and that he will not at any time, by day or night, depart or absent himself from the service of his said master, without his leave, but will, in all things, as a good and faithful apprentice, demean and behave himself to his said master during said term.

And the said C. D. on his part, hereby agrees, in consideration of one dollar to him paid, the receipt whereof is hereby acknowledged, to teach and instruct the said A. B. in the art of *Painting*, or otherwise cause him to be well and sufficiently instructed in said art; that he will find and allow unto the said A. B., meat, drink, washing, lodging and apparel, both linen and woolen, and all other things necessary in sickness and in health, meet and convenient for such an apprentice, during the term aforesaid.

And the said C. D. hereby further agrees, in pursuance of the statute in such case made and provided, that he will teach, or cause to be taught, the said A. B., within said term, to read and write, and the ground rules of arithmetic; and at the expiration of said term of service, will give unto the said A. B., a new bible, and two new suits of clothes suitable to his condition in life.

In witness whereof, the said A. B. and the said E. B., father of the said A. B. and the said C. D., have to this and one other indenture of the same tenor and date, set their hands and seals the day and year first above written.

Signed and sealed in presence of

A. B. [SEAL.]
E. B. [SEAL.]
C. D. [SEAL.]

Form of Indorsement on Indenture of Apprenticeship, when father covenants for faithful performance of his son.

In consideration of the within mentioned agreements of the said C. D., I do hereby separately covenant and agree with the said C. D.,

that the within named A. B. shall well and faithfully perform and observe all the stipulations on his part within mentioned, to which true and faithful performance and observance, I bind myself firmly by these presents.

In witness whereof, I have hereunto set my hand and seal, the day and year first within mentioned.

Signed and sealed in presence of S. C. } E. B. [SEAL.]

Form of Indenture binding poor child, by Overseer of Poor, under township organization.

THIS INDENTURE, made and entered into on the *first* day of *June*, A.D. 1855, by and between *Francis H. Porter*, Overseer of the Poor of the town of *Waukegan*, in the county of *Lake*, for the year 1855, of the first part, and *Samuel I. Bradbury*, of said town, of the second part, witnesseth:

Whereas it hath been made to appear to said overseer of the poor, that *John Jones* is the minor child of poor parents, who have become chargeable to said town, as having a lawful settlement therein, (*or*, "who are supported," &c., *stating such a case as comes within the law*,) therefore the said overseer of the poor, by virtue and conformity to the law in such case made and provided, hath bound the said *John Jones*, who is now of the age of *fifteen* years, to the said *Samuel I. Bradbury*, as an apprentice to learn the art or trade of a *Printer;* and as such apprentice to dwell with and serve the said *Samuel I. Bradbury*, from the date hereof, until the said *John Jones* shall have attained the age of twenty-one years, which will be on the *ninth* of *May*, 1861. And it is hereby agreed and understood, that the said *John Jones* shall well and faithfully serve the said *Samuel I. Bradbury* during the said term, and shall obey all his lawful and reasonable commands; that he will not willingly do or suffer to be done, any harm or damage to the goods, property or interest of the said master; that he will not, without leave, absent himself from the service of his said master, but that he will in all things during the said term, demean and behave himself as a good and faithful apprentice to his said master.

And the said *Samuel I. Bradbury* doth, on his part, hereby covenant and agree, in consideration of the undertaking and binding aforesaid, to teach and instruct the said *John Jones* in the trade of a *Printer*, or otherwise cause him to be well and sufficiently taught and instructed

in said trade; that he will furnish and provide, or cause to be found, furnished, and provided unto the said *John Jones*, meat, drink, lodging, and suitable and proper clothing, in sickness and in health, and medicine, medical attendance and nursing, in sickness, during the said term.

And the said *Samuel I. Bradbury* further covenants and agrees that he will teach, or cause to be taught, the said *John Jones* to read and write, and the ground rules of arithmetic; and at the expiration of said term, will pay to him, the said *John Jones*, the sum of one hundred dollars, a new bible, and two complete suits of new wearing apparel suitable to his condition in life, (*or such other instruction, benefit or allowance as may be agreed upon.*)

In witness whereof, the said parties have hereto set their hands and seals, the day and year first above written.

FRANCIS H. PORTER, [SEAL.]
Overseer of the Poor of the town of *Waukegan*.
SAMUEL I. BRADBURY. [SEAL.]

Certificate of Approbation of County Judge, of the binding of an infant who has no parents or guardian in the State.

I, the undersigned, judge of the county court, within and for the county of *Randolph*, and State of Illinois, do hereby approve of the binding of A. B., the within named infant, by himself to the within named C. D., according to the statute in such case made and provided.

Given under my hand this *first* day of *June*, A. D. 1855.

J. M., County Judge.

Indenture of Apprentice by two Overseers of the Poor, of a minor.

THIS INDENTURE, made and entered into this *first* day of *June*, A.D. 1855, by and between A. B. and C. D., overseers of the poor, (*or* "justices of the peace,") of the county of *Randolph*, in the State of Illinois, of the one part, and E. F. of the same county, of the other part, witnesseth:

That the said overseers of the poor, (*or* "justices of the peace,") by virtue of the sixth section of the sixth chapter of the revised statutes relating to apprentices, and by and with the consent of the judge of probate of said *Randolph* county, have placed, and by these presents do place and bind out as an apprentice, a poor child, named G. H., of

said county, of the age of *fifteen* years, the said G. H. being, &c.,[1] to the said E. F., to learn the *Blacksmiths'* trade, in which the said E. F. is engaged, and after the manner of an apprentice to dwell with, and serve the said E. F. from the date hereof, until the said G. H. shall have attained the age of twenty-one years, to wit, on the *ninth* day of *May*, 1861.

