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A

DIGEST OF LAWS

RELATING TO THE

OFFICES AND DUTIES

OF

SHERIFF, CORONER AND CONSTABLE.

BY JOSEPH BACKUS, Counsellor at Law.

IN TWO VOLUMES.

VOL. I.

NEW-YORK:
PRINTED FOR THE AUTHOR.
1812.

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DISTRICT OF CONNECTICUT, *To wit:*

[*L. S.*] BE IT REMEMBERED, That on the twenty-sixth day of August, in the thirty-seventh year of the Independence of the United States of America, Joseph Backus of the said District, hath deposited in this Office the title of a Book the right whereof he claims as Author, in the words following, to wit:

"*A Digest of the Laws relating to the Offices and Duties of Sheriff, Coroner and Constable. By Joseph Backus, Counsellor at Law. In two Volumes. Vol. II.*"

In Conformity to the act of the Congress of the United States, entitled, "An Act for the encouragement of Learning, by securing the Copies of Maps, Charts, and Books, to the Authors and Proprietors of such Copies, during the terms therein mentioned.

HENRY W. EDWARDS, Clerk of the District of Connecticut.

A true Copy of Record, examined and sealed by me, H. W. Edwards, Clerk of the District of Connecticut.

W. A. Davis, Print.

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BOOK III.

OF THE

OFFICES AND DUTIES

OF

SHERIFF, CORONER AND CONSTABLE.

CHAP. I.

Statute regulations in the State of New-York.

I. APPOINTMENT AND DISCHARGE.

APPOINTMENT AND DISCHARGE. Sheriff, coroner and constable.

SHERIFFS, coroners and constables are annually appointed: Sheriffs and coroners by the council of appointment;(a) and constables by the people, in town meetings and in ward meetings, in the cities and counties of New-York and Albany, or by three justices of the peace in case the people neglect to make such appointment.(b) Sheriffs must be substantial freeholders of the city or county for which they are appointed, and receive a commission under the great seal of the state in the form following to wit:

Sheriff's commission.

"The people of the state of New-York, to all to whom these presents shall come, Greeting:

"Know ye, that we have committed to our well beloved A. B. our county of W. (or our city and

(a) St. N. Y. I. 13. Const.
(b) Ibid. 14. Const. 325, 327. March 27, 1801.

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APPOINTMENT AND DISCHARGE.

county of N. as the case may be,) with the appurtenances to keep during the pleasure of our council of appointment. In testimony whereof we have caused these our letters to be made patent, and the great seal of our state to be hereunto affixed." And be tested or witnessed in the usual form.(c) And before

Must give bond.

permitted to execute the office, must enter into bonds to the people of the state with sureties, freeholders jointly and severally, to answer to the people of the state, and parties, if any complain; which bond must be in the form and to the effect following, to wit:

Form of bond.

"*Know all men by these presents, that we ——, of ——, are holden and firmly bound to the people of the state of New-York in the penal sum of thousand dollars, to be paid to the said people; for the payment whereof we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated this day of in the year one thousand*

Condition.

"*Whereas the above bounden ——, hath been appointed to the office of ——, on the day of last past. Now, therefore, the condition of the above obligation is such, that if the said ——, shall well and faithfully, in all things perform and execute the office of sheriff of the said county of ——, during his continuance in the said office, by virtue of the said appointment, without fraud, deceit, or oppression; then the above obligation to be void, or else to remain in full force.*" The sheriff of the city and county

Number of sureties, and amount of bonds.

of New-York, with two sureties, in the penal sum of twenty thousand dollars; the respective sheriffs of the counties of Delaware, Tioga, Cayuga, Onondago, Ontario, Steuben, Essex, and Clinton; each with any

(c) St. N. Y. I. 204. March 20, 1801.

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number of sureties not exceeding six, in the sum of ten thousand dollars; and every other sheriff in the remaining counties in the state with two sureties in the sum of five thousand dollars each, which bonds must be given within twenty days after notice of appointment, and must be filed in the clerk's office of the counties respectively, for which such sheriff shall have been respectively appointed.(d) APPOINTMENT AND DISCHARGE.

Sheriffs, coroners and constables must be sworn according to the form prescribed by law.(e) Neither sheriffs nor coroners can hold their respective offices more than four years successively, nor can sheriffs hold any other office at the same time.(f) Sheriffs, coroners and constables must be sworn.

A sheriff thus appointed, and in all the particulars aforesaid qualified, continues in office under the limitation aforesaid until another is in like manner appointed and qualified in his place, and shall have delivered unto him a writ of discharge, if in the county; and if not, until the same shall be filed in the office of the clerk of the county: which writ of discharge must issue at the time of issuing the commission to the new sheriff, and with it be delivered to him, and must be in form following, to wit:

"The people of the state of New-York, to all to whom these presents shall come, *Greeting:* Form of writ of discharge to old sheriff, on appointment of new.

"*Whereas we have committed to our well beloved A. B. our county of W.* (or our city and county of N. as the case may be,) *with the appurtenances, to keep during the pleasure of our council of appointment; therefore we command C. D. late sheriff of the county*

(d) St. N. Y. I. 204, 205. March 20, 1801.
(e) Ibid. 402. April 2, 1810. And 328, 329. March 27, 1801.
(f) Ibid. 13. Const.

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APPOINTMENT AND DISCHARGE.

aforesaid, (or of the city and county aforesaid, as the case may be,) *that by indenture thereof, in due manner to be made, he deliver to the said A. B. the county aforesaid,* (or the city and county aforesaid, as the case may be,) *with the appurtenances, together with the rolls, writs, memorandums, and all other things touching that office, which are in his possession, to keep in form aforesaid.*" Which writ of discharge must be tested in the same manner as said commission is tested, and sealed with the great seal of the state.(*g*)

Sheriff must appoint under sheriff.

Sheriffs in their respective counties, must each, as soon as may be after taking upon himself the office, by writing under his hand and seal, appoint an under sheriff of the same county, during the pleasure of the sheriff; and on the death, removal, or incapacity of such under sheriff to perform the duties of his office, to supply his place by a new appointment, which appointment must be recorded in the office of the clerk of the county; and in case of the death of the sheriff of any county, his under sheriff shall in all things execute the office of sheriff in the name of the deceased sheriff, until another shall be appointed, commissioned, and take upon him the said office, and the defaults and misfeasances in office of such under sheriff in the mean time, as well as before, shall be adjudged a breach of the bond given by the sheriff who appointed him; and the executors and administrators of such deceased sheriff shall have the same remedy for the defaults and misfeasances in office of such under sheriff, happening during such interval, as such sheriff would have been entitled to, if living and in the exercise of his office.(*h*)

(*g*) St. N. Y. I. 204. March 20, 1801.
(*h*) Ibid. 206, 207. March 20, 1801.

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APPOINTMENT AND DISCHARGE.

Each sheriff may also appoint such and so many deputies, beside such under sheriff, as he may think proper; who as well as said under sheriff must be sworn to a faithful discharge of their offices.(i) But no person who may be deputed by any sheriff to do a particular act only, shall be required to take the oath to be taken by deputies of sheriffs.(j)

And may appoint as many other deputies as he may think proper.

On forfeiture of sheriff's bond, how the penalty may be recovered against himself and sureties.

In case of any recovery against any sheriff for any default or misconduct in office, the justices of the supreme court upon motion in open court, may order the bond so given by such sheriff, to be put in suit against him and his sureties, or any, or all of them: and when judgment shall be obtained thereon, the said supreme court, shall upon motion in open court, direct so much money to be levied thereon, as shall be sufficient to pay the party his debt or damages so recovered, with costs, and to be paid to such party grieved; but if such sheriff or his sureties, or either of them shall pay the debt or damages so recovered against such sheriff, with costs, such suit on such bond shall be stayed, and be no further prosecuted. But if after judgment on such bond, any other party who shall have recovered any debt or damages against such sheriff for any default or misconduct as aforesaid, shall apply to said court for relief, they shall upon like motion, direct such further sum to be levied on such judgment on such bond, as shall be sufficient to pay the debt or damages so recovered, with costs, and to be paid to such party grieved; and shall so direct as often as any recovery shall be had against such sheriff for any default or misconduct in his office. But the sureties in any such bond shall not be charged beyond the amount of the sums in which they are bound, nor in the counties of Delaware,

Sureties not liable beyond amount of bonds, nor in

(i) St. N. Y. l. 207, 402. March 20, 1801. And 402. April 2, 1801.
(j) Ibid. 207. March 20, 1801.

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APPOINTMENT AND DISCHARGE.

certain counties beyond a sixth part thereof, against any single surety.

Tioga, Cayuga, Onondago, Ontario, Steuben, Essex, and Clinton, beyond the amount of one sixth part of the sums in which they are respectively bound as aforesaid. And if two or more such recoveries be had against a sheriff in the same town, or at the same time, amounting together to more than the whole of the sums contained in such bond, said court shall direct the monies to be levied thereon, to be distributed to the parties respectively, in proportion to the amount of their respective recoveries.(*k*)

(*k*) St. N. Y. I. 207, 208.

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II. GENERAL DUTY.

GENERAL DUTY.

Sheriffs &c. to make fresh pursuit after felons.

WHEN any felony 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 such felon, by sheriffs, coroners, constables, marshals, and all other persons who shall be by them commanded and summoned for that purpose: and every competent person who will not so do, and be thereof convicted, shall be punished by fine according to the the discretion of the court having cognizance of the offence: and every such officer who shall conceal, or cause or procure to be concealed, any felon, or who shall not do his duty in the premises, and be thereof convicted, shall be punished by fine and imprisonment in the like discretion of any court having cognizance of the offence.(a)

Sheriff to certify, if required, the delivery of writs.

Every sheriff or officer to whom any writ shall be delivered in the county where it is to be executed, must, if required by the person delivering it, give to such person a certificate under his hand, without taking any thing therefor, wherein the names of the parties and the day of the delivering the writ shall be mentioned: and when any writ shall be returned, the sheriff or other officer to whom the return thereof appertains, shall put his own name to the return of the same, and if any sheriff or other officer shall not make due return of any writ delivered to him to execute, he shall be liable to attachment or amerecement at the discretion of the court where such writ shall be returnable, and also to an action on the case for damages, at the suit of the party grieved. And

And sign return.

Process to compel return.

(a) St. N. Y. I. 218, 219. March 20. 1801.

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GENERAL DUTY.

How far liable for issues of lands, and what are issues.

such sheriff or other officer shall be in like manner responsible, if, when commanded to answer to the issue of any land or chattels, he return less than he might or ought to have returned. And rent, corn gathered, and all moveables, except arms, implements of trade, and household goods, are comprehended within the name issues.(*b*)

Sheriffs and coroners to take up wrecks of vessels, &c.

Sheriffs and coroners must take into custody all ships, vessels, or boats, and all goods, wares, and merchandize, cast by the sea upon the land within their respective jurisdiction, and cause the same to to be appraised, and the same keep a year and a day unless sued for by the rightful owner within that time, and proved to be his; and the same goods, &c. to sell at public vendue for the benefit of the state, and the avails of such sale to account for at the exchequer, deducting the expenses of saving, keeping, and selling the same. And if convicted of otherwise conducting, such sheriff or coroner shall be liable in damages to the party grieved, and to be punished by fine and imprisonment at the discretion of the court of justices before whom convicted. And for such serving, preserving and keeping such goods, &c. the sheriff or coroner shall have a reasonable allowance, and may detain the goods so saved until payment thereof; and in case of dispute concerning such allowance, the same shall be adjusted by any two or more justices being in or near the town or place where such goods shall be found or saved. And it is the duty of any sheriff, coroner or constable, to prevent all persons not lawfully authorized, from taking any goods whatsoever out of any ship or vessel stranded as aforesaid; and to present all such persons as shall have taken or secreted any such goods con-

Penalty for mal conduct therein.

Sheriff to make presentment of persons embezzling such goods.

(*b*) St. N. Y. I. 218, 219. March 20, 1801.

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trary to law, at the sessions of the peace in their counties.(c) GENERAL DUTY.

It is also the duty of all sheriffs, constables, and other civil officers, by all lawful means to prevent the setting on foot, opening, or drawing any unlawful lotteries, games, or devices of chance.(d) Sheriffs, constables, &c. to suppress and prevent lotteries.

Whenever the mayor or recorder of the city of New-York shall issue his warrant to the sheriff thereof, commanding him to cause to be abated or removed, nuisances therein, he must forthwith execute the same.(e)

Whenever any person is sentenced to imprisonment in the state prison, it is the duty of the clerk of the court to make and deliver a copy of such sentence to the sheriff, who must, when he conveys such convict to said prison, deliver the same copy with the prisoner to the keeper thereof, and the said keeper must thereupon pay such sheriff for conveying such convict to said prison, eighteen cents per mile, to be computed from the place where such prisoner was convicted. And the sheriffs, of the several counties in the state, during the time that they, or either of them are conveying to said prison any person convicted in any of said counties, have the same power, and the like authority to demand assistance of any of the people of the state, in securing every such person, as when such sheriff is in the county for which he is appointed sheriff; and all persons must aid and assist such sheriff under the Sheriff's warrant for conveying convicts to state prison. And how paid for so doing. May command assistance in any county while conveying them there.

(c) St. N. Y. I. 62, 63, 64. Feb. 20, 1801.
(d) Ibid. 38. Feb. 14, 1783.
(e) Ibid. 373. March 30, 1801.

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GENERAL DUTY.

same penalties as if such sheriff were in his proper county. (f)

On process out of exchequer, to deliver copy thereof on demand, and acquit debtors for money received.

Every sheriff and other officer to whom any process out of the court of exchequer is directed and delivered, shall upon demand, show the same; and without fee or reward, deliver a copy thereof to the debtor or person against whom the same was issued, and upon the receipt or levying of the money therein mentioned, acquit the debtor thereof, and account for the same at his next account. And if any sheriff or other officer shall refuse so to do, and be thereof convicted, he shall render to the party grieved treble damages; and be further punished by fine at the discretion of the court in which he shall be convicted.

Penalty on refusal.

Sheriffs, coroners, and other officers to account on oath for all fines, &c. and pay the balance.