And it is hereby agreed and understood, that the said G. H. shall well and faithfully serve the said E. F., during the said term, keep his secrets, and obey his lawful commands; shall do no hurt or damage to his said master in his goods, estate or otherwise, nor willingly suffer any to be done by others, and whether prevented or not, shall forthwith give notice thereof to his said master; shall not inordinately embezzle or waste the goods of his said master, nor lend them, without his consent, to any person or persons whatsoever; shall not play at any unlawful game, contract matrimony, haunt or frequent any grocery, tippling or gaming house; nor at any time by day or night depart or absent himself from the service of his said master, without his leave, but shall in all things, as a good and faithful apprentice, demean and behave himself to his said master.

And the said E. F. on his part, hereby agrees, in consideration of one dollar to him paid, the receipt whereof is hereby acknowledged, to teach and instruct the said G. H. in the *Blacksmiths'* trade, or otherwise cause him to be well and sufficiently instructed in said trade; that he will find and allow unto the said G. H., meat, drink, washing, lodging, and apparel suitable for working and holy-days, and all other things necessary in sickness and in health, and meet and convenient for such an apprentice, during the term aforesaid.

And the said E. F. hereby further agrees, in pursuance of the statute in such case made and provided, that he will teach or cause to be taught the said G. H., within said term, to read and write, and the ground rules of arithmetic; and at the expiration of said term of service, will give unto the said G. H. a new bible, and two new suits of clothes, suitable to his condition in life.

In witness whereof, the said A. B. and C. D., and the said E. F., have to this, and one other indenture of the same tenor and date, set their hands and seals, the day and year first above written.

Signed and sealed in presence of

A. B. [SEAL.]
C. D. [SEAL.]
E. F. [SEAL.]

(1) See Rev. Stat. p. 52, Sec. 6.

II. ARBITRATIONS AND AWARDS.

All persons having the requisite legal capacity, may, by an instrument in writing, to be signed and sealed by them, and attested by at least one witness, submit to one or more arbitrators, any controversy existing between them, not in suit, and may in such submission agree that a judgment of any court of record, competent to have jurisdiction of the subject matter, to be named in such instrument, shall be rendered upon the award made pursuant to such submission.[1]

General Form of a Submission, to be made a Rule of Court.

WHEREAS divers disputes and controversies have arisen and are now depending and unsettled, between A. B., of *Waukegan*, in the county of *Lake*, and State of Illinois, of the one part, and C. D., of said *Waukegan*, of the other part: Now, therefore, for the purpose of settling and determining such disputes and controversies, it is hereby mutually agreed and understood by and between the said parties, that the same shall be referred and submitted to the arbitrament and determination of E. F., G. H. and J. K., all of said county and State, or any two of them; and the said arbitrators, or any two of them, shall make and publish their award in writing, under their hands and seals, and deliver the same to the parties, or to either of them, who shall desire the same on or before the *first* day of *July* next; and it is hereby further agreed and understood by and between the said parties, that this submission shall be made a rule of the circuit court within and for the county of *Lake* aforesaid.

In witness whereof, the said parties have to this and one other instrument of the same tenor and date, set their hands and seals, this *first* day of *June*, A. D. 1855.

Signed and sealed in presence of } A. B. [SEAL.] C. D. [SEAL.]

Short Form of General Submission.

We, the undersigned, hereby mutually agree to submit all our matters in difference, of every name or nature, to the award and determi-

(1) Rev. Stat. 56, Sec. 1.

nation of E. F., L. M. and S. T., for them to hear and determine the same, and make their award in writing, on or before the —— day of ——— next.

Witness our hands, this —— day of ———, 18—.

In presence of } A. B.
G. H. } C. D.

Arbitration Bond, to be mutual.

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of *Waukegan*, in the county of *Lake*, and State of Illinois, am held and firmly bound unto C. D., of said *Waukegan*, in the sum of *one thousand* dollars, to be paid to the said C. D., his executors, administrators and assigns, to which payment well and truly to be made, I do bind myself, my heirs, executors and administrators, and every of them firmly by these presents.

Sealed with my seal, dated the *first* day of *June*, A. D. 1855.

The condition of this obligation is such that if the above bound A. B., his heirs, executors and administrators, shall in all things well and truly stand to, abide, perform, observe, fulfill, and keep the award, order, arbitrament and determination of E. F., G. H, and J. K., all of said county and State, arbitrators indifferently selected as well on the part and behalf of the above bound A. B. as of the above named C. D., to arbitrate, award, order, adjudge, and determine, of, and concerning all, and all manner of actions, suits, cause and causes of action, bills, bonds, specialties, covenants, contracts, promises, judgments, executions, accounts, debts, quarrels, controversies, damages, trespasses and demands whatsoever, both in law, equity, or otherwise, which, at any time or times heretofore, have been had, made, moved, brought, commenced, sued, prosecuted, committed, done, suffered, or depending and unsettled by or between the said parties; so that the said award be made in writing, under the hands and seals of the said arbitrators, or any two of them, and ready to be delivered to the said parties in difference, or such of them as shall desire the same, on or before the *first* day of *August* next; then this obligation to be void, otherwise to remain in full force and effect. And the above named A. B. doth agree and desire that this his submission may be made a rule of the circuit court within and for the county of *Lake*, and State aforesaid.

Signed and sealed in presence of } A. B. [SEAL.]

Certificate of Oath of Arbitrators.

STATE OF ILLINOIS, }
Lake COUNTY, } ss.

I, *Amos S. Waterman*, a justice of the peace of said county, do certify that E. F., G. H., and J. K., named as arbitrators in the foregoing arbitration bond, before proceeding to hear any testimony in the cause therein mentioned, made oath that they would faithfully and fairly hear, examine and determine the cause according to the principles of equity and justice, and make a just and true award to said court according to the best of their understanding.

Given under my hand and seal this *tenth* day of *June*, A. D. 1855.

AMOS S. WATERMAN. [SEAL.]

Award of Arbitrators.

We, the subscribers, arbitrators appointed by submission, (*or* "rule of court," *or* "arbitration bond,") hereunto annexed, having notified and met the parties, and heard their several allegations, proofs and arguments, and duly considered the same, do award and determine that the within named A. B. shall recover of the within named C. D., the sum of ——— dollars, and that the same shall be in full of all matters within referred to us.

E. F.
G. H.
J. K.

Notice to the adverse party before Judgment is entered upon an award in the Circuit Court.

To A. B.:

Sir:—I send you herewith a copy of the award made the *first* day of *July*, A. D. 1855, by E. F., G. H. and J. K., of the county of *Lake*, and State of Illinois, on a reference to them of all disputes and controversies existing between us prior to the *first* day of *June*, A. D. 1855, by our submission of that date; and I hereby notify you to appear on the first day of the next term of the *Lake* county circuit court, to be holden at *Waukegan*, within and for said *Lake* county, at the court house, on the *second Monday of October* next, and show cause, if you can, why judgment should not then and there be entered by said circuit court against you on the said award, agreeably to the tenor and effect thereof.

July 1, 1855.

C. D.

III. AGREEMENTS.

General Form of Agreement.

THIS AGREEMENT, made this *twenty-fourth* day of *September*, one thousand eight hundred and *fifty-five*, between A. B., of the town of *Waukegan*, and State of Illinois, of the first part, and C. D., of the *village* of *Hainesville* in said county and State, of the second part—

Witnesseth, that the said A. B., in consideration of the covenants on the part of the party of the second part hereinafter contained, doth covenant and agree to and with the said C. D., that (*here insert the agreement on the part of A. B.*)

And the said C. D., in consideration of the covenants on the part of the party of the first part, doth covenant and agree to, and with the said A. B., that (*here insert the agreement on the part of C. D.*)

In witness whereof, we have hereunto set our hands and seals, the day and year first above written.

Signed, sealed and delivered in the presence of L. M.

A. B. [SEAL.]
C. D. [SEAL.]

Agreement to Sell Land.

ARTICLES OF AGREEMENT, made and entered into the *tenth* day of *June*, A. D. 1855, between A. B. of, &c., of the first part, and C. D. of, &c., of the second part, witnesseth:

That the said party of the first part, in consideration of the covenants and agreements hereinafter contained on the part of the said party of the second part, agrees to sell unto the said party of the second part, all that piece or parcel of land bounded and described as follows: (*here describe the premises*) for the sum of *eight hundred* dollars, in manner following, to wit: *three hundred* dollars on the execution of these presents, *two hundred and fifty* dollars on the *tenth* day of *December* next, and the remaining sum of *two hundred and fifty* dollars on the *tenth* day of *June*, A. D. 1856, with the lawful interest from this date on each payment at the time of making the same; and to pay all taxes assessed on said premises during the continuance of this contract.

And the said party of the first part also agrees that on receiving the said sum of *eight hundred* dollars at the time, and in the manner above mentioned, he will execute and deliver to the said party of the second part, at his own proper cost and expense, a good and sufficient deed,

Condition of Bond for Payment of Money at different times.

The condition of this obligation is such that if the above bound A. B., his heirs, executors or administrators, shall well and truly pay, or cause to be paid, unto the said C. D., his executors, administrators or assigns, the sum of *two thousand* dollars, in manner following, to wit: *five hundred* dollars on the *first* day of *January* next, *five hundred* dollars on the *first* day of *March* next ensuing, *five hundred* dollars on the *first* day of *July*, A. D. 1856, and *five hundred* dollars on the *first* day of *January*, A. D. 1857, then this obligation to be void; but if default be made in the payment of either of the said sums on the day specified for the payment of each, then this bond shall be and remain in full force and effect.

Signed and sealed in presence of } A. B. [SEAL.]

Condition of Bond for Conveyance of Real Estate.

The condition of this obligation is such, that whereas the said A. B. has this day sold unto the said C. D., *(here describe the land,)* for the sum of *three thousand* dollars, one third part of which sum the said C. D. has paid unto the said A. B. in hand, and for the remainder thereof has given two promissory notes, bearing even date with these presents, for the sum of *one thousand* dollars each, signed by the said C. D., and payable to the said A. B. or order, one on the *first* day of *January*, A. D. 1856, and one on the *first* day of *January*, A. D. 1857, each bearing *six* per cent. interest: Now if the said A. B., upon the payment of the said notes on the day specified and appointed in each for the payment thereof, by the said C. D., shall make, execute and deliver unto the said C. D., or his assigns, a warranty deed of the said premises, containing the usual covenants, then this obligation is to be void, otherwise to be and remain in full force and effect.

Signed and sealed in presence of } A. B. [SEAL.]

VIII. COPARTNERSHIP.

Articles of Copartnership.

ARTICLES OF AGREEMENT, made and entered into this *first* day of *June*, A. D. 1855, by and between A. B. and C. D., both of *Waukegan*, in the county of *Lake*, and State of Illinois, witnesseth:

First, The said parties have agreed, and by these presents do agree, to become partners in trade, and in buying, selling, vending and retailing all sorts of goods, wares, and merchandise, which copartnership shall continue for the term of *three* years from this date. And the said A. B. and C. D. have each contributed and delivered, as his proportion of the stock in trade, the sum of *five thousand* dollars, to be laid out, expended and employed in the management of their said business, for their best advantage and profit. And it is hereby agreed between the said parties, that [the said A. B. shall immediately proceed to Philadelphia for the purchase and forwarding by the way of New Orleans, a suitable quantity of dry goods, and that the said C. D. shall immediately proceed to St. Louis and New Orleans for the purchase and forwarding of groceries and such other articles of stock as may be most advantageously purchased at those places, each party to accomplish the business thus specified as soon as may be.]