And all sheriffs, coroners, and other officers who shall have received, or become liable for any fines, forfeitures, issues, or amercements, must annually on the first day of April or October term, on oath, render a just and true account thereof to the said court of exchequer, and pay the balance, if any found due thereon, to the clerk of said court, which account shall be audited and settled by the said court; and on payment thereof by any sheriff, coroner, or other officer of the said court, must grant a discharge for the same, under the seal of said court. And if any sheriff, coroner or other officer shall not pay such balance within twenty days after auditing his account, execution shall be issued out against him for the same; and if such sheriff, coroner, or other officer, shall refuse or neglect to render such account, such officer so neglecting or refusing, shall be liable to pay all such sums of money as shall or might have been received by him for any such fines, forfeitures,

On default of payment, execution to issue against them.

Penalty for neglecting to account.

(f) St. N. Y. I. 413, 416, April 3, 1801.

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GENERAL DUTY.

issues, and amercements, and all such fines, forfeitures, issues, and amercements, as shall have been adjudged against such officer so neglecting or refusing, in any court of record in the state, and execution shall thereuppn be issued against such officer for the same. And if on auditing the account of any such sheriff, coroner, or other officer, a balance shall be found in his favour, he shall be entitled to receive the same out of the treasury of the state, on a certificate under the hand of the judge, and under the seal of the said court.(g)

If on account, a balance be due to such sheriff, he may receive the same out of the treasury.

Whenever any sheriff shall receive from any county treasurer a warrant directed to, and commanding such sheriff to cause to be made from the goods, chattels, lands and tenements of any collector, who has refused or neglected to pay to such treasurer the amount of the taxes mentioned in any assessment roll, delivered to such collector, or to account for the same in due time, such sheriff shall immediately cause the same to be executed, and shall make return thereof to the county treasurer, within the time therein specified, and pay to him the money levied by virtue thereof, deducting for his fees five cents upon every dollar for the sum levied, and no more; and if the whole sum be not levied, he shall endorse on the warrant the amount so levied, exclusive of his fees, and that such collector has not any more lands, tenements, goods or chattels in his county, whereon he could cause the residue of the money therein mentioned, to be made or levied; and in case he cannot find any goods or chattels, lands or tenements of such collector, whereof he can cause any part of the sum mentioned in such warrant to be made or levied, he shall

Sheriff's duty on warrant from county treasurer, against delinquent collector of taxes.

(g) St. N. Y. I. 446, 447. April 3, 1801.

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GENERAL DUTY.

make return thereof accordingly, and if any sheriff shall neglect to return such warrant, or to pay the money levied thereon, within the time limited for the return thereof, or shall make any other return than such as is above mentioned, he shall be liable to pay to the people of the state, to be recovered with costs of suit in an action for so much money received to their use, the whole sum directed to be levied by such warrant.(*h*)

Liable on default in not executing and returning said warrant according to the directions thereof.

Whenever any sheriff shall receive any process issued by the junior justice of the supreme court, as justice of the court of exchequer, under his seal in the name of the people of the state, tested in the name of such justice, directed to such sheriff, him commanding to sell at public vendue any lands subject to quitrent, and whereon such rent had not been paid, nor the charges arising from such default; every such sheriff is empowered and required within sixty days after the receipt of such process, to cause advertisements to be affixed to the court-house, and at three or more of the most public places in the county where such land lies, or if the same lie in different counties, then at the court-house of, and three of the most public places in, each of the said counties, that on such day or days, which shall not exceed fifty, nor be less than thirty days after the date of such advertisement, so much of said land will be sold at public vendue to the highest bidder, at the court-house of the county in which such lands shall be situated, as will pay the sum mentioned in such process, together with the charges of advertisement, sale, survey, (if required,) and conveyance thereof, and between the hours of nine in the forenoon, and two in the afternoon of the

Duty of sheriff in executing process, to sell land subject to quitrent.

(*h*) St. N. Y. I. 552, 553. April 8, 1801.

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days appointed for that purpose; and at the time of such sale, such person as will accept the least quantity of land to pay the sum mentioned in such process, together with the said charges, (of which such sheriff shall then make a true account as far as he can ascertain the same,) shall be deemed the highest bidder; and on every such sale, such sheriff shall make and execute to the purchaser sufficient deeds or conveyances, which shall be valid both in law and equity, whether such sale be made in the proper county of such sheriff, or in any other county as aforesaid; and shall vest in such purchaser, his heirs, and assigns, an estate in fee simple in the premises so sold. Provided always, that such sheriff before executing such deeds or conveyances, shall cause the lands so sold to be surveyed, except in cases where the quitrent or undivided parts of any tract or on particular lots thereof, shall have been paid or discharged by commutation or otherwise; in which cases such sheriff may sell and convey as aforesaid, any proportion of the undivided parts of such tract or of the remaining lots thereof, on which quitrent shall not have been so paid or discharged, without causing any survey to be made; and in cases where such survey shall be required as aforesaid, the lands so sold and surveyed, shall be laid out in one entire piece, and at one side or end of the tract out of which the same shall be sold, and shall always be of the unimproved land, if there be sufficient for the purpose in any one piece. And if there be no court-house in any county at the time of such advertisement and sale, the advertisement shall be fixed up, and the sale made at the place where the then last court of common pleas for such county was held.(i)

GENERAL DUTY.

Conveyance by him valid.

Lands sold to be surveyed.

And to be laid out in one piece.

(i) St. N. Y. I. 609, 610, 611. April 8, 1801.

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GENERAL DUTY.

Sheriff to take oath.

And every sheriff to whom any such process shall be delivered, must, before he proceed to execute the same, take an oath, to be administered to him by any justice of the peace who shall be applied to for, that purpose, who must give a certificate thereof to the sheriff, who must file the same with the clerk of the county whereof he is sheriff, and which oath must be in the words following, to wit: "*You —— shall well, truly, faithfully, and honestly discharge the trust reposed in you by virtue of an act, entitled,* An Act *concerning* quitrents, *according to the best of your skill and understanding.*" (*j*)

Sheriff must pay the sum due for quit rent to the treasurer.

And every such sheriff must, within sixty days after such sale, pay to the treasurer of the state the sum mentioned in such process, and such sheriff may retain for his services and the charges attending such sale, such sum as the judge of the court of exchequer, either in the term or vacation of said court, shall allow for the same, and certify under his hand to be due to such sheriff therefor; who must return the surplus money, if any, to the person to whom the lands so sold belonged, immediately before such sale, and if they cannot be found, then such sheriff shall pay the same to the said treasurer, who must apply the same as the comptroller shall direct, to the payment of the quitrents due, or which shall thereafter become due, from such persons, and the said sheriff must at the same time deliver to the comptroller, a full and just account of the monies arising from such sale, and of the application of the same. (*k*)

How surplus to be disposed of.

And account with comptroller.

How sheriff to give notice of executing a

Whenever any sheriff shall execute any writ of inquiry, issued out of the court of chancery, by

(*j*) St. N. Y. I. 611. April 8, 1801.
(*k*) Ibid.

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GENERAL DUTY.

virtue of the statute, entitled, "*An Act concerning the commissions of the land office, and the settlement of lands,*" to such sheriff directed, he must, on receiving such writ, affix a copy thereof upon the front door of the court-house, or place where the court of common pleas and sessions of the peace in his county were last held, with a notice of the time when and time where the same writ is to be executed, which time must not be less than sixty days from the time of fixing said notice, in the manner aforesaid; (*l*) and must thereupon execute said writ, and make return thereof according to the directions therein given.

Writ of inquiry.

Duty of sheriff, on writ of inquiry concerning escheats.

And also, whenever any writ of inquiry is issued out of the court of chancery, by virtue of the statute, entitled, "*An Act concerning escheats,*" directed to any sheriff, and delivered to him, he must in like manner execute and return the same, according to the directions therein given; and when in pursuance of such inquiry, and the proceedings on return thereof, any writ of seizure shall issue, either from the supreme court, or from said court of chancery, as the case may require, and the lands, tenements and hereditaments shall, by virtue of such writ of seizure, have been seized by such sheriff, and in conformity to said act have been sold by the commissioners of the land office, and letters patent issued to the purchaser; upon the production of such letters patent to the sheriff, he must deliver the possession of the said lands, tenements and hereditaments, to the purchaser thereof.(*m*)

Consequent proceeding.

(*l*) St. N. Y. I. 301. March 24, 1801.
(*m*) Ibid. 311, 312. March 24, 1801.

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GENERAL DUTY.

Under sheriff, sheriff's clerk and coroner not to practice as counsellors, &c.

No under sheriff, sheriff's clerk, or coroner, shall, during his continuance in office, act as a counseller, attorney or solicitor in any court.(*n*)

If a sheriff die while any writ executed against the lands and tenements of the defendant, delivered to such sheriff remains unsatisfied, his under sheriff may execute such writ, in the same manner as the sheriff if living ought to do, and may, on sale of any real estate, by virtue of such writ, execute in his own name a deed of the premises, sold to any purchaser, or purchasers, his or their heirs and assigns for ever.(*o*)

(*n*) St. N. Y. 221. March 20, 1801.
(*o*) Ibid. VI. 323. April 9, 1811.

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III. PROCESS AND SERVICE.

PROCESS AND SERVICE.

Writs, &c. how tested, and in what name to run.

IT is ordained by the constitution of this state, that all writs and other proceedings shall run in the name of the people of the state of New-York, and be tested in the name of the chancellor or chief judge of the court whence they issue.(*a*)

Assize on forcible entry.

In every special assize for forcible entry into the lands and tenements of others, and the putting the possessors out of the same, granted by the chancellor to the party aggrieved, one at least of the judges of the supreme court must be named as one of the justices to take such assize, and no writ of supersedeas may be granted to the contrary of such special assize.(*b*)

Assize of novel disseisin.

In an assize of novel disseisin, the plaintiff must obtain a writ issued from the chancery, directed to the sheriff, containing the plaint of disseisin, upon the disseisin, and commanding the sheriff, that taking with him the coroner of the county, or one of them, if there be more than one in the same county, and two or more justices of the peace in the same county, he go in his proper person to the tenement or pasture whereof the plaint had been made, and before them, by the first and other neighbours and lawful men, if the first recovery was by verdict, if not, by the neighbours and lawful men, he diligently thereof make inquisition: and if they find the plaintiff disseized again, the plaintiff shall recover double damages, and the redisseizors shall be also punished by fine and imprisonment, and shall by the sheriff

(*a*) St. N. Y. I. 14. Const.
(*b*) Ibid. 84. March 12, 1787.

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PROCESS AND SERVICE.

be forthwith taken and committed to goal, until they shall have paid such damages and fine, and be thence delivered by due course of law, but if the redisseisin be not found, the plaintiff shall be amerced, and the others shall be acquitted. But no sheriff may proceed in any such plaint without a special writ.(c)

Pannels to be made and delivered, &c.

Pannels of the assizes must in all cases be arrayed, and a copy thereof delivered by the sheriff or his deputy to the plaintiffs, tenants and defendants, if they demand the same, at least six days before the circuit court or sessions of the justices at which the same are returnable, upon pain that every sheriff or other officer neglecting his duty therein, shall forfeit for every offence to the party grieved the sum of twenty pounds, to be recovered with costs of suit, in any court of record, by action of debt, bill, plaint or information.(d)

Of the test and return of process.

All writs of summons and attachment, and other process in pleas of lands, must have full fifteen days at the least, between the days of the test and the days of the return thereof; but writs of dower, after issue joined, need not have above fifteen days between the test and return of the *venire facias*, or any other process sued out for the trial of the issue. Writs of summons to the warranty, and all other process in any real action, being tested the last day of, or any other day in any term, and returnable the first day, or any other day, in the next succeeding term, are good.(e)

Summons proclaimed at the church door.

After every summons upon the lands in any real action, and fourteen days at the least before the day

(c) St. N. Y. l. 87, 88. March 12, 1787.
(d) Ibid. 90. March 12, 1787.
(e) Ibid. 90, 91. March 12, 1787.

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PROCESS AND SERVICE.

of the return thereof, the sheriff to whom such summons is directed, must make or cause to be made, proclamation of such summons, at or near the most usual door of the church of the town, or place where the land whereupon the summons was made lies, upon a Sunday, immediately after divine service, and sermon, if any there be; and if there be more than one church in such town, then such proclamation must be made at or near the most usual door of the church nearest to such lands; and if there be no church in such town, such proclamation must be made at or near the most usual door of the church in the same county nearest to such lands, and such proclamation so made must be returned, together with the names of the summoners; and if such summons be not so proclaimed and returned, no *grand cape* may be awarded but on *alias* or *pluries* summons, as the case shall require, until a summons and proclamation shall be so duly made and returned.(*f*)

And for avoiding delays in all manner of writs and attachments, if the tenant or defendant after the first attachment returned make default, the great distress shall be immediately awarded, and the tenant or defendant shall be distrained from time to time, until he or she do appear, or comply with the purpose of the writ. And if the sheriff do not make sufficient return to any such writ at the day of the return thereof he shall be amerced.(*g*)

Issues levied on distress may be sold.

The process by *distringas* as formerly used being dilatory and expensive, the court out of which the writ proceeds may order the issues levied from time

(*f*) St. N. Y. I. 91. March 12, 1737.
(*g*) Ibid.

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PROCESS AND SERVICE.

to time to be sold, and the monies arising thereby to be applied to pay such cost to the plaintiff as the court shall think just, under all circumstances, to order, and the surplus to be retained until the defendant or tenant shall have appeared, or other purpose of the writ be answered; and when the purpose of the writ is answered, such issues must be returned, or if sold, what remains of the money arising from such sale must be paid to the party distrained upon.(*h*)

Writs of inquiry of escheats may be directed to sheriff of any county.

Whenever the attorney general shall cause a writ of inquiry to be issued out of the chancery in case of an escheat, every such writ may at the discretion of such attorney general, be directed to the sheriff of any county in the state.(*i*)

And be executed before the sheriff or circuit court.

Writs of inquiry may at the election of the plaintiff or plaintiffs, in the original action, be executed before the sheriff of the county in which the venire is or shall be laid; or before the circuit court or sittings in such county.(*j*)

Courts of oyer and terminer, may direct process into any county.