Second, The said parties further agree to and with each other, that neither of them will, during the term of copartnership aforesaid, exercise or follow the business herein before specified, or any other business, to their private benefit and advantage; but shall and will, at all times during said term, if they shall so long live, devote their exclusive attention, and exercise their best endeavors in every possible way and manner, to promote the joint interest, benefit, advantage and profit of the copartnership. And it is hereby mutually agreed, that all the necessary expenses of said copartnership business shall be equally borne and paid by said parties; that all the gain, profit, and increase arising from said business shall be equally divided between the said parties; and that all losses that may arise in said joint trade, by reason of bad debts, ill commodities, or otherwise, not chargeable to the negligence or inattention of either party, shall be borne and paid equally between them.

Third, It is mutually agreed by the said parties, that there shall be kept from time to time, and at all times during said term, perfect, just, true and proper books of account, wherein each of said parties shall

duly enter and set down as well all moneys by him received, paid, expended and laid out, in and about the management of said business, or to either of themselves, or for their private account, as also all goods, wares or merchandise, either of them may desire for their individual benefit, and all other matters and things whatsoever, to the said joint business and management thereof in any wise belonging or appertaining, which said books shall be used in common by said parties, so that either of them may have free access thereto.

Fourth, It is further mutually agreed by the said parties, that they will, as often as once in three months, make, yield and render, each with the other, a true, just and perfect account of all profit and increase by them, or either of them, made, and of all losses by them, or either of them, sustained, and also of all payments, receipts and disbursements whatsoever, by them, or either of them, made or received, and of all other things, by them, or either of them, acted, done or suffered in their said joint business; and the same account being so made, shall and will clear, adjust, pay and deliver, each unto the other, at the time of making such account, their equal shares of the profits so made as aforesaid; and at the end of said term, or sooner, should the parties so determine, they will make a true and just account of all things as aforesaid, and divide the profits aforesaid, and in all things well and truly adjust the same; and upon such settlement and adjustment, all and every the stock and stocks, as well as the gain and increase thereof, which shall appear to be remaining, whether consisting of money, debts, goods, wares or merchandise, shall be equally divided between the said parties.

Fifth, Neither of said parties shall sell on credit any goods, wares, or merchandise of the said joint stock to any person or persons, against the express wish or consent of the other, verbally or in writing; or release or compound any debt or demand due or coming to them on account of said joint business, without the consent of the other; or use his own or the copartnership name, without the consent of the other, as promisor, obligor, covenantor, indorser, drawer or acceptor, or as bail or surety in any way in any transaction, wherein the said firm, or either of them, are not interested on their partnership or individual account: nor shall either of the said parties, without the consent of the other, in writing first had and obtained, sell or assign his share or interest in the said joint trade and business, to any person or persons whatsoever.

In testimony whereof, the said parties have to this and one other

instrument of the same tenor and date, interchangeably set their hands and seals, the day and year first above written.

Signed and sealed in presence of } A. B. [SEAL.] C. D. [SEAL.]

Agreement to continue a Partnership by Indorsement thereon.

It is hereby agreed and understood between the within mentioned parties, that their joint trade, as specified within, shall be continued for a further term of *two* years on the same terms, and subject to the same restrictions and requirements as within specified and expressed.

Witness our hands and seals, this *first* day of *August*, A. D. 1855.

Signed and sealed in presence of } A. B. [SEAL.] C. D. [SEAL.]

Agreement for a Law Partnership.

ARTICLES OF AGREEMENT, made and entered into this *first* day of *June*, A. D. 1855, by and between A. B. and C. D., of *Waukegan*, in the county of *Lake*, and State of Illinois, witnesseth:

That the said parties have this day mutually agreed to enter into, and do hereby enter into, a copartnership, under the name and style of B. & D., in the practice of Law generally, and particularly in the circuit and district courts of the United States, and the supreme and circuit courts of the State of Illinois; and that their office shall be at *Waukegan*, aforesaid.

And the said parties do hereby mutually agree, that they will give their sole and undivided attention to the business of their profession, and constant attendance at their said office, when not necessarily called elsewhere on professional business, or absent for any stated time by consent of the other; that they will incur no liabilities in the name of said firm, or obtain any credit, unless when necessary so to do, in the business of said firm.

And it is further mutually agreed by the said parties, that they will jointly investigate, prepare and argue all causes in which they may be engaged, whensoever the same may be necessary, and will equally share all the profits and expenses incident to said business.

And it hereby further agreed, that this copartnership shall continue for the term of *three* years, from the date hereof, unless sooner terminated by mutual consent.

In witness whereof, &c.

Agreement to Dissolve a Copartnership.

ARTICLES OF AGREEMENT, made and entered into this *first* day of *June*, A. D. 1855, by and between A. B. and C. D., now partners in trade in the city of *Waukegan*, in the county of *Lake* and State of Illinois, witnesseth:

That whereas the said partners, on the *first* day of *June*, A. D. 1852, by articles of agreement of that date, entered into a copartnership in trade, which has continued until the present time, and the said parties being desirous that the same should cease on the *thirty-first* instant, it is hereby mutually agreed and understood that said copartnership do expire, by limitation, on the *thirty-first* day of *June* instant; that the said parties will give public notice of such intention in the newspapers of said city, requiring all persons indebted to make immediate settlement, by note or otherwise, and requesting all persons having claims to present them for settlement; that the stock now on hand be advertised and sold at retail, at prime cost for cash, and whatever may remain on said *thirty-first* day of *June*, shall be sold at public auction to the highest bidder, on such terms as these parties may then and there determine; that the said A. B. shall, immediately after such sale, proceed to the settlement of all claims due to and from said firm, and for that purpose, and that only, is hereby empowered to use the name of said firm, whenever it may be necessary to institute suits at law, or in equity; and finally, after such settlement, or within six months from the date hereof, the said A. B. and C. D. will equally divide the assets of said firm remaining on hand.

In witness whereof, &c., (*as in articles of copartnership.*)

Agreement for a Limited Law Partnership.

ARTICLES OF AGREEMENT, made and entered into this *first* day of *June*, A. D. 1855, by and between A. B. of *Waukegan*, in the county of *Lake* and State of Illinois, and C. D., of the *city of Chicago*, in the county of *Cook* and State aforesaid, witnesseth:

That the said parties hereby agree to enter into a law partnership in the business of the circuit court of said county of *Lake*, for the term of *three* years from this date, upon the terms and conditions hereinafter expressed.

And the said A. B., on his part, hereby agrees with the said C. D., that he will regularly attend the circuit court of said county of *Lake*,

and will argue, when required by said C. D., all questions of law or fact which may arise in any suit commenced by the said C. D., or which he may be employed to defend, and should any such suit be carried to the supreme court of said State by appeal or writ of error, then and there to manage, according to the best of his abilities, all such suits.

And the said C. D., in consideration of the agreements of the said A. B., on his part, hereby agrees that in all suits which he may commence in said county of *Lake*, or which he may be employed to defend, he will cause all due preparation to be made by the summoning of the necessary witnesses, and the examination of such legal authorities having a bearing upon the question at issue, as may be within his reach, and prepare a brief of the same for the use of said A. B. And he hereby further agrees, for the consideration aforesaid, that he will collect and pay over to the said A. B., one half of all the fees accruing in such litigated suits, in said circuit court, and all fees accruing by reason of any such suit being carried to the supreme court; and that in the collection and payment of such fees, he will use all due diligence.

In testimony, &c.

IX. CONVEYANCES.

Warranty Deed.

THIS INDENTURE, made this *first* day of *October*, in the year of our Lord one thousand eight hundred and *fifty-five*, between A. B. and C. B. his wife, of the county of *Cook* and State of Illinois, of the first part, and E. F., of the county and State aforesaid, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of *one thousand* dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, have granted, bargained, sold, remised, released, aliened and confirmed, and by these presents do grant, bargain, sell, remise, release, alien and confirm, unto the said party of the second part, and to his heirs and assigns forever, all of the following described premises, situate, lying and being in the county of *Cook* and State of Illinois, (*here describe the premises.*)

Together with all and singular the hereditaments and appurtenances

thereunto belonging, or in any wise appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim or demand whatsoever of the said party of the first part, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances; to have and to hold the said premises, above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever. And the said A. B., for himself, his heirs, executors and administrators, doth covenant, bargain and agree, to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of those presents, the said A. B. and C. B. are well seized of the premises above conveyed, as of a good, sure, perfect, absolute and indefeasible state of inheritance in the law in fee simple, and have good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid; and that the same are free and clear of all former and other grants, bargains, sales, liens, judgments, taxes, assessments and encumbrances of what kind or nature soever; and the above bargained premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, shall and will warrant and forever defend.

In witness whereof, the said party of the first part have hereunto set their hands and seals, the day and year first above written.

Sealed and delivered in presence of } A. B. [SEAL.] C. B. [SEAL.]

Quit Claim Deed.

THIS INDENTURE, made this *first* day of *October*, in the year of our Lord one thousand eight hundred and *fifty-five*, between A. B. and C. B. his wife, of the county of *Lake* and State of Illinois, party of the first part, and E. F., of the said county and State, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of *one* dollar in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, have remised, released, conveyed and quit-claimed, and by these presents do remise, release, convey and quit-claim unto the said party of the second part, his heirs and

assigns forever, all the right, title, interest, claim and demand, which the said party of the first part have in and to the following described lot, piece or parcel of land, to wit: (*here describe the premises.*)

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in any wise appertaining, and all the estate, right, title, interest and claim whatever, of the said party of the first part, either in law or equity, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered in presence of } A. B. [SEAL.] C. B. [SEAL.]

Deed of Gift of Real Estate.

KNOW ALL MEN BY THESE PRESENTS, That I, N. E., of *Waukegan*, in the county of *Lake* and State of Illinois, for and in consideration of the natural love and affection which I bear to my son, N. W. E., and also in consideration of the sum of *one* dollar to me paid by my said son, at and before the ensealing and delivery hereof, the receipt whereof I do hereby acknowledge, have given, granted, aliened, released and confirmed, and by these presents do give, grant, alien, release, and confirm unto the said N. W. E., his heirs and assigns, the following described tract or parcel of land, to wit: (*describe the land*); together with all the buildings thereon standing.

To have and to hold the said above granted premises and all the appurtenances thereunto belonging, to him, the said N. W. E., his heirs and assigns, to his and their proper use and behoof forever. And the said N. E. doth covenant with the said N. W. E., his heirs and assigns, that he is lawfully seized in fee of the aforegranted premises; that they are free from all encumbrances; that he has good right to convey the same to the said N. W. E., and that he will warrant and defend the same to the said N. W. E., his heirs and assigns forever, against the lawful claims and demands of all persons.

In witness whereof, I, the said N. E., have hereunto set my hand and seal, this *first* day of *July*, A. D. 1855.

Signed, sealed and delivered in presence of } N. E. [SEAL.]

Mortgage.

THIS INDENTURE, made this *third* day of *October*, in the year of our Lord one thousand eight hundred and *fifty-five*, between A. B., of the county of *Lake* and State of Illinois, of the first part, and C. D., of the said county and State, party of the second part. Whereas, the said party of the first part is justly indebted to the said party of the second part, in the sum of ——— dollars, secured to be paid by a certain promissory note, (*describe the note, or other instrument.*)

Now, therefore, this indenture witnesseth, that the said party of the first part, for the better securing the payment of the money aforesaid, with interest thereon, according to the tenor and effect of the said (*promissory note*) above mentioned; and also, in consideration of the further sum of *one* dollar to him in hand paid by the said party of the second part, at the delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, remised, aliened and conveyed, and by these presents doth grant, bargain, sell, remise, alien and convey unto the said party of the second part, and to his heirs and assigns forever, all (*here describe the premises.*)

To have and to hold the same, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, with the rents, issues and profits thereof; and also, all the estate, interest and claim whatsoever, in law or equity, which the party of the first part hath in and to the premises hereby conveyed unto the said party of the second part, his heirs, executors, administrators, or assigns, and to their only proper use, benefit and behoof forever; provided always, and these presents are upon this express condition, that if the said party of the first part, his heirs, executors, administrators or assigns, shall well and truly pay, or cause to be paid, to the said party of the second part, his heirs, executors, and administrators or assigns, the aforesaid sum of money, with such interest thereon, at the time and in the manner specified in the above mentioned (*promissory note,*) according to the true intent and meaning thereof, that then and in that case, these presents, and everything herein expressed, shall be absolutely null and void.