Courts of oyer and terminer may direct their writs into all the cities and counties of the state, where need shall be to arrest and take such person as shall be indicted before them.(*k*) And the precepts for jurors to come before such courts must be tested by the chief justice of the supreme court, or in case that office is vacant, by the next senior justice of said court.(*l*)

Precepts for jurors to attend such courts, to be tested by chief justice of S. C. unless—

(*h*) St. N. Y. I. 91, 92. March 12, 1787.
(*i*) Ibid. III. 647. April 10, 1804.
(*j*) Ibid. V. 501. March 27, 1809.
(*k*) Ibid. I. 177. Feb. 20, 1801.
(*l*) Ibid. 176.

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PROCESS AND SERVICE.

Offenders being in another county, warrant to be endorsed.

In case any person against whom any warrant shall be issued by any justice of the peace, for any offence shall escape, or be in any other county out of the jurisdiction of the justice granting the warrant, it shall be the duty of any justice of the peace of the county where such person shall be, upon proof of the hand writing of the justice granting the warrant, to endorse his name on the same; which shall be a sufficient authority to the person bringing the warrant, and to all other persons to whom it was directed, to arrest the offenders in the county where it was endorsed, and to bring him before any justice of such county.(*m*)

Test and return of process to superior court.

In each term of the supreme court, there are two common days of return only, that is to say, the first day, and the Tuesday in the next ensuing week of each term; but that the process in proceedings by bill or otherwise, except original writs, if issued in term, may be tested any day in that term, and may be made returnable on any day in said term, or the next term; and if issued in the vacation, may be tested on any day in the succeeding term, and may be made returnable on any day in the next term.(*n*)

Any person not appointed under the authority of the United States, nor of this state, to execute process within the state or district of New-York, nor being an inhabitant thereof, who shall presume to come within the same, under pretence of any authority whatever, to serve or execute any writ or process against any citizen of this state, or against the goods, chattels, lands or tenements of any citizen as aforesaid, shall be deemed and adjudged guilty of a

(*m*) St. N. Y. I. 219. March 20, 1801.
(*n*) Ibid. 315. March 24, 1801.

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high misdemeanor; and being thereof duly convicted, shall be sentenced to imprisonment in the state prison of this state for the term of seven years; and be confined in the same to hard labour or solitude, or both, at the discretion of the court before which the conviction shall be had. But persons who may serve process to compel the attendance of witnesses before either house of Congress, or before any court of the United States, are excepted from such penalties and prosecution.(*o*)

And it is the duty of all sheriffs, constables and magistrates in this state, to cause to be apprehended all who may offend in manner aforesaid. And if any person or citizen of this state shall cause to be taken and apprehended any such offender, so that he may be brought to proper punishment, such person shall be entitled to receive five hundred dollars from the treasury of this state.(*p*)

If any sheriff or other officer, by color of his office, without special warrant or authority certain, pertaining to his office, disseize any person of his or her freehold, or of any thing belonging to his or her freehold, it shall be lawful for the person disseized to sue at common law by writ of *novel dissesin;* and he who shall be convicted thereof, shall pay double damages to the plaintiff, and be further punished by fine and imprisonment at the discretion of the justices.(*q*)

If surrogate make, decree against administrator.

Whenever any surrogate, having called an administrator or administrators to account, touching the goods,

(*o*) St. N. Y. I. 167, 168. August 10, 1798.
(*p*) Ibid. 168.
(*q*) Ibid. 83, 84. March 12, 1787.

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chattels, and credits by him or them administered, and shall order and decree an equal distribution of what remains clear after debts, funeral charges, and just expenses of every sort are allowed and deducted; and whenever any such surrogate shall make any decree against any person to compel payment of any legacy or request, in any last will or testament, payable, or coming out of the personal estate of the testator; and shall issue a process directed to the sheriff of any county in the state, to take and imprison such person or persons, until he or they shall perform the same sentence or decree; every such sheriff must cause all such process to be duly executed, and confine such person or persons against whom such process issued, as in execution, until he, she, or they shall be delivered by due course of law. And if any sheriff neglect his duty therein, he is answerable to the party grieved, in like manner as he is in process of the like kind, issued out of the supreme court.(r)

PROCESS AND SERVICE.

For distribution, or against other persons concerning legacies or bequests, to compel performance or payment, and issue process to sheriff, &c. must execute the same, as in case of execution against the body.

Or be answerable to party grieved.

No person may execute any writ, process, warrant, order, judgment, or decree on Sunday, except in case of treason, felony, or breach of the peace; but the service shall be void, and the person so serving or executing the same, shall be liable to damages at the suit of the party grieved.(s)

Note. In New-York writs may be tested as of any day in the term, (Sunday excepted,) and every day in the term time is return day. The return of a writ sued out in term, may be at any day in the next. If taken out in the vacation, though tested as of the preceding term, it must be returnable in that which is next. And if more than a term intervene

Process, when it may be tested, and when it must be returnable.

(r) St. N. Y. I. 320, 321. March 27, 1801.
(s) Ibid. 225. March 27, 1801.

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PROCESS AND SERVICE.

between the test and the return of a writ, it is a nullity; as where a writ sued out in May, is returnable in May next, nor can such a writ be amended.(1)

Capias requires bail, or not: its kind.

In this state the *capias* is of two kinds; such as does not require bail, and such as does. The plaintiff may wave bail either by special direction to the sheriff for that purpose, or only by the form of the writ. If the writ contain no clause expressing the true cause of action, the defendant need not be held to bail,(2) but if such clause be inserted in the writ, the defendant must be held to bail.(3)

Sheriff may put in special bail.

If the defendant do not put in special bail, the sheriff to relieve himself, may do it; which bail must be two real persons, if the plaintiff insist upon it.(4)

(1) Canjes' Prac. 45.
(2) Ibid. 23.
(3) Ibid. 9.
(4) Ibid. 59.

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IV. BAIL.

BAIL.

Sheriff required to take bail.

EVERY sheriff or other officer shall let out of prison all persons by them arrested, or held in custody by virtue of process in any personal action, upon reasonable sureties of persons having sufficient within the county where the persons are so to be let to bail, to answer according to the exigency of such process: except persons so in prison by condemnation, execution, *capias utlagatum*, or by special order of any court of justices. And no sheriff or other officer may take any obligation for any cause aforesaid, or by color of their office; but only to themselves and by the name of their office, and upon conditions written, that the prisoner named therein shall appear at the day and place required in said process. And if any sheriff or other officer, take any obligation in other form, by color of their offices, it shall be void. And if any sheriff or other officer return upon any process, that he hath taken the body, or that such person hath surrendered himself, such sheriff or other officer shall be chargeable to have the body according to the command of the said process in usual form.(*a*)

Form of bail bonds.

Sheriffs answerable according to their return.

Defendants not held to bail if cause of action is not expressed in writ.

No person arrested by any sheriff, officer, or other person, by force or color of any process issued out of the supreme court, except of writs of capias utlegatum, attachment upon rescous, and attachments upon contempt; in which process the certainty and true cause of action is not expressed particularly, and for which every defendant in such process named, shall be bailable by such sheriff or other officer as

(*a*) St. N. Y. I. 210. March 20, 1801.

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BAIL.

aforesaid, shall be compelled to give security, or enter into bond with sureties for the appearance of such person so arrested, at the day and place in such process specified; but all sheriffs and other officers shall let from their custody every person by them arrested upon any process wherein the certainty and true cause of action is not particularly expressed, except as before excepted, upon the person so arrested endorsing his appearance upon such process; and when such appearance shall be so endorsed, the clerk of the supreme court shall, at the return of the said process, enter the appearance of the person so endorsed; and after such appearance, no amercement or attachment shall be set or had against any sheriff, or other officer, for the want of such appearance. And a like proceeding may be held in any mayor's court or court of common pleas, the clerk whereof may in like cases enter an appearance on process so endorsed as aforesaid.(*b*)

Clerks to enter appearances when endorsed on writs.

Bail bonds may be assigned.

If any person be arrested on mesne process issuing out of any court of record, at the suit of any common person, and the sheriff or other officer take bail from such person against whom such process issued, the sheriff or other officer, at the request and costs of the plaintiff, or his lawful attorney, shall assign to the plaintiff, the bail bond or other security taken from such bail, by endorsing the same, and attesting it under his hand and seal, in the presence of two or more credible witnesses. And if the said bail bond or assignment, or other security taken for bail be forfeited, the plaintiff, after such assignment made, may bring an action thereupon in his own name, and the court where the action is brought, may by rule of the same court, give such relief to

By endorsement.

Assignee may bring action in his own name.

(*b*) St. N. Y. I. 210, 211. March 29, 1801.

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the plaintiff and defendant in the original action, and to the bail upon said bail bond, or other security taken from such bail, as is agreeable to justice; and such rules of such court shall have the nature and effect of a defeasance of such bail bond or other security for bail.(c) BAIL. Judgment.

(c) St. N. Y. I. 351. March 30, 1801.

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V. PRISONS AND PRISONERS.

PRISONS AND PRISONERS.

Sheriffs to have custody of goals, except as to New-York city prison.

IN the city and county of New-York the sheriff thereof shall have the custody of the goal for the confinement of persons on civil process only, and the prisoners in the same; and the sheriffs in each of the other cities and counties of the state, shall have the custody of the goals and prisons thereof, and of the prisoners in the same; and such sheriffs respectively shall put in such keepers for whom they will answer.(*a*) But the goal in the city of New-York, called the city prison, is under the charge of the mayor, aldermen, and commonalty of said city; and said mayor, aldermen, and commonalty, in common council convened, shall from time to time appoint some proper person to be keeper of the same, who shall hold his office during the pleasure of said common council, and shall be called the *keeper of the city prison of the city of New-York;* and all commitments of offenders shall be to the keeper of the city prison of the city of New-York: and the said keeper shall keep all persons committed to him as aforesaid, in the same manner and under the same penalties, as the sheriffs of the other counties in this state ought by law to keep in the goals in their respective counties the criminals committed to them.(*b*)

New-York city prison under the charge of the corporation.

Style of the keeper.

His duties.

Sheriffs to receive prisoners under process of the United States.

It is the duty of the sheriffs of the respective cities and counties of this state, and of the keeper of the city prison of the city of New-York, to receive into their respective goals, and safely keep all prisoners who shall be committed to the same, by virtue of any process issued under the authority of

(*a*) St. N. Y. I. 208. March 20, 1801.
(*b*) Ibid. 358, 359. March 30, 1801.

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PRISONS AND PRISONERS.

the United States, until they shall be discharged by the due course of the laws thereof; the United States supporting such prisoners as shall be committed for offences against the United States. But persons committed in the city of New-York on civil process only, must be committed to the goal in custody of the sheriff of said city; and persons committed in said city charged with any offence whatsoever, must be committed to the city prison. And in case any prisoner shall escape out of the custody of any sheriff or keeper to whom such prisoner may have been committed as aforesaid, such sheriff or keeper shall be liable to the like actions and penalties as he would have been, had such prisoner been committed by virtue of any process issuing under the authority of this state. And such sheriff or keeper, into whose custody any such prisoner is so committed, is authorized to take to his own use such sums of money as are payable by the United States for the use of said goals.(c)

Proviso as to New-York.

Sheriffs, &c. liable for escapes of such prisoners.

Liberties of prisons.

The liberties of the goals of the counties respectively, as established according to law by the courts of common pleas of the respective counties, shall be the liberties thereof, as well in counties where goals are not erected, as others; subject to be altered by the courts of common pleas of the counties respectively in their discretion, not oftener than once in every year. And when the same has not been done in any county, the court of common pleas of such county may appoint a certain reasonable space of ground adjacent to the goal of such county, to be denominated the liberties thereof, subject to be altered as aforesaid. And such court shall cause such liberties, and their limits, to be designated by en-

By whom designated.

(c) St. N. Y. I. 208, 209. March 20, 1801.

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PRISONS AND PRISONERS.

closures or posts, or other visible marks placed on the outer line of such liberties, as to them shall seem proper; and the extent of such liberties to be entered on their minutes, which extent shall in no case comprehend a larger space than ten acres, nor extend in any direction to a greater distance than sixty rods, provided there be ten dwelling houses within such extent.(*d*) And the mayor's court in the city of New-York, in their discretion, may extend the limits of the goal of said city and county, so that the same do not exceed ten acres in the whole, and the same alter at pleasure, but not oftener than once in any one year.(*e*)

Their extent.

In New-York.

Sheriffs and goalers to receive felons in prisons.

Sheriffs and goalers shall receive from any constable or other officer, without taking any thing therefor, and safely keep in prison, all felons indicted, or taken in the fact, who shall be taken by any constable or other officer; and shall not on their own authority let out of prison, on bail, or otherwise, any person in their custody by virtue of any process for treason or felony, or upon any condemnation, execution, or *capias utlagatum*, or committed by special order of any court of justice, upon pain of being punished by fine and imprisonment, and to answer the damages of the party aggrieved, if any there be.(*f*)

What persons not to go at large.

Prisoners not to be carried to taverns, &c. without consent.

If any sheriff or other officer shall have in his custody any person by virtue of any process or warrant whatever, it shall not be lawful for such officer to carry the said person to any tavern or alehouse, or other public victualling or drinking house, without the voluntary consent of such person, so as to

(*d*) St. N. Y. I. 359, 360. March 30, 1801.
(*e*) Ibid. V. 509, 510. March 28, 1809.
(*f*) Ibid. I. 210. March 20, 1801.

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charge such prisoner with any sum of money for any drink, victuals, or other thing whatsoever, but what such person shall call for of his own accord, and such officer shall not directly nor indirectly demand, take or receive any other or greater sum than what by law ought to be taken or demanded for such arrest, taking or waiting until such persons shall have procured an appearance, found bail, agreed with his adversary, or be sent to goal; nor take or exact any other reward or gratuity for so keeping the said person out of goal, than what such person shall of his own accord voluntarily give, nor take or receive any greater sum for each night's lodging or other expenses, than what is reasonable and fitting in such case, or shall be so adjudged by the next justice of the peace, or at the general sessions; and shall not cause the said person to pay for any drink or victuals, or other things than what such person shall voluntarily and particularly call for. And every sheriff or other officer, having the custody of such prisoner, shall permit him at his own will and pleasure, to send for, and have any beer, ale, victuals, and other necessary food, where and from whom any such prisoner pleases; and to have and use such bedding, linen, and other things as such prisoner shall think fit, without any detaining or paying for the same or any part thereof: and shall not demand, take, or receive of such prisoner, other or greater fees for his commitment, release, or discharge, than shall be allowable by law, nor any thing whatsoever for the chamber rent of such prisoner. Nor shall any sheriff or goaler put or keep prisoners for debt and felons together in one room.(g)

PRISONS AND PRISONERS.