In witness whereof, the said party of the first part hereunto sets his hand and seal the day and year first above written.

Signed, sealed and delivered in presence of } A. B. [SEAL.]

X. LEASES.

Usual Form of Lease.

THIS INDENTURE, made this *first* day of *July*, in the year of our Lord one thousand eight hundred and *fifty-five*, between A. B., of *Waukegan*, in the county of *Lake*, and State of Illinois, and C. D. of the same place, witnesseth:

That the said A. B. doth hereby demise and lease unto the said C. D. all that *(here describe the land)*; to hold for the term of *two* years from the date hereof; yielding and paying therefor yearly, on every first day of April, July, October, and January, during the said term, unto the said A. B., or his assigns, the yearly rent of *one hundred* dollars, in four equal payments of twenty-five dollars each.

And the said C. D. covenants and agrees to pay the said rent in manner aforesaid, and to deliver up the premises to the said A. B., or his attorney, peaceably and quietly at the end of said term, in as good condition as the same now are or may be put into by the said A. B., reasonable wear and tear thereof, and fire and other casualties excepted; and to pay all taxes and duties lawfully levied and imposed on the premises demised, except for making or repairing sidewalks, or grading of any description during the said term; and the said lessee further covenants, that he will not do, or suffer any waste in the demised premises; that he will not underlet the same or any part thereof, nor permit any other person or persons to occupy the same or any part thereof; nor make or suffer to be made, any alteration therein without the consent of the said A. B., or his assigns, for that purpose in writing, first had and obtained; and the said lessee further covenants that the said A. B., or his attorney, or agent, may enter the premises for the purpose of reviewing or making improvements at reasonable times, in the day time, (*other covenants may be introduced according to circumstances.*)

In witness whereof, the said parties have to this and one other instrument of the same tenor and date, interchangeably set their hands and seals the day and year first above written.

Signed and sealed in presence of } A. B. [SEAL.]
C. D. [SEAL.]

Another Form of Lease.

THIS INDENTURE, made this *first* day of *July*, in the year of our Lord one thousand eight hundred and *fifty-five*, between A. B., of *Waukegan*, in the county of *Lake*, and State of Illinois, and C. D. of *Avon*, in the same county, witnesseth:

That the said A. B., for and in consideration of the yearly rents and covenants hereinafter mentioned and reserved, on the part and behalf of the said C. D., his executors, administrators, and assigns, to be paid, kept and performed, hath demised, set, and to farm let, unto the said C. D., his executors, administrators and assigns, all that [messuage and lot of land situated, lying and being in said county of *Lake*, being known and described as the north-west quarter of section four (4) in township one (1) north of the base line, and range nine (9) west of the fourth principal meridian, containing one hundred and sixty acres, be the same more or less;] to have and to hold the said messuage and lot of land, and all and singular the premises hereby demised, with the appurtenances, unto the said C. D., his executors, administrators and assigns, from the *first* day of *May* next ensuing the date hereof, for and during the term of *three* years then next ensuing, and fully to be complete and ended, yielding and paying for the same unto the said A. B., his executors, administrators, and assigns, the yearly rent of *one hundred* dollars in equal semi-annual payments of fifty dollars each, the first of which to be made on the *first* day of *November* next.

And the said C. D. for himself, his heirs, executors, and administrators, doth covenant, promise and agree to and with the said A. B., his heirs, executors, administrators and assigns, by these presents, that he, the said C. D., his heirs, executors and administrators, or some of them, shall and will well and truly pay, or cause to be paid, unto the said A. B., his heirs, executors, administrators or assigns, the said yearly rent of one hundred dollars hereby reserved, on the several days and times herein before mentioned and appointed for the payment thereof, according to the true intent and meaning of these presents.

And the said A. B., for himself, his heirs, executors and administrators, doth covenant, promise, grant and agree to and with the said C. D., his executors, administrators and assigns, by these presents, that he, the said C. D., his executors, administrators and assigns, (paying the rent and performing the covenants aforesaid,) shall and lawfully may, peaceably and quietly, have, hold, use, occupy, possess and enjoy the said demised premises with the appurtenances, during the

term aforesaid, without the lawful let, suit, trouble, eviction, molestation or interruption of the said A. B., his heirs or assigns, or any other person or persons whatsoever.

In witness whereof, the said parties have to this and one other instrument of the same tenor and date, interchangeably set their hands and seals, the day and year first above written.

Signed and sealed in presence of } A. B. [SEAL.] C. D. [SEAL.]

A Short Form of Lease.

THIS INDENTURE, made this *first* day of *June*, A. D. 1855, between A. B., of *Waukegan*, in the county of *Lake*, and State of Illinois, of the one part, and C. D. of the same place, of the other part, witnesseth:

That the said A. B. for the consideration hereinafter expressed, hath demised, granted and leased, and by these presents doth hereby demise, grant and lease unto the said C. D., and his assigns, (*here describe the premises*,) together with all the privileges and appurtenances thereunto belonging.

To have and to hold the above described premises for and during the term of *two* years from the date hereof.

And the said C. D. doth covenant and agree to pay unto the said A. B., or his assigns, the sum of *one hundred* dollars as yearly rent for said premises, in two equal payments of fifty dollars each, at the expiration of each and every six months from date, during the continuance of this lease.