Nor illegal fees demand.

Nor any reward for keeping person out of goal.

Prisoners how to be kept in goal.

(g) St. N. Y. I. 211. March 20, 1801.

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PRISONS AND PRISONERS.

Penalties for offences against the four preceding paragraphs.

And every sheriff or other officer who shall offend against any thing in either of the four last paragraphs, shall forfeit his office or place, and treble damages to the party grieved, to be recovered by action of debt, or information, with costs of suit.

Duty of sheriff to grant prisoners the liberties on sufficient sureties by bond.

It is the duty of the sheriffs of the respective counties, to permit any prisoner who shall be in their custody, on civil process only, to go at large within the limits of the liberties of their respective prisons, if such prisoner shall procure and offer to the sheriff in whose custody he shall be, a bond with one or more sufficient sureties, in the penalty of double the amount of the sum for which such prisoner is confined; conditioned that such prisoner shall remain a true and faithful prisoner, and shall not at any time, or in any wise escape, or go without the limits of the liberties aforesaid, until he shall be discharged by due course of law. And it

Sheriff may require new security.

shall be lawful for any such sheriff, in case he shall discover to his satisfaction, any bail so taken to be insufficient, to confine any prisoner so admitted to the benefit of the liberties in the gaol, until other good and sufficient bail for the liberties be offered; and every such surety shall be an inhabitant and a freeholder within the county where such prisoner shall be confined, and every bond so taken shall be

Operation of such bonds.

valid in law, and and for the indemnity of such sheriff only: and any sheriff who may let any prisoner in his custody on civil process only, go at large within the limits of the liberties aforesaid, shall not be deemed to have incurred an escape; but if

Prisoner going beyond limits will be an escape.

such prisoner shall go at large without the limits of such liberties, that shall be an escape.(*h*)

(*h*) St. N. Y. I. 360. March 30, 1801.

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PRISONS AND PRISONERS.

Bonds for liberties of the prison may be assigned.

And all bonds taken as aforesaid, are assignable, and may be assigned to the respective parties, their attornies or representatives, at whose suit any person or persons giving such bond, shall be confined upon the request and at the cost of such party or his representative; and the same shall be made by endorsement on such bond, under the hand and seal of the sheriff, or other officer, or of the executors or administrators of such sheriff or other officer to whom such bond shall have been given, in presence of two or more creditable witnesses; and the person to whom such assignment is made, may maintain an action thereupon as assignee of such sheriff or other officer; and upon obtaining judgment therein, shall recover the amount due in the original action, in which the person or persons giving such bond shall have been charged in execution, together with all such fees as shall have accrued thereon; and a recovery in such action on a bond so assigned, is a bar to any action brought by or on behalf of the person receiving such assignment, against the sheriff or other officer assigning such bond, for any neglect or escape of the person or persons so charged in execution, which may have taken place before the execution of such assignment. (*i*)

Amount to be recovered by assignment.

If party will not receive assignment, proceedings against sheriff may be stayed until, &c.

And in case any party at whose suit any person or persons shall be confined within the liberties of any goal, shall neglect or refuse to take such assignment, the court in which any action is prosecuted against any sheriff or other officer, for the negligent escape of the person who shall have given such bond after judgment in such action, by rule or order may stay all proceedings thereon until such sheriff or officer shall have had a reasonable time to obtain judg-

(*i*) St. N. Y. V. 509. March 28, 1809. VI. 323. April 9, 1811.

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PRISONS AND PRISONERS

ment, and collect the amount ascertained to be due in such action, on the bond given for such gaol liberties. And in all suits prosecuted on any such bond by the sheriff, or other officer to whom it was given, if the condition be broken, the damages to be recovered in such suit shall be the amount due in the original action in which the person giving such bond shall have been charged in execution.(j)

Amount to be recovered by sheriffs, &c. on such bond.

Every sheriff, coroner, or other officer, in case of escapes, may avail himself, as at common law, of a defence arising from a recaption on fresh pursuit, and a returning of the prisoner within the custody of such officer, before any action shall be commenced for the escape, any thing in "*the act relative to gaols*, passed March 30, 1801," or in "*the act rendering bonds taken for the gaol liberties assignable, and for other purposes*, passed March 28th, 1809, to the contrary notwithstanding.

Every sheriff who shall have in his custody any debtor who may have given such bond, must imprison such debtor whenever even the surety or sureties in such bond shall in writing require the sheriff so to do.

No action may be brought or maintained against any sheriff, coroner, or other officer, for the escape of any prisoner imprisoned on civil proces, unless such action be brought within one year from the time of such escape.(k)

Debtors of a certain description may be discharged.

If any person, having a family in this state, and not being a freeholder at the time of judgment ren-

(j) St. N. Y. V. 509. March 28, 1809.
(k) Ibid. VI. 77. April 5, 1810.

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dered against him, or at any time thereafter, be imprisoned under the act, entitled "*An Act for the more speedy recovery of debts to the value of twenty-five dollars,*" and shall have remained in prison for more than thirty days: And if any person, not having a family, and not being a freeholder at the time of judgment rendered against him, nor at any time thereafter, be imprisoned under said act, and shall have remained in prison for more than sixty days, he shall in either case be discharged from prison on the execution issued under such act. But before such person may be discharged, he must make affidavit before one of the justices of the supreme court, or a commissioner authorized to take affidavits to be read therein, or any of the judges or assistant justices of any court of common pleas, or any justices, (who are required to take such affidavit) that he comes within the provisions of the act, entitled "*An Act to amend the Act, entitled An Act for the more speedy recovery of debts to the value of twenty-five dollars,*" which affidavit must be taken in presence of such sheriff, or any one of his deputies, or gaoler, who must attend for that purpose when called on by such prisoner. And on producing and delivering such affidavit to the sheriff or gaoler of the county where the party is imprisoned, such party must be forthwith discharged from prison. And if the sheriff or gaoler refuse so to discharge such prisoner, such sheriff or gaoler shall be subject to a penalty of twenty-five dollars, to be recovered by the party grieved, to his own use, with costs, in any court having cognizance thereof. And the sheriff or gaoler must file such affidavit in the office of the clerk of the county in which such party is imprisoned, who must file the same without demanding or receiving any fees therefor. And if any sheriff or gaoler shall be sued or prosecuted, for or by reason

PRISONS AND PRISONERS.

But must previously thereto take an affidavit before, &c.

In presence of sheriff, or, &c.

Affidavit must be filed in county clerk's office.

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PRISONS AND PRISONERS.

If sheriff be sued, he may plead the general issue, &c.

Judgments against goods and chattels remain in force.

Penalty for making false affidavit.

of any discharge under the act last aforesaid, he may plead the general issue, and give said act and the special mattter in full justification and defence. And no discharge under said act shall in any wise affect, or prejudice any judgment, or execution, against the goods or chattels of such person. And if any person shall wilfully, falsely and corruptly, make the affidavit required by said act as aforesaid, he shall, on conviction in any court having cognizance thereof, suffer the pains and penalties inflicted on persons guilty of wilful and corrupt perjury; and shall be subject to be taken in execution at the suit of the party in like manner as if he had never been discharged under said act.(*l*)

When any person imprisoned on execution, for a sum or sums not exceeding in the whole five hundred dollars, or being so imprisoned on execution, for any sum or sums above five hundred dollars, and not exceeding two thousand dollars, and shall have remained in gaol the space of three calendar months, having petitioned the court from whence the process issued, by virtue of which he is so imprisoned, or such other court as may have jurisdiction of such petition, for the relief in such case provided, by the act, entitled "*An Act for the relief of debtors, with respect to the imprisonment of their persons,*" passed March 25th, 1801, shall in pursuance of the proceedings had on such petition, obtain an order of the court to which such petition was presented, having jurisdiction thereof, that such person be discharged from custody in the cause or causes stated in said petition, the sheriff or gaoler, on being served with a copy of such order, must discharge the

(*l*) St. N. Y. V. 440, 441. Feb. 2, 1809.

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prisoner from gaol without taking any fee, or detaining for or on account of any gaol fees.(m) PRISONS AND PRISONERS.

If any plaintiff obtain judgment in any court of record, in any action against any defendant, in custody of any sheriff or other officer, either upon the process upon the same action, or upon being surrendered in discharge of the bail, or otherwise, and do not charge such defendant in execution within three months next after such judgment obtained, such defendant may be discharged out of custody, by a supersedeas allowed by one of the judges of the court in which such judgment was obtained, and where any defendant is surrendered, in discharge of his bail, after judgment against such defendant, and be thereupon committed to gaol, and the plaintiff do not charge such defendant so surrendered and remaining in gaol in execution, within three months next after such surrender, such defendant may be discharged out of custody by a supersedeas allowed as aforesaid.(n) Prisoners not charged in execution four months after judgment, or after surrender in discharge of bail, may be set at liberty by supersedeas.

No spirituous liquors may, on any pretence whatsoever, be sold within either of the gaols in the city and county of New-York, nor within the gaol of the city and county of Albany; nor may any kind of spirituous liquors, except beer, of the kind commonly called table beer, and cider, be brought into either of said gaols for the use of any person therein confined, without the permission of a physician, for the purpose of granting such permission when necessary, by the mayor of each of the said cities, occasionally appointed, which permission must be in writing under the hand of such physician, allowing Spirituous liquors prohibited in the gaols of New-York and Albany— Without permission of physician appointed for that purpose.

(m) St. N. Y. I. 291, 292, 293. March 24, 1801.
(n) Ibid. 296. March 24, 1801.

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PRISONS AND PRISONERS.

Sheriff and keeper of New-York and Albany prisons to prevent the use of spirituous liquors. Penalty for knowingly permitting the same.

such prisoner to procure and bring into such gaol such quantity of spirituous liquors as such physician may think proper. And it is the duty of the sheriffs of said cities, and the keeper of the city prison of the said city of New-York, having the custody of the said gaols respectively, to prevent the use of spirituous liquors therein. And if the sheriff of either of the said cities, or the keeper of the city prison of said city of New-York, knowingly suffer or permit any spirituous liquors to be sold or used in their respective gaols, and be thereof convicted before the supreme court, or court of oyer and terminer, he shall for such offence forfeit two hundred and fifty dollars for the use of the people of the state.(o)

(o) St. N. Y. I. 369. March 30, 1801.

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VI. ESCAPE.

ESCAPE.

All prisoners, either upon contempt or mesne process, or in execution, or for refusing to account before auditors, who shall be committed to any prison, shall be actually detained within such prison until they shall be from thence discharged by due course of law. And if at any time the keeper of any prison shall permit, or suffer any prisoner committed to his custody, either upon contempt or mesne process, or in execution, to go or be at large out of his prison, except by virtue of some writ of *habeas corpus*, or rule of court, (which rule of court shall not be granted but on motion made on petition read in open court,) every such going or being out of such prison will be an escape, and shall be so adjudged.(*a*) What shall be deemed an escape.

And if any sheriff, or keeper of any prison, shall take any sum of money, reward, or gratuity whatsoever, or any security for the same, to procure, assist, or connive at, or permit any escape of any prisoner in his custody, and shall be thereof lawfully convicted, every such sheriff or keeper shall, for every such offence, forfeit the sum of one thousand two hundred and fifty dollars and his said office, and be for ever after incapable of exercising the said office.(*b*) And no retaking on fresh pursuit shall be given in evidence, on the trial of any issue, in any action of escape against any sheriff or keeper of any prison, unless the same shall be specially pleaded, or notice thereof in writing be given, with the general issue; and no such special plea of retaking on fresh pursuit, or plea of the general issue, Penalty for taking a reward for, or conniving at escapes. Retaking on fresh pursuit when and how to be pleaded. To be accompanied with an oath.

(*a*) St. N. Y. I. 95. Feb. 6, 1788. And 212, 213. March 20, 1801.
(*b*) Ibid. 212, 213. March 20, 1801. And 95. Feb. 6, 1788.

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ESCAPE.

with notice of such special matter, shall be received or allowed, unless oath be made in writing by such sheriff or keeper of any prison against whom such action shall be brought and filed, with such plea, that the prisoner for whose escape such action is brought, did, without his consent, privity or knowledge, make such escape; and if such affidavit shall at any time afterwards appear to be false, and such sheriff or keeper of any prison be convicted thereof by due course of law, he shall forfeit the sum of one thousand two hundred and fifty dollars.(c) And in case of escape of a prisoner in execution, the creditor may retake such prisoner by any new *capias*, or *capias ad satisfaciendum*, or sue for any other kind of execution on the judgment, as if the prisoner had never been taken in execution.(d)

Penalty for swearing falsely.

Creditor may have new execution.

Every sheriff, officer, or keeper of any gaol, upon whom any copy of a declaration against any prisoner in his custody, by virtue of any process out of any court of record shall be served, shall within ten days thereafter deliver the same to the defendant or defendants therein named, with a note of the time of the service thereof upon such sheriff or officer as aforesaid; and if any such sheriff, officer or keeper, to whom any such copy of any declaration shall be delivered as aforesaid, shall neglect to deliver the same as aforesaid, he shall be answerable to such defendant or defendants for all damages occasioned by such neglect.(e)

(c) St. N. Y. I. 213. March 20, 1801.
(d) Ibid.
(e) Ibid.

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VII. HABEAS CORPUS.

HAB. CORP.

Writs of habeas corpus when and by whom issued.

WRITS of habeas corpus *ad subjiciendum* are issued, as well out of the court of chancery, as out of the supreme court; also the chancellor or any judge of the supreme court, or the recorder of the city of New-York, upon the request of any person (other than persons convict, or in execution by legal process, or committed for treason or felony, plainly and specially expressed in the warrant of commitment,) imprisoned and held in custody by any sheriff or goaler, or other person, upon view of a copy of the warrant of commitment, or upon oath, that such copy is denied, such request being made in writing by such prisoner, or by any one on his behalf, attested and subscribed by two witnesses in time of vacation, must allow an habeas corpus, under the seal of the court whereof he is chancellor or judge, signed by the person awarding the same, and endorsed with these words, *by the statute*, directed to the officer or person in whose custody such prisoner shall be, returnable immediately before such chancellor or judge, unless such prisoner shall have neglected two whole terms after his imprisonment to pray out an *habeas corpus*, in which case, no habeas corpus may be granted in time of vacation. And if the chancellor, or any judge of the supreme court, or recorder of the city of New-York in vacation time, upon view of the warrant of commitment or detainer, or upon oath that such copy was denied as aforesaid, shall deny to allow any such writ of habeas corpus to be granted, being applied for as aforesaid, he shall forfeit and pay the party grieved one thousand two hundred and fifty dollars.(a)

Penalty on chancellor or judge for denying such writs.