In witness whereof, the said parties have to this and one other instrument of the same tenor and date, interchangeably set their hands and seals the day and year first above written.

Signed and sealed in the presence of } A. B. [SEAL.] C. D. [SEAL.]

X. POWERS OF ATTORNEY.

General form of Letters of Attorney.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of *Waukegan*, in the county of *Lake*, and State of Illinois, have made, constituted, and appointed, and by these presents do make, constitute and appoint C. D., of the same place, to be my true and lawful attorney, for me, and in my name, and for my sole use, to (*here state the specific purposes of the power, in as concise terms as possible,*) hereby giving and granting unto my said attorney, full power and authority in the premises, to use all lawful means in my name, and for my sole benefit for the purposes aforesaid. And generally to do and perform all such acts, matters and things, as my said attorney shall deem necessary or expedient for the completion of the authority hereby given, as fully as I might and could do, if I were personally present; and finally, hereby ratifying and confirming all the acts of my said attorney or his substitutes, done by virtue of these presents.

In witness whereof, I, the said A. B., have hereunto set my hand and seal, this *first* day of *June*, in the year of our Lord one thousand eight hundred and *fifty-five*.

Signed and sealed in presence of } A. B. [SEAL.]

Letter of Substitution appended to Power of Attorney.

KNOW ALL MEN BY THESE PRESENTS, that I, C. D., of *Waukegan*, in the county of *Lake*, and State of Illinois, named in the letter of attorney above mentioned, have made, appointed, and substituted, and and by these presents do make, appoint and substitute, E. F., of said *Waukegan*, to be the true and lawful attorney of the said A. B., in the above letter of attorney named, to do and perform all such acts, matters and things, as he may deem necessary or expedient for the complete execution of the authority therein given, as fully in all respects and to all intents and purposes, as I myself might and could do, by virtue of the power and authority therein delegated, if I were personally present.

Hereby ratifying and confirming all the acts of my said substitute, done by virtue of these presents.

In witness whereof, I, the said C. D., have hereunto set my hand

and seal, the *first* day of *October*, in the year of our Lord one thousand eight hundred and *fifty-five.*

Signed and sealed in presence of } C. D. [SEAL.]
}

General Letter of Attorney to collect Debts.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of *Waukegan*, in the county of *Lake*, and State of Illinois, have made, constituted and appointed, and by these presents do make, constitute and appoint C. D., my true and lawful attorney, for me, and in my name, and to my use to ask, demand, sue for, recover and receive of E. F., and of all and every person and persons whomsoever indebted to me by note, account, or otherwise, all and every such sum and sums of money, debts and demands whatsoever, as now are due and owing unto me, the said A. B., from them or either of them. And in default of payment thereof by them, or either of them, to have, use, and take, all lawful ways and means in my name, or otherwise, for the recovery thereof, by attachment, arrest, or otherwise, and to compound or agree for the same; and on receipt thereof, acquittances, or other sufficient discharges for the same for me, and in my name to make, seal and deliver; and generally to do all lawful acts and things whatsoever, concerning the premises, as fully, in every respect, as I myself might or could do, if I were personally present; and an attorney or attorneys under him, for the purposes aforesaid, to make, and at his pleasure to revoke.

Hereby ratifying, allowing and confirming all and whatsoever my said attorney shall, in my name, lawfully do, or cause to be done, in and about the premises.

In witness whereof, I, the said A. B., have hereunto set my hand and seal, this *first* day of *June*, one thousand eight hundred and *fifty-five.*

Signed and sealed in presence of } A. B. [SEAL.]
}

Revocation of Letter of Attorney.

TO ALL PERSONS to whom these Presents shall come: A. B., of *Waukegan*, in the county of *Lake*, and State of Illinois, sendeth Greeting:

Whereas, I, the said A. B., by my letter of attorney, bearing date *June first*, 1854, did make, constitute and appoint C. D. of said *Wau-*

kegan, my attorney for certain purposes, to wit: in my name and for my use to collect all debts due and owing unto me, as by said letter of attorney will more fully appear:

Know ye, that I, the said A. B., for divers considerations me hereunto moving, have made void, countermanded and revoked, and do hereby make void, countermand and revoke the said letter of attorney, and all and singular the power and authority therein contained.

In witness whereof, I, the said A. B., have hereunto set my hand and seal, this *first* day of *June*, in the year of our Lord one thousand eight hundred and *fifty-five*.

Signed and sealed in presence of } A. B. [SEAL.]

Warrant of Attorney to Confess Judgment on Note.

WHEREAS A. B. is justly indebted unto C. D., in the sum of *eighty-four* dollars and *seventy-five* cents with interest, by note hereunto annexed, and of which the following is a true copy, to wit: *(here copy the note.)*

Now, therefore, know all men by these presents, that I, A. B., of *Waukegan*, in the county of *Lake*, and State of Illinois, do make, constitute and appoint *E. P. Ferry*, of said *Waukegan*, attorney and counsellor at law, my true and lawful attorney, in my name and behalf, at the next term of the circuit court, within and for the said county of *Lake*, to be holden at said *Waukegan* on the *second Monday* of *October* next, or at any term thereof subsequently, to confess a judgment against me, and in favor of said C. D., for the amount of principal and interest which shall be due on said aforedescribed note, according to the tenor and effect thereof at the time such judgment may be confessed.

Hereby waving and releasing all errors, and ratifying and confirming all that my said attorney may do in the premises.

In witness whereof, I, the said A. B., have hereunto set my hand and seal, this *first* day of *March*, one thousand eight hundred and *fifty-five*.

Signed and sealed in presence of } A. B. [SEAL.]

Short form of Warrant of Attorney to Confess Judgment on Note.

I, A. B., do hereby authorize and empower *Isaac L. Clark*, or any other attorney at law in the State of Illinois, to appear in the circuit court

of *Lake* county, in said State, at any regular term thereof, and waive the issuing and service of process, and confess a judgment against me and in favor of C. D., for the sum of *eighty-four* dollars and *seventy-five* cents, the same being the amount due and owing on a note hereunto annexed, of which the following is a true copy, to wit: *(here copy the note,)* and thereupon to release all error, and waive all right and benefit of appeal in my behalf.

Dated at *Waukegan*, this *second* day of *June*, A. D. 1855.

A. B. [SEAL.]

XII. RELEASES.

General form of Release.

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of *Waukegan*, in the county of *Lake*, and State of Illinois, for and in consideration of the sum of *one* dollar to me paid by C. D., of the same place, have remised, released and forever discharged, and by these presents do remise, release and forever discharge the said C. D. and his heirs, executors and administrators, of and from all and all manner of action and actions, cause and causes of action, suits, debts, dues, sum and sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, extents, executions, claims and demands whatsoever, in law and in equity, which against the said C. D. I ever had, now have, or which I, my executors or administrators, hereafter can, shall, or may have, for, upon, or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the date of these presents.

In witness whereof, I, the said A. B., have hereunto set my hand and seal, this *second* day of *July*, A. D. 1855.

Sealed and delivered in presence of } A. B. [SEAL.]
}

Release of Trust Deed.

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of the county of *Lake* and State of Illinois, for and in consideration of *one* dollar, and for other good and valuable considerations, the receipt whereof is hereby confessed, do hereby grant, bargain, remise, convey, release and quit-claim unto C. D., of the county of *Cook* and State of Illinois, all the right, title, interest, claim or demand whatsoever, I may have acquired in, through or by a certain indenture or trust deed, bearing date the *second* day of *July*, A. D. eighteen hundred and *fifty-five*, and recorded in the recorder's office of *Lake* county, Illinois, in book ——, page ——, to the premises therein described, and which said deed was made to secure a certain promissory note bearing even date with said deed, for the sum of ——— dollars and ——— cents.

Witness my hand and seal, this —— day of ——, A. D. 18—.

In presence of } A. B. [SEAL.]
L. M. }

XIII. WILLS.

A *will* or *testament* is the legal declaration of a man's intention of what he wills to be performed after his death.

Form of Will of Real and Personal Estate.

In the name of God, Amen: I, A. B., of the town of ——, in the county of ——, and State of ——, of the age of —— years, and being of sound mind and memory, do make, publish and declare this my last will and testament, in manner following, that is to say:

First. I give and bequeath to my wife, E. B., the sum of ———, to be accepted and received by her in lieu of dower; to my son, C. B., the sum of ———; to my daughter, M. B., the sum of ———; and to my daughter-in-law, S. B., widow of my son, R. B., deceased, the sum of ———; which said several legacies or sums of money I direct and order to be paid to the said respective legatees, within one year after my decease.

Second. I give and devise to my son, C. B. aforesaid, his heirs and assigns, all that tract or parcel of land situate, &c., (*describe the pre-*

mises,) together with all the hereditaments and appurtenances thereunto belonging, or in any wise appertaining; to have and to hold the premises above described to the said C. B., his heirs and assigns forever.

Third. I give and devise all the rest, residue and remainder of my real estate, of every name and nature whatsoever, to my said daughter, M. B., and my said daughter-in-law, S. B., to be divided equally between them, share and share alike.

And *lastly,* I give and bequeath all the rest, residue and remainder of my personal estate, goods and chattels, of what nature or kind soever, to my wife, E. B., whom I hereby appoint sole executrix of this my last will and testament, hereby revoking all former wills by me made.

In witness whereof, I have hereunto set my hand and seal, this —— day of ——, in the year of our Lord one thousand eight hundred and ——.

A. B. [SEAL.]

The above instrument, consisting of one sheet, (*or* "two sheets,") was, at the date thereof, signed, sealed, published and declared by the said A. B., as and for his last will and testament, in presence of us, who, at his request and in his presence, and in the presence of each other, have subscribed our names as witnesses thereto, (*or* "the above instrument consisting of one sheet, was, at the date thereof, declared to us by A. B., the testator therein mentioned, to be his last will and testament; and he at the same time acknowledged to us, and each of us, that he had signed and sealed the same, and we, therefore, at his request, and in his presence, and in the presence of each other, signed our names thereto as attesting witnesses.")

C. D., residing at ——, in —— county.
G. H., residing at ——, in —— county.

Form of Codicil to a Will.

WHEREAS I, A. B., of, &c., have made my last will and testament in writing, bearing date the —— day of ——, in the year of our Lord one thousand eight hundred and ——, in and by which I have given and bequeathed to, &c., (*here set forth the bequest which the testator desires to change.*)

Now therefore, I do, by this my writing, which I hereby declare to be a codicil to my said last will and testament, and to be taken as a

part thereof, order and declare that my will is, that only the sum of ——— be paid to my daughter-in-law, S. B., in full of the said legacy; and that the sum of ——— be given and paid to my nephew R. F.; and lastly, it is my desire that this codicil be annexed to, and made a part of, my last will and testament as aforesaid, to all intents and purposes.

In witness, &c., (*as in foregoing form of will, except that the attestion will read,* "as and for a codicil to his last will," &c.)

Nomination of Executors in a Will.

And lastly, I do hereby nominate and appoint my sons, C. B. and M. B., (*or,* "my friends, E. F. and L. M.,") to be the executors of this my last will and testament, hereby revoking all former wills by me made.

Devise to Executors in Trust, with power to sell, &c.

I give and devise all my real and personal estate, of what nature or kind soever, to E. F. and L. M., the executors of this my last will and testament, hereinafter nominated and appointed, in trust for the payment of my just debts and the legacies above specified, with power to sell and dispose of the same, at public or private sale, at such time or times, and upon such terms, and in such manner, as to them shall seem meet; provided, however, that no part of my real estate, as aforesaid, shall be sold at public auction, until after the expiration of *three* years from the time of my decease.

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