(a) St. N. Y. I. 227, 288, 290. March 24, 1801.

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HAB. CORP.

Duty of sheriff and others in receiving a hab. corp.

When any person shall bring any writ of *habeas corpus*, directed to any sheriff, goaler, or other person, for any person in his custody, and the writ shall be served upon such officer, or other person, or left at the prison with any under officer of the same, the person upon whom the writ shall be so served, or with whom it shall be so left, (unless the person so in custody be committed for treason, or felony, plainly and specially expressed in the warrant of commitment, upon payment or tender of charges of bringing in the prisoner, to be ascertained by the court or judge awarding the same, and endorsed on such writ, not exceeding twelve and a half cents per mile, and security given by his own bond to pay the charges of carrying back to the prisoner, if remanded, and that he will not escape by the way, must make return of such writ, and cause to be brought the body of such prisoner before the chancellor or supreme court, or any judge of the same before whom such writ is returnable, according to the command thereof, and certify the true cause of his imprisonment, within three days thereafter, unless the commitment of such person be in a place beyond the distance of twenty miles from the place where such court or person resides; and if beyond the distance of twenty miles, and not above one hundred miles, then within the space of ten days; and if beyond the distance of one hundred miles, then within the space of twenty days after the delivery of the writ as aforesaid, and not longer.(*b*)

Time allowed to return the same.

Penalty on disobeying the writ.

And if any person, whose duty is as aforesaid, shall neglect, or refuse to make return and obey the said writ as aforesaid, according to the command thereof, within the respective times aforesaid, or

(*b*) St. N. Y. I. 236. March 24, 1801.

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upon demand made by the prisoner, or any one in his behalf, shall refuse to deliver, to the person demanding a true copy of the warrant of commitment and detainer of such prisoner, every such person so offending, shall, for the first offence, forfeit to the party grieved two hundred and fifty dollars, and for the second offence five hundred dollars, and shall, if an officer, be incapable to hold his said office.(c) It is however provided, that after the court of oyer and terminer is proclaimed in any county where any prisoner is detained, no prisoner shall be removed from the common goal, upon *habeas corpus;* but upon every such *habeas corpus*, shall be brought before such court of oyer and terminer, or goal delivery, which court shall thereupon do what to justice shall appertain; though after the end of such court, any prisoner may, notwithstanding, have a *habeas corpus* as before.(d) HAB. CORP.

Penalty for re-imprisonment for the same cause.

No prisoner set at large, upon *habeas corpus*, may be again imprisoned for the same offence, unless by the legal order or process of the court wherein he is bound by recognizance to appear, or other court having jurisdiction of the cause; and if any person shall, knowingly, contrary to the last mentioned and described act, recommit or imprison, or cause to be committed or imprisoned, for the same offence, or pretended offence, any person so set at large, or shall knowingly aid or assist therein, he shall forfeit to the party grieved one thousand two hundred and fifty dollars, any colorable pretence or variation in the warrant of commitment notwithstanding.(e)

(c) St. N. Y. I. 286, 287. March 24, 1801.
(d) Ibid. 289. March 24, 1801.
(e) Ibid. 288. March 24, 1801.

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HAB. CORP.

No prisoner to be removed by habeas corpus after the court of oyer and terminer be proclaimed.

After the court of oyer and terminer, or goal delivery, be proclaimed for the county where any prisoner is confined, no prisoner shall be removed from the common goal, upon any habeas corpus granted in pursuance of the act, entitled, "*An act to prevent unjust imprisonment, by securing the benefit of the writ of habeas corpus*, shall be brought before such court of oyer and terminer, or goal delivery; but after the court of oyer and terminer, or goal delivery, be ended, any prisoner may have an *habeas corpus*, according to the intention of the act aforesaid.(*f*)

No person committed for crime may be removed, &c. unless by legal process.

If any citizen of this state shall be committed to any prison, or in custody of any officer, for any criminal matter, such person must not be removed therefrom, unless by legal process; or where the prisoner is delivered to some inferior officer to carry to goal, or is sent by order of any court, judge, or justice, to any house of correction, on removal from one place to another within the same county for trial or discharge, in due course of law, or in case of fire,

Or from necessity.

infection, or other necessity; and if any person shall, after such commitment, make out or sign, or countersign, any warrant for such removal, contrary thereto, as well he who makes, or signs, or countersigns such warrant, as the officer executing the same, shall for every such offence forfeit to the party grieved five hundred dollars.(*g*)

Under penalty.

Penalties how recovered.

The several penalties aforesaid may be recovered by the party grieved, his or her executors or administrators, against the offender, his executors or administrators, by action of debt or information, in

(*f*) St. N. Y. I. 289. March 24, 1801.
(*g*) Ibid. 290. March 24, 1801.

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any court of record, if such action or information be commenced within two years after the time when such offence shall have been committed, in case the party grieved shall not then be in prison, and if in prison, then within two years after the decease of the person imprisoned, or his delivery out of prison, which shall first happen; and in every such action or information, the defendant may plead the general issue, and give the special matter in evidence. HAB. CORP.

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VIII. EXECUTION.

EXECUTION.

Real estate liable to be taken and sold on execution.

ALL and singular, the lands, tenements and real estate of every debtor, are liable to be sold upon execution issued by virtue of any judgment, in any court of record, against any debtor, for the payment and satisfaction of the debt or damages so recovered.

Time of signing the judgment, to be noted in the margin of the record.

And every judge or officer of any court of record, who shall sign any judgment, must at the time of signing the same, without any fee, set down the day and year of his signing the same judgment, upon the margin of the roll or record where the same judgment shall be entered; and the clerks of the said respective courts must upon the back of every roll or judgment, filed in their respective offices, note the time of filing the same.

Clerk to note on the back of the roll the time of filing.

Judgment not to affect land in certain cases but from the filing the record.

And no judgment shall effect any lands or tenements as to purchasers or mortgagees, or have any preference against heirs, executors or administrators in their administration of their ancestors', testators', or intestates' estates; but from the time of the actual filing of the roll or record of the same judgment in their respective offices, after the same shall have been so signed.(a)

Clerk to docket all judgments.

The clerks of the several courts of record, must during every term or court, or within six days thereafter, make and put up an alphabetical docket, by the name of the party against whom any judgment is entered, a particular entry of all final judgments for debt or damages entered in any such courts respectively, of such term, or at the court preceding, which must contain the names of the parties, their places of abode, and titles, trades or professions, if any such be in the record of such judgments: and

(a) St. N. Y. I. 688. March 31, 1801.

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the debt, damages and costs recovered thereby, and such respective docket, must be fairly put into and kept in a book in the office of such clerks respectively, which may be searched by all persons at reasonable times. And every clerk, for every term or court in which he shall omit to do his duty in the premises, shall forfeit the sum of two hundred and fifty dollars, the one moiety thereof to the party grieved and the other moiety to the person who will sue for the same, to be recovered with costs of suit, in any court of record, by action of debt, or by information. And no judgment not so docketed and entered in the books, shall affect any lands or tenements, as to purchasers or mortgagees, or have any preference against heirs, executors or administrators in their administration of their ancestors', testators', or intestates' estates.(b)

EXECUTION.

Penalty for neglect of duty therein.

Judgments not docketed not to affect purchasers, &c.

And no recognizances shall bind any lands, tenements or hereditaments in the hands of any purchaser or mortgagee, *bona fide*, and for a valuable consideration.(c)

Recognizances not to bind lands against purchaser.

The clerks of the supreme court must respectively deliver each to the other, on or before the last day of every term, at the place where the supreme court shall then be held, a transcript of the docket of all judgments which shall have been so docketed in his office during the preceding term and vacation, and before the first day of the term in which such transcript shall be delivered, which transcript must be certified by the clerk in whose office it is made, to be a true copy of the original docket in his office, and must be entered in a book in the office of the clerk

Clerks of supreme court to interchange with each other on every term, a transcript of the docket of judgments.

(b) St. N. Y. I. 388, 389. March 31, 1801.
(c) Ibid. 389.

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EXECUTION.

receiving the same, which book must be provided for that purpose by each of said clerks in his office.(d)

Execution to bind goods from delivery.

No writ of execution binds the property of the goods of any person against whom such writ is issued but from the time such writ is delivered to the sheriff, under sheriff, coroner or other officer, to be executed.

Sheriffs, &c. to endorse the time of delivery.

And the sheriff, under sheriffs, coroners and other officers, and their deputies and agents, must, upon the receipt of every such writ, without fee for so doing, endorse on the back thereof the day of the month and year, when he or they received the same.(e)

Lands liable to execution against *cestui qui use.*

All such lands, tenements, rents and hereditaments as any one is in any manner or wise seized or possessed of, to the use or interest of him against whom execution is issued on any judgment rendered by any court of record, or on a recognizance, are liable to be taken and sold on execution, in the same manner as if the person against whom execution issued, were seized of such lands, tenements, rents, or other hereditaments of such estate, as he is seized of in the use or trust at the time of such execution sued. And such lands, tenements, rents, or other hereditaments, by force and virtue of such execution, shall be held and enjoyed, freed and discharged of all incumbrances of such person or persons, as are seized and possessed to the use and interest for the person against whom such execution is sued; and shall, notwithstanding any devise or descent, be liable to the debts of the testator or intestate, to whose use, or in trust for whom such estate was held.(f)

And are assets in the hands of heirs or devisees.

(d) St. N. Y. I. 389. March 31, 1801.
(e) Ibid. 389, 390.
(f) Ibid. 68, 69. Feb. 20, 1788. And 388. March 31, 1801.

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EXECUTION.

When any debt is recovered or acknowledged, or adjudged in any court of record, the party in whose favour such judgment is given, may have an execution against the body of the debtor, or a writ, commanding the sheriff or other proper officer, to cause such debt and damages to be made, of the goods and chattels of the party chargeable with such debt, or of the goods and chattels, lands and tenements, of the person chargeable with such debt; but no execution may be issued against the body, or the proper goods and chattels, lands and tenements, of any heir, devisee, executor or administrator, unless such person shall have made himself liable, by false pleading or otherwise. And in every writ of execution which may be issued against lands and tenements, the sheriff or other officer shall be commanded, that of the goods and chattels, of the person or persons against whom such execution shall issue in his county, he cause to be made the debt, damages and costs, or sum of money in such execution specified. And if sufficient goods and chattels of such person or persons cannot be found in his county, that then he cause said debt, damages and costs, or sum of money, to be made of lands or tenements, whereof such person or persons was or were seized, on the day when the same lands became liable to such debt, damages, or sum of money, specifying the day particularly, or at any time afterwards, in whose hands soever the same may then be: but when any execution shall be issued against any person or persons, as tenants, or as heirs or devisees of any person deceased, unless they have made their estates liable by false pleading, or otherwise, such writ shall only command the sheriff, or other officer to whom it shall be directed, that of the lands and tenements whereof the ancestor, testator or person deceased was seized, on the day the same lands became liable as aforesaid, or at any

Execution may be issued against the body or estate of the debtor.

Exception as to heirs, &c.

Form of execution against estate.

Form thereof against tenants and devisees.

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EXECUTION.

time afterwards, or at the time of his or her death, as the case may require, he cause to be made the debt, damages and cost, or sum of money specified in the same writ.(g)

Officer must advertise six days before sale of goods and chattels on execution.

When any goods or chattels are seized, by virtue of any such execution, the officer who seized the same, before he can make sale of such goods and chattels, must give notice of such sale by advertisement for at least six days, put up in three of the most public places of the town in which such sale shall be, notifying the time and place, when and where such goods and chattels are to be sold.(h) And no lands or tenements may be sold, by virtue of such execution, if there be sufficient goods and chattels to be found by the sheriff, or other officer executing the same, within his county, to satisfy the same execution.(i) Nor may such sheriff, or other officer, in any case, by virtue of execution, sell such lands or tenements, unless such sale be at public vendue, and between the hour of nine in the morning and the setting of the sun of the same day, nor unless the time and place of holding such sale have been previously advertised publicly, for the space of six weeks successively, by nailing up a printed or written notice thereof, in at least three of the most public places of the town where such lands or tenements shall be sold; and also, by causing a similar notice thereof to be printed in one of the public newspapers, if any such newspapers there be, within the county, wherein such lands and tenements shall be sold: and unless such lands and tenements shall have been described in such advertisement with common certainty, by setting forth the number of the lot,

What time of day must sell lands on execution, and how.

What notice to be given of such sale previous thereto.

(g) St. N. Y. I. 390. March 31, 1801.
(h) Ibid. III. 462. April 10, 1804.
(i) Ibid. I. 390. March 31, 1801.

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and the name of the township in which the same is situate, if any they have, if not, by some other appropriate description; and in case such lands or tenements are not occupied by the defendant, or defendants in such execution named, or some one of them, or by some person holding the same as tenant, or purchaser under such defendant or defendants, and are situate in any county in the eastern or western district in the state, in which no news paper is printed, then, unless the advertisement of the sale, with the description of the lands as aforesaid, shall have been inserted in the news paper printed in the city of Albany, in which the laws of the state are required to be printed, for six weeks preceding such sale. EXECUTION.

Penalty for violations of or deviations from law in making such sale.

And if any sheriff shall sell any lands or tenements, by virtue of any such execution, otherwise than in the manner aforesaid, or without such previous notice; or if any person shall take down or deface any such notice, previous to the day of sale therein specified, unless upon satisfaction of the judgment upon which such execution issued, or with the consent of the plaintiff therein, the sheriff so offending shall, for every such offence, forfeit and pay the sum of one thousand two hundred and fifty dollars, to be recovered with costs of suit, to the use of the party or parties aggrieved by such sale; and every person so offending, by taking down or defacing such notice, shall forfeit and pay the sum of thirty seven dollars and fifty cents, to be recovered with costs of suit by any person who will sue for the same; but neither of the officers aforesaid shall affect the validity of such sale. *(j)*

(*j*) St. N. Y. I. 392, 393. March 31, 1801. V. 267, 268, April 11, 1806.

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EXECUTION.

No sheriff may purchase under sales on execution.

No sheriff or other officer, to whom any such execution is directed, nor any of their deputies, nor any person for them or either of them, may purchase any goods, chattels, lands or tenements, at any sale by virtue of any execution, and all purchases so made by them, or any of them, or for the use of them or any of them, will be void.(*k*)

Goods not liable to execution, unless party pay arrears of rent to landlord.

There is, however, an exception to the liability of the goods and chattels to be taken upon execution, in favour of landlords, contained in the act concerning distresses, &c. it is provided, that no goods or chattels whatever, in or upon demised premises, shall be liable to be taken by virtue of any execution, or any pretence whatsoever, unless the party at whose suit the execution is sued out shall, before the removal of the goods from off the premises, by virtue of such execution, pay to the landlord of the premises, or his bailiff, all and every sum or sums of money due for rent for the said premises, at the time of the taking such goods or chattels, by virtue of such execution, if the arrears of rent do not amount to more than the rent for one year. And in case such arrears exceed one year's rent, the party at whose suit such execution is sued out, paying the landlord or his bailiff one year's rent, may proceed to execute his judgment as he might have done if said act had not been made; and the sheriff is empowered and required to levy and pay to the plaintiff, as well the money so paid for rent, as the money due on such execution.(*l*)

Not exceeding one year's rent.

Sheriff to levy debt and rent so paid.

When sheriff may raise posse comitatis on execution.

Whenever the sheriff, or any of his deputies, find that resistance will be made against any process of execution, the sheriff, taking with him the power of

(*k*) St. N. Y. I. 393. March 31, 1801.
(*l*) Ibid. 137. Feb. 21, 1788.

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the county, shall forthwith go in his proper person and do execution. And if he find resistance, shall certify to the court the names of the resisters, aiders and favourers, who shall be attached to appear in the same court, and if convicted of such resistance, be punished by fine and imprisonment.(m) Execution.

Every person who shall be arrested on execution, issued from any court of record against his or her body, for any debt or damages, by any sheriff or other officer to whom such writ shall be directed; and every person who shall be committed to the custody of any sheriff or other officer, in execution of any such debt, or damages, shall be safely kept in prison, in close and secure custody, without bail, living at his own costs, until such person shall satisfy such debt or damages. And if such sheriff or other officer shall permit any such person, so arrested or committed, to go out of prison, or be at large by bail, or otherwise, without the assent and agreement of the plaintiff, or party in whose favour such execution may be, such sheriff or other officer shall thereby become answerable to such plaintiff, or party, for the debt and damages for which such person was arrested or committed, and the plaintiff or party may recover the same with cost, by action of debt, against such sheriff or other officer.(n) Prisoners how to be kept when charged. Penalty on escapes of prisoners.

If any writ shall be granted, commanding the sheriff or keeper of the prison where any person shall be so charged in execution for any debt, or damages as aforesaid, to have the body of such prisoner, with the cause of his imprisonment, in the chancery, or any other court, or before the chancellor Prisoners in execution, and removed by hab. corp. to be remanded.

(m) St. N. Y. I. 137. Feb. 21, 1788.
(n) Ibid. 211, 212. March 20, 1801.

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EXECUTION. or any judge, and it be returned upon the said writ that such prisoner is charged in execution as aforesaid, such prisoner shall be immediately remanded, and shall remain in prison according to law, without being let to bail against the will of the party in whose favour such prisoner shall be so charged, until satisfaction be made for the sum adjudged.(o)

(o) St. N. Y. I. 212. March 20, 1801.

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IX. DECREES FOR SALE OF MORTGAGES.

SALE OF MORTGAGES.

Decrees to sell mortgaged premises.

IN case of a decree to sell mortgaged premises, and a writ being issued to the sheriff commanding him to make such sale, the sheriff, upon receipt of such writ, must cause an advertisement of the intended sale of such lands to be inserted in at least one of the public newspapers printed in the county where the lands lie; and if no newspapers be printed in such county, then in one or more of the public newspapers printed in the state for six weeks successively before the day appointed for such sale, and at the day so notified must proceed to sell the same to the highest bidder, and shall execute deeds for the same to the purchaser in such manner as the case may require; but no greater estate in the premises may at any time be granted or conveyed by the sheriff to such purchaser, than would have vested in the mortgage had the equity of redemption been duly foreclosed.(a)

Time and mode of such sale and deeds to be given.

No greater estate to be conveyed by sheriff than mortgage after foreclosure could convey.

(a) St. N. Y. I. 406, 407. April 2, 1801.

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X. ABSENT AND ABSCONDING DEBTORS.

ABSENT DEBTORS.

How to execute process against absent and absconding debtor.

ON a warrant issued by a judge of the supreme court, against the estate and effects of an absent and absconding debtor, the sheriff must attach and safely keep all the estate, real and personal, of such debtor within his county, with all books of account, vouchers and papers relating thereto, and with the assistance of two substantial freeholders, forthwith make a true inventory of all such estate so attached, and return the same signed by himself and the two freeholders to the judge who issued the warrant; and in case any sheriff seize any perishable goods, the judge who issued the warrant, may, in his discretion, order such goods to be sold, and the money arising therefrom to be paid to the trustees to be appointed for the creditors. And if any sheriff shall ignorantly seize any goods or effects which shall be claimed by any person, to be his property, such sheriff may summon and swear a jury to try the property thereof; and if the jury by inquisition find the property of the same, to be in the person so claiming, or in any other person than the said debtor, the sheriff shall forthwith deliver the goods or effects to the person in whom the property thereof shall be so found, or to his authorized agent, and shall not be liable to prosecution for such seizure. And all reasonable charges arising by the sale of such goods, or by such inquest, if it find the property not to be in such debtor, shall be allowed and certified by the judge issuing the warrant, and paid out of the estate of such debtor; but if found to be his property, all costs and charges arising by such claim and inquisition, or either of them, to be paid

Perishable goods to be sold.

If sheriff ignorantly seize goods claimed by a stranger, may inquire by a jury.

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by the person who made the claim, or procured, or occasioned such inquisition.(a)

ABSENT DEBTORS.

If at any time in proceedings under the act, entitled, "*An Act for relief against absconding and absent debtors*," any justice of the peace shall grant a warrant commanding the absconding debtor, his wife, or any other person known or suspected to detain any part of such debtor's estate, or to be indebted to it, or to know any thing concerning the concealment or embezzlement thereof, to be brought before him at such place as he and the trustees for all the creditors of such debtor, appointed according to law, shall appoint; where the said justice, or in his absence any other justice requested by the trustees shall be present, to be examined on oath administered by such justice, either by said justice or such trustees, touching any matter relative to such debtor, his dealings, and his estate: if any person so brought before such justice shall refuse to be sworn or to answer, or shall not answer to the satisfaction of the said justice, all lawful questions put by said justice and trustees, or a major part of them present, as well by word of mouth, as by interrogatories in writing; or shall refuse to sign such examination, not having any reasonable objection to the wording thereof, or otherwise, the said justice shall then by warrant commit such person to prison, there to remain without bail, until he shall submit to do what shall be required of him as aforesaid, which warrant of commitment must specify the particular default of such person, and if it be in not answering any question, such question must be specified in the warrant. And if such person shall bring any *habeas corpus* to be discharged from im-

Any justice may issue warrant against any person, &c.

Such person may be examined on oath relative to the debtor, &c. and for refusing to answer may be committed.

Warrant of commitment must specify the default.

(a) St. N. Y. I. 236, 337. March 21, 1801.

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ABSENT DEBTORS.

Gaoler answerable for wilful escape.

prisonment, and the court or judge before whom he shall be brought by such *habeas corpus*, shall by order or warrant recommit him, and he be wilfully suffered to escape from prison, the gaoler or keeper wilfully suffering the same, being thereof convicted on indictment, or information, shall forfeit to the trustees a sum equal to all such sums as shall be owing to the creditor or creditors of such absconding or concealed debtor, if the same does not exceed two thousand five hundred dollars.(*b*)

(*b*) St. N. Y. I. 239, 240. March 21, 1801.

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XI. FORCIBLE ENTRY.

FORCIBLE ENTRY.

If forcible entry be made into lands or tenements, justices to view and record the force and punish the offender.

AT all times when any forcible entry shall be made into lands, tenements or other possessions, and complaint thereof come to the justices of the peace of the same county, or to any of them, the same justice shall take sufficient power of the county, and go to the place where such forcible entry shall be made, and if they find any that hold such place forcibly after such entry made, the justice or justices shall record such force, and set and impose a fine not exceeding five pounds upon every of the said offenders, to be paid by them for the said offences to the people of the state; and cause every of them so holding by force, to be taken and put into the next gaol of the same county, there to abide convict by the record of the same justices or justice, until they shall respectively have paid such fine to the people of the state. And all the people of the county, as well the sheriff as others, shall be attendant on the justices to go and assist them to arrest such offenders, upon pain of fine and imprisonment. And the same justices are empowered to remove such force, and to inquire by the people of the county, as well of those that make such forcible entry, as of those who hold the same with force.(a)

Sheriff to assist in arresting offenders.

Justice may remove such force and take inquisition.

To issue precept for a jury.

And when the said justices or justice make such inquiries, they or one of them shall make a warrant or precept to be directed to the sheriff of the same county, commanding him in the name of the people of the state of New-York, to cause to come before the same justices or justice, at a certain time and place therein specified, not less than two days from

(a) St. N. Y. Vl. 77. April 5, 1819.

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FORCIBLE ENTRY.

the time of issuing thereof, twenty-four good and lawful men duly qualified to serve as jurors in the same county on trials in the supreme court, to inquire of such entries. And shall return issues upon every one of the jurors, at the day of the return of the first precept, twenty shillings, and every day after, double. And if any person who shall be indicted for such forcible entry or detainer, before such justices or justice, shall immediately traverse such indictment on a like warrant or precept, from the same justices or justice, the sheriff shall cause to come before them or him, at a certain day, not less than four, nor more than eight days from the time of issuing such precept, and at a certain place therein specified, twelve good and lawful men of the same county, qualified to serve as jurors as aforesaid, to try the same traverse; and the sheriff shall return issues upon them in manner aforesaid. And if any sheriff shall not duly execute such precept to him directed, to make such inquiries, or to try such traverse, he shall forfeit twenty pounds for every such default to the party grieved, to be recovered with costs of suit.(*b*)

Sheriff to return issues.

Traverse of indictment to be tried by jury.

Forfeiture of delinquent sheriffs.

(*b*) St. N. Y. I. 103. Feb. 6, 1788.

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XII. REPLEVIN.

REPLEVIN.

Beasts, goods or chattels wrongfully detained to be replevied by writ or plaint.

IF the beasts, goods or chattels, of any person be taken, and wrongfully detained, the sheriff, by a writ of replevin, to be issued out of the chancery, or upon complaint thereof to him to be made, without writ, shall cause the same beasts, or goods or chattels to be replevied and delivered, without let or gainsaying of the person who took them, whether they were taken within liberties or without, and shall summon the person who took them to appear, if the suit be by writ, at the return thereof, and if by plaint, at the next court of common pleas to be held in his county, to answer to the plaintiff, of the taking and unjust detention of the same beasts, or goods or chattels, which plaint, before the sheriff, shall be in writing, in the following form, viz. "*West-Chester county, to wit; A. B. of Bedford, in the county of West-Chester, yeoman, complains of C. D. of the manor of Pelham, in the county of West-Chester, gentleman, of a plea of taking and unjustly detaining his beasts, (or his beasts, goods and chattels, or his goods and chattels, or his certain mare, or his certain silver bowl,) and gives security to prosecute his said complaint, and to return the same beasts, if return thereof shall be adjudged.*" Which said plaint, the sheriff shall return to the next court of common pleas, to be held in and for his county, in the same manner as if it was a writ of replevin, returnable into the same court, and the like proceedings shall thereon be had in the same court, as may and ought to be had upon a writ of replevin.(a)

Form of plaint.

Plaint to be returned by sheriff to court of common pleas.

(a) St. N. Y. 97. 1. Feb. 6, 1788.

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REPLEVIN.

Sheriff may take the power of his county and break open house or place of strength to make replevin.

And if any person shall take the beasts, goods or chattels of another, and drive and convey, and put them into any house or place of strength, and the person from whom the same beasts, or goods, or chattels, shall be taken, sues for a replevin thereof, by writ or plaint, the sheriff shall solemnly demand deliverance thereof, at the house or place where the same are detained: and if neither the taker, nor any person on behalf of such taker shall upon demand deliver the same, or if no person shall come upon such demand to deliver the same, the sheriff shall take the power of the county and break open such house or place of strength, and make replevin according to the writ or plaint.(*b*)

Sheriff must take security to prosecute the suit or be accountable for the value of the things delivered.

But every sheriff, before he makes deliverance of any beasts, goods or chattels, by virtue of any writ or plaint in replevin, shall take of the plaintiff sufficient security to prosecute the suit, and to return the same beasts, goods or chattels, if return thereof be adjudged; and if any sheriff shall take security otherwise, or neglect to take such security, he shall answer for the price or value of the beasts, goods or chattels; and the person who distraineth shall have his or her recovery by writ that he shall restore to him or her so many beasts, goods or chattels.(*c*)

If return of goods be awarded, plaintiff may have a writ of second deliverance.

If the plaintiff in any action or suit in replevin shall make default, and a return of the beasts, goods or chattels be awarded to the distrainer, the sheriff shall be commanded by a judicial writ to make return of the beasts, goods or chattels unto the distrainer; in which it shall be expressed, that the sheriff shall not deliver them without making men-

(*b*) St. N. Y. I. 97. Feb. 6, 1788.
(*c*) Ibid.

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tion of the judgment, which cannot be without a writ issuing out of the court in which the matter was moved: and if the plaintiff cometh unto them, and desireth replevin of the same beasts, goods or chattels, he or she shall have a judicial writ, that the sheriff take security for the suit, and also for the return of the same beasts, goods and chattels; or for the price or value of them, shall deliver unto the plaintiff the beasts, goods and chattels before returned, and the distrainer shall be attached to come and be at a certain day at the court in which the plea was moved, in the presence of the parties; and if the plaintiff shall again make default, or for another cause, return of the distress be awarded, being now twice returned, the distress shall remain irrepleviable. But if a distress be taken of a new, and for a new cause, the process aforesaid shall be observed in the same new distress.(d) REPLEVIN.

And if at any time on a writ or plaint in replevin, the defendant in replevin or possession shall claim property in the thing whereof deliverance is sought, and the sheriff either by himself, his under sheriff or bailiff, having due notice, shall nevertheless proceed to make deliverance, and dispossess such defendant thereof before the claim of property shall be inquired into, or tried according to law, such sheriff for every such offence, besides being answerable to the defendant for the trespass, shall forfeit one hundred pounds to be recovered by any person who will sue for the same, in any court of record by action of debt, bill, plaint or information; the one moiety thereof to the person who shall sue for the same, and the other moiety thereof to the use of the people of the state.(e) On claim of property if sheriff make replevin before it be tried, he forfeits £100, besides being answerable for the trespass.

(d) St. N. Y. I. 97, 98. Feb. 6, 1788.
(e) Ibid. 98.

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REPLEVIN.

In replevin for distress for rent, sheriff to take bond of plaintiff with two sureties in double the value of the goods, to prosecute and make return if awarded.

And every sheriff shall in every replevin of distress, for rent, take in his own name, from the plaintiff and two sureties, a bond in double the value of the beasts, or goods or chattels distrained, (such value to be ascertained by the oath of one or more witnesses not interested) and which oath such sheriff is authorised to administer, and conditioned for prosecuting the suit with effect and without delay, and for returning the beasts or goods and chattels, in case a return be awarded, before any deliverance be made of the distress: and the sheriff shall at the request and cost of the defendant, avowant, or person making cognizance, assign such bond to the defendant, avowant, or person making cognizance, by endorsing the same, and attesting it under his hand in the presence of two witnesses, which on forfeiture thereof, may be sued in the name of the endorsee and for his own benefit. *(f)*

(f) 3t. N. Y. I. 99. Feb. 6, 1786.

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XIII. COURTS AND JURORS.

COURTS AND JURORS.

Sheriffs to return to courts of general sessions.

THE sheriffs of the respective counties in the state, at certain days and places which the justices of the peace for every such county, or any two or more of them, together with one of the judges of the court of common pleas in and for such county, shall make known to them, shall cause to come before the courts of general sessions of the peace twenty four good and lawful men of the same counties respectively, to enquire for the people of the state, and the bodies of the same counties; and likewise so many good and lawful men of the same counties respectively, duly qualified to serve as jurors in the same counties, as the said justices shall direct, by whom the truth of the matter may be better known and inquired into of all crimes and misdemeanors to be tried at the said courts.(a)

Grand jurors.

And petit jurors.

Sheriffs to return jury and other process to circuit court.

And the sheriffs and other officers to whom the return of writs, juries, or certificates shall appertain, shall cause the same to come before the circuit courts or sittings, as the case may require, to be held in their respective counties, together with the pannels, attachments, reattachments, summons, resummons, and all other instruments whatsoever, any ways concerning the same, in all things according to law; provided that the attachments, reattachments, summons, and resummons thereof, be made at least fifteen days before the holding of the said court.(b)

Sheriff on receiving jury process ex-

Whenever any process shall be issued for summoning a jury for any trial in any supreme court, circuit

(a) St. N. Y. I. 303. March 24, 1801.
(b) Ibid. 376. March 31, 1801.

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COURTS AND JURORS.

court sittings, court of oyer and terminer and goal delivery, mayor's court, court of common pleas, or general sessions of the peace, to be held in any city or county of the state, the mayor's court of the cities of Albany and Hudson excepted, the sheriff or other officer to whom such process shall be directed, shall immediately on receiving the same repair to the clerk of the same city or county, who shall thereupon in the presence of such sheriff or officer, or in the presence of one of the judges of the mayor's court or court of common pleas of such city or county, whose duty it shall be, on being served with a written request, to attend the clerk's office, proceed to draw out of the box by him provided for that purpose, and containing on slips of paper the names of the jurors of his city or county, with their places of abode, and addition, as the same shall have been duly certified and transmitted to him, as many of the said slips of paper as there are jurors to to be summoned on such process; and the names contained on such slips of paper shall be the persons who are to be summoned to serve as jurors at the next court, unless any of them shall be dead, or shall have changed their places of residence to any other city or county; or be absent from the city or county, or not qualified to serve as jurors. And if the persons named on any of slips of paper so drawn, shall be dead, removed, or not qualified as aforesaid, within the knowledge of such sheriff, officer, clerk, or judge, then the said clerk shall immediately destroy such slips of paper, and proceed to draw out of said box until the pannel shall be completed. And the clerk of the said court shall immediately make out and certify under his hand, a pannel of the names of such jurors so drawn out, with their respective places of abode and addition, and deliver the same to such sheriff or other officer whose duty it shall be to summon the several persons

except from mayor's court of Albany and Hudson, to repair to the clerks.

Who shall draw the names of the jurors from a box, and certify a pannel to the sheriff.

Sheriff to summon the persons

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whose names are contained in such pannel, at least eight days previous to the setting of any such court; and to make return in what manner he has served such process.(c) And if a sufficient number of jurors do not appear at any of the courts aforesaid, or if after appearance of a full jury by challenge, the jury is like to remain for default of jurors, the sheriff on command of the court, must name and appoint, as often as shall be requisite, so many of such other persons of the said county qualified to serve on juries, and to add and annex their names to the former pannel, as shall make up a full jury of twelve men for the trial of every issue.(d)

named in such pannel eight days before court.

Sheriff on command of court to name talesmen to fill the pannel and annex them to it.

The fee of the clerks of the respective counties for drawing every such jury and making the pannel, shall be paid to them by the sheriff or other officer at whose request it shall be done; and the sheriff or other officer shall be allowed for the same in his account against the people of the state: and the sheriff or other officer to whom any writ or process shall be directed for the trial of issues in the said respective courts, except in cases of special juries, shall annex a pannel of the same jurors, with their places of abode and addition, to all the said writs or processes returnable at the same court, and shall furnish any person who shall apply therefor, a copy of the pannel of the jurors to serve on the trial of issues in any of the said courts.(e)

Clerks fees for drawing and impannelling jury, to be paid by sheriff, and to be allowed in his account with the state.

A like pannel to be annexed to each writ.

Sheriff to furnish copy of pannel to any person applying.

Whenever the sheriff or other officer shall not be able to summon personally any person directed to be summoned as a juror, by reason of absence from home, a summons in writing left at the usual place

Jurors may be summoned by notice in writing.

(c) St. N. Y. I. 378, 379. March 31, 1801.
(d) Ibid. 380. March 31, 1801.
(e) Ibid. 380, 381. March 31, 1801.

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COURTS AND JURORS

of abode of such person within the time prescribed for that purpose, with some person of suitable age and discretion, shall be deemed a sufficient notification: and in all cases of the summons of jurors in writing as aforesaid, who shall not appear according to such summons, and a list of the names of such defaulting jurors shall have been transmitted to the sheriff of the county, he must without delay notify such jurors of their defaults, and liability to a fine on that account. (f)

Sheriff must give notice to defaulting jurors, of their liability to fine.

Sheriffs to return at courts of over and terminer and gaol delivery, grand jurors.

The sheriff of the city and county of New-York, and the sheriff of each of the other counties in the state shall cause to come before the court of oyer and terminer and gaol delivery, to be held therein, twenty four good and lawful men of the same city and counties respectively, to inquire for the people of the state of New-York, and the body of the same city and counties respectively, and to do and receive all those things, which, on behalf of the people of the state, shall be then and there enjoined them; and also all the prisoners then being in the gaols thereof, together with their attachments, indictments, and other muniments, any way concerning those prisoners. And likewise so many good and lawful men of the same city and counties respectively, duly qualified to serve as jurors therein, as the said court of oyer and terminer and gaol delivery, or any justice thereof shall from time to time direct, by whom the truth of the matter may be better known and inquired into, and such as have no affinity to those prisoners. And the said respective sheriffs shall cause to be publicly proclaimed throughout their respective counties, that all those who will prosecute against those prisoners be then and there to prosecute against them as shall be just; and shall

And petit jurors.

And to proclaim the court, and notify prosecutors and officers to appear.

(f) St. N. Y. I. 581, 582. March 31, 1801.

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also give to all justices of the peace, coroners, bailiffs, and constables, within their respective counties, that they be then and there in their own proper persons, to do those things, which to their offices shall appertain.(g)

COURTS AND JURORS.

Sheriffs and their officers to attend.

And the district attornies shall from time to time, as soon as conveniently may be, after every circuit court is appointed to be held in the cities and counties of the state, within their respective districts, and at least fifteen days before the time for holding the same, issue precepts under the seal of the supreme court, directed to the respective sheriffs of the same cities and counties, for the purposes aforesaid; and mentioning the day and place, when and where such courts are to be held, and commanding such sheriffs to perform their duty as above set forth, which precepts shall always be in the name of the people of the state of New-York, and be tested in the name of the chief justice of the supreme court, unless the office of chief justice be vacant, then to be tested in the name of the next senior justice of said court, and which precepts may be tested on any day of the term preceding the vacation in which the court is to be held.

(g) St. N. Y. L. 175, 176. Feb. 20, 1801.

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XIV. OUTLAWRY.

OUTLAWRY.

Process of outlawry given in personal actions.

In all actions of debt, detinue, annuity, covenant, conspiracy, and of the case, and in all actions in replevin, after a capias in —— is returned, that the person against whom it is issued has no goods, the like process may be had as in actions of trespass done with force and arms; and these, as well as in all other cases where process issues for taking the body, if it be returned, that the person against whom such process issued, is not found, such process may be pursued to the exigent and outlawry thereupon. And every sheriff must hold a court in his county, either in person or by his sufficient deputy on the first and third monday in every month, in case any process shall require it, at the court-house in his county, to be called his county court, for the purpose of demanding persons upon exigents, and pronouncing outlawries thereupon. And it shall be sufficient for the sheriff or his deputy to give the judgment of outlawry, and to return the same upon the *exigent* without saying by the judgment of coroners.(*a*)

Sheriff to hold county court, to proclaim outlawries.

In every original writ of actions personal, and in all indictments and informations in which the *exigent* shall be awarded to the names of the defendants in such writs, indictments, and informations, additions shall be made of their estate or degree, or mystery; and of the towns and counties of which they were, or be conversant: and if by process upon such writs, indictments, or informations in which such additions are omitted, any outlawries be pronounced, they will be void; and before any outlawries pronounced, such writs, indictments, and informations in which such additions are omitted, shall be abated by the exception of the party; but though such writs be not according to the records

(*a*) St. N. Y. I. 246. March 21, 1801.

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and deeds by the surplusage of such additions, they shall not for that cause be abated.(b) OUTLAWRY

Accessaries not to be outlawed until the principal is attainted.

No person charged as an accessary in any indictment, shall be outlawed until the principal be attainted; but such indictment may nevertheless be prosecuted, and the *exigent* against the accessary shall remain until the principal be attainted by outlawry or otherwise. After any person shall be indicted, the sheriff shall be commanded to take the body of the person so indicted; and if the sheriff return the writ that the body is not found, another *capias* shall be immediately made returnable at a certain day, not less than three months after the date of such writ, and in such writ shall be comprised, that the sheriff shall cause the goods and chattels of the person indicted to be seized, and safely kept until the day of the return of the writ; and if the sheriff return that the body is not found, and the person indicted shall not appear, the *exigent* shall be awarded, and the goods and chattels so seized, shall be forfeited to the people of this state; but if the person indicted appear, or be taken by the sheriff or other officer, before the return of the second writ, the goods and chattels shall be saved.(c)

In treason if the body be not found, his goods to be seized on the alias capias.

And if not found on the alias the exigent to be awarded, and the goods forfeited.

Proceedings to outlawry on indictment for treason against a person residing in another county.

Upon any indictment against any citizen of this state, dwelling in any other county than where such indictment shall be taken, of any treason after the first writ shall be returned, another writ shall be awarded, directed to the sheriff of the county where the person indicted is, or is supposed to be conversant, by the same indictment, returnable in the same court before whom the indictment shall be taken, at a cer-

(b) St. N. Y. L. 247. March 21, 1801.
(c) Ibid.

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OUTLAWRY.

tain day not less than three months after the date of the same writ, by which the sheriff shall be commanded to take the body of the person so indicted, if he or she shall be found in his county; and if he or she shall not be found in his county, the sheriff shall make proclamation in two of his county courts before the return of such writ, that the person so indicted, appear at the said court at the day of the return of said writ, to answer to the people of this state of the treason whereof he or she shall be so indicted: and after such writ so served and returned, if the person so indicted come not at the day of the return of the said writ, the exigent shall be awarded against such person. And when any such indictment shall be taken before any other court or officer having authority to take the same, and be removed into the supreme court, an exigent shall be awarded by the supreme court, until such writ, with proclamation be so awarded, served, and returned as aforesaid. And if any exigent be awarded, before such writ with proclamation be awarded, served, and returned as aforesaid, and outlawry be thereupon pronounced, the exigent and outlawry shall be void.(d)

Writs of proclamation, how executed.

In every action personal, and in all cases of indictments and informations for trespasses and misdemeanors, wherein any writ of exigent shall be awarded out of any court, one writ of proclamation shall be issued out of the same court having the like test and return, as such writ of exigent, directed to the sheriff of the county where the defendant, at the time of the exigent so awarded, shall be dwelling, which writ of proclamation shall contain the effect of the action, indictment or information; and such sheriff must cause to be made three proclamations in the

(d) St. N. Y. I. 248. March 21, 1801.

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form following, that is to say, one of the same proclamations in his open county court; and one other at the general sessions of the peace in the county where the defendant, at the time of the exigent awarded, shall reside; and one other, one month at least before the fifth demand by virtue of such exigent, at or near the most usual door of the church of the town where the defendant shall reside, at the time of awarding such exigent; and if there be more churches than one in such town, then at or near the most usual door of the church nearest the defendant's dwelling; and if there be no church in such town, then at or near the most usual door of the church in the next town, nearest the defendant's dwelling; and upon a Sunday, immediately after divine service, if any there be; and if any such defendant shall at the time of awarding such exigent, reside out of this state, then such proclamation must be directed to and executed by the sheriff to whom the exigent shall be directed: and in such case such writ of proclamation must be published in one or more of the newspapers printed in the city of New-York, for twelve weeks before the return of the exigent. And all outlawries prosecuted without writs of proclamation awarded and returned according as above prescribed, are void; and may be voided by averment, without suing out any writ of error.(e) OUTLAWRY.

(e) St. N. Y. J. 248. March 21, 1801.

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XV. ELECTIONS.

ELECTIONS.

Sheriff's on vacancy, notification from clerk of the senate or secretary of state, are to notify inspectors of elections, in towns and wards of vacancy in state offices, and when they are to be filled.

WHENEVER between the first day of January and the first day of March in each year, the sheriffs of the different counties in the state shall receive a notification in writing under the hand of the clerk of the senate, or in case of his death, inability, or removal out of the state, a like notification from the secretary of the state, containing the names of the senators for the district to which such county belongs, whose seats will be vacant on the first monday of July thereafter: and the names of those, if any, whose seats have become vacant by death or otherwise; and of the number of senators to be elected in such district at the ensuing election; and also, that a governor or lieutenant governor, or a lieutenant only, as the case may require, is or are then to be chosen. And in case any vacancy shall happen in the office of senator, on or after the first day of March, and before the fifteenth day of April in any year, then the said clerk shall immediately thereafter give the like notification of the name of every senator whose seat shall so become vacant; and in case of the death, inability or removal of such clerk out of this state, it shall be the duty of the secretary of this state, to make and send such notifications, and each sheriff shall without delay transmit a copy of such notification to one of the inspectors of each ward or town in his county, and also fix a copy thereof on the door of the court-house in his county.(a) And whenever the person administering the government of the state, shall by proclamation give notice that there is a vacancy in the

On receiving notice of vacancy in representation

(a) St. N. Y. I. 265. March 24, 1801.

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representation of the state in the house of representatives of the congress of the United States, and therein specifying in which of the districts the person is to be elected to fill such vacancy, and appoint a day, not less than forty, nor more than sixty days from the publication of such proclamation for holding an election in such district to fill such vacancy, a copy whereof shall have been delivered to the sheriff of every county belonging wholly or in part to such district, every such sheriff shall thereupon give notice in writing of such election, to one of the inspectors of elections in each town or ward in his county, within eight days after receiving such proclamation.(*b*)

ELECTIONS.

In congress, to give like notice to inspectors.

If any person shall be guilty of any disorderly conduct at any election of state officers, held by virtue of an act, entitled, "*An Act for regulating elections,*" or during the time of canvassing and estimating the votes, or of using indirect, sinister, or corrupt means to influence any elector or electors in giving his or their ballots, the major part of the inspectors at such election are authorized to commit the offender to the gaol of the county, there to remain for a space not exceeding thirty days; and all sheriffs, under sheriffs, constables, and gaolers are strictly charged and required to obey the inspectors therein.(*c*)

Sheriffs, &c. to aid and obey inspectors of elections in preserving order and imprisoning offenders.

And if any sheriff of the state shall be guilty of any wilful neglect of the duties required of him by said act, or of any partial or corrupt conduct in the execution of the same, and be thereof convicted, he shall forfeit and pay for every such offence the sum of five hundred dollars, to be recovered by action of

Penalty for neglect of duty or corrupt conduct in sheriff, five hundred dollars.

(*b*) St. N. Y. I. 285. March 24, 1801.
(*c*) Ibid. 272. March 24, 1801.

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ELECTIONS.

debt or by information, in any court of record, the one moiety to the use of any person who shall prosecute for the same, and the other moiety thereof to the use of the people of the state: and if the prosecutor prevail, he shall recover single costs, but if the accused be acquitted, he shall recover double costs against the prosecutor. And every person so convicted, shall suffer the pains and penalties as in cases of wilful and corrupt perjury, and shall from and after such conviction be utterly disqualified to hold or enjoy any place or office in the state.(d)

On conviction, to suffer as for perjury, and disqualified to hold any office.

Officer may not serve civil process on voters on election days, &c.

No officer may serve any civil process, in any city or town in the state, on any person entitled to vote at any election which may be held by virtue of said act, between the day preceding such election and the day subsequent to the closing of the poll thereof, in such town or ward;(e) nor may any officer serve any civil process in any city or town, on any person entitled to vote at any election which may be held by virtue of an act, entitled, "*An Act for regulating the elections of representatives for the state, in the house of representatives of the congress of the United States,*" between the day preceding such election and the day subsequent to the closing the poll thereof.(f)

(d) St N. Y. L. 274, 275. March 24, 1801.
(e) Ibid. 275. March 24, 1801.
(f) Ibid. 286. March 24, 1801.

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XVI. CORONERS.

IN case there shall be no under sheriff of any county at the time of the death of the sheriff of such county, or if such under sheriff shall die or remove out of the county, or become incapable of executing the office, before another sheriff of the same county shall be appointed and commissioned, and have taken upon himself the said office, then and in every such case the coroner or coroners, if there shall be more than one in such county, shall in all things execute the office of sheriff in the same county until a sheriff thereof shall be appointed and commissioned; and shall take upon himself the said office; and in every case of the death of a sheriff, the writ of discharge shall be delivered by the new sheriff to the under sheriff of the same county, if there be any, and if not, then to one of the coroners of the same county, or filed in the office of the clerk of the same county; and the new sheriff shall in all cases be considered as sheriff of the same county from the time of such delivery or filing the writ of discharge as aforesaid, and not before.(a)

CORONERS.
Coroners to act in case of vacancy, if there be no under sheriff.

It is the duty of every coroner to go to the places where any are slain, or suddenly dead, or wounded; or where houses are broken open, or treasure is said to be found; and forthwith to command twenty-four good and lawful men of his county to appear before him, at such place therein as he shall appoint, and upon their oaths or the oaths of any twelve of them, and upon the view of the body of any person slain or suddenly dead, and the proof of witnesses, to inquire how and in what manner, and when and where

To take inquest on persons found dead, &c.

(a) St. N. Y. I. 207. March 20, 1801.

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CORONER. such person was slain, or died; and who such person was, and of all the circumstances attending such death; and who are guilty thereof, either as principal or accessary, and in what manner; and to take and commit every one so found guilty, and also every one suspected of the death of any person, or of doing hurt to any person so as to endanger life, to the gaol of the county; and to make the like inquiry of persons who die in prison, or are killed by misfortune; and also of treasure found, and who were the finders, or suspected thereof, and to attach such finders, and bind them with at least two sufficient sureties, to appear before the next justices of oyer and terminer and gaol delivery in such county, to answer the premises; all which matters must be enrolled by the coroners; and all coroners must deliver their inquisitions and rolls to such justices in their respective counties, who shall proceed thereon against the offenders, if they be in gaol, and if not, such justices shall deliver the same into the supreme court, then to be proceeded upon according to law.(*b*)

Every coroner upon any inquisition found before him, whereby any person shall be indicted of murder or manslaughter, or as accessary thereto, before the fact, must put in writing the effect of the evidence given to the jury before him, and bind the witnesses to appear and testify against such person at the next court of oyer and terminer and gaol delivery, to be holden in the same county, and must certify the recognizances taken by him for that purpose; together with the inquisition and evidence to such court. And in case any coroner shall neglect to perform any duty required of him aforesaid, and be thereof convicted before any justices of oyer and terminer

(*b*) St. N. Y. I. 228. March 21, 1801.

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and gaol delivery in such county, he shall be fined at the discretion of such justices.(c) CORONERS.

Any return made and signed by any one of the coroners of any county, to any process which issues from any court of record in this state, directed to the coroners of such county generally, is good and valid in law, as if such return were made and signed by all the coroners of such county. And no act or return of any one of the coroners can in any degree prejudice the rest.(d)

(c) St. N. Y. I. 229. March 21, 1801.
(d) Ibid.

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XVII. CONSTABLES.

CONSTABLES.

TOWNS are not limited as to the number of constables to be elected in each, but by the opinion of the majority of the electors present in the meetings at which the elections are made.(*a*)

In case any city or town requests the appointment of constables at the proper meetings, or the office becomes vacant by the refusal, incapacity to serve, removal, or death of any person chosen to the office, and such vacancy be not filled by a choice made by the people of the city or town wherein such vacancy happens, within fifteen days thereafter, three justices of the peace of the same county, residing in such city, or in or near such town, may, and indeed must appoint under their hands and seals a sufficient number of constables for supplying such vacancy or vacancies. Constables thus appointed have the same powers and privileges, and are liable to the same penalties as when elected by the people, and hold their office for the same term.(*b*)

All constables when chosen or appointed must, within fifteen days thereafter, take and subscribe the oath by law prescribed.(*c*)

If any person so chosen or appointed, shall refuse to take upon him to serve in such office, or shall proceed in the execution thereof before he shall have taken and subscribed, or before he shall have given such security as is, or shall by law be required, he shall forfeit to the people of the state the

(*a*) St. N. Y. I. 325, 326.
(*b*) Ibid. 327.
(*c*) Ibid. 327, 328.

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sum of sixty-two dollars and fifty cents, to be recovered by action of debt or information, in any court of record.(d). CONSTABLES.

By virtue of "*An Act for the more speedy recovery of debts to the value of twenty-five dollars,*" every justice of the peace of any city or county, the city and county of New-York excepted, may, as often as need may require, hold a court for the trial of causes in said act mentioned. Such justice may also, on application, issue original process, either summons or warrant, as the case may require, directed to some constable or other proper officer of the city or town where the defendant dwells, or can be found, commanding him when a summons is issued, to summon the defendant to appear before such justice at a certain time expressed in such summons, not less than six, nor more than twelve days from the time of issuing such summons, to answer the plaintiff in a plea in the same summons mentioned: and when a warrant is issued, it commands the sheriff or other officer to take the defendant and bring him or her forthwith before such justice, to answer the plaintiff in a plea in the same warrant mentioned, which summons must be served at least six days before the time of appearance mentioned therein, by reading the same to the defendant, and delivering a copy thereof when required, if such defendant be found; if not, by leaving a copy thereof at his or her house or place of abode, in the presence of some one of the family of suitable age and discretion, who must be informed of the contents thereof, and the constable or officer serving such summons, must, upon the oath of his office, endorse thereupon the time and manner he executed the

Justice of the peace may issue civil process returnable before themselves.

Constables may serve such process.

How summons must be served.

(d) St. N. Y. I. 229.

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CONSTABLES.

And how a warrant.

same, and sign his name thereto. And when a warrant is issued, the constable or other officer must take the defendant, and him or her forthwith have before the justice who issued the same, unless such justice be absent or unable to hear and try the cause; in which cases only, the constable serving such warrant may carry the defendant for trial before the next justice of the city or county, where the justice, who issued the warant, resides.(a)

Constables may execute venires for juries to attend such court.

Whenever on demand of either party to a cause to be tried before such court, the justice holding the same, shall, in a *venire facias* directed to any constable of the city or town where the cause is to be tried, command him to summon a jury for the trial of such cause, he must execute the same according to the directions therein given, and must at the return

Mode of return of venire.

of such *venire*, return a pannel of the names of the jurors summoned by return of such *venire*, and the name of each person so empannelled must be written on several and distinct pieces of paper as nearly of the same size as may be, and must be delivered to the said justice before whom such action is to be tried, by the constable returning such pannel; and must, by said constable, be rolled up, all as near as may be in one and the same manner, and put together into a box or some convenient thing, thence to be drawn by the justice, or some indifferent person by him appointed, till a jury of six is formed, qualified to try such cause, unless the parties agree

If parties agree, constable may name the jury.

that the constable may summon six men at his discretion for such jury.

Constable must keep the jury together.

It is also the duty of any constable such justice shall direct, to attend the jury, and after they have

(a) St. N. Y. I. 491, 492, 493. April 7, 1801.

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heard the cause, while deliberating thereon, to keep them together in some convenient place, until they all agree upon a verdict; for which purpose such constable must be sworn by the justice in the form following, viz. "*You do swear in the presence of Almighty God, that you will, to the utmost of your ability, keep every person sworn on this inquest together, in some private and convenient place, without meat or drink, except water; you will not suffer any person to speak to them, nor speak to them yourself unless by order of the justice, unless it be to ask them whether they have agreed on their verdict, until they have agreed on their verdict.*"(b) CONSTABLES. His oath so to do.

Executions issued by a justice of the peace run against the goods and chattels of the defendant, his arms and accoutrements excepted, and for want of such goods and chattels, the officer is directed to take the defendant's body, and him commit to prison; and are directed to a constable of the city or town where the party dwells or can be found. When any constable by virtue of any such execution, has taken the goods and chattels of the person against whom such execution was issued, he must immediately give public notice by advertisement, signed by himself, and put up in three public places in such city or town where such goods and chattels were taken, of the time and place when and where they will be exposed for sale, at least five days before the time appointed for selling them, and therein describe the goods and chattels so taken; and at the time and place so appointed for selling them, must expose to sale at public vendue, to the highest bidder, and pay the debt or damages and costs to the justice who issued the execution, returning the surplus, if any, to the Execution, how issued. How directed. How executed. On goods and chattels.

(b) St. N. Y. I. 496, 497. April 7, 1801.

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CONSTABLES.

owner; and for want of goods and chattels whereon to levy, the said constable must, according to the tenor of such execution, take the body of the person against whom the said execution was granted, and convey and deliver him or her to the keeper of the common gaol of the city or county, there to remain till such judgment with all taxable costs be fully paid. But if the person against whom such judgment shall be rendered, shall prove to the satisfaction of the justice at the trial on which such judgment was rendered, that such person is not a freeholder, and has a family in the state, such justice must endorse the same on the back of the execution at the time it is issued, and the person against whom it is issued shall not be imprisoned by such execution, upon condition that he will pay such judgment and costs to the constable in whose hands the execution is, by instalments, one dollar and fifty cents within one month after the judgment is given, if so much be due, and one dollar and fifty cents each and every month thereafter, till the whole judgment and costs are fully satisfied: but upon the neglect or refusal to pay such instalment or instalments, as may at any time be due or unpaid on such execution, the defendant may be imprisoned till such instalment or instalments are fully paid. But no defendant in an action of trespass, which the justice before whom the action shall be tried, shall judge to be wilful and malicious, shall have the benefit of paying by instalments as aforesaid. And in all cases wherein there shall be more than one execution against the same person, who is entitled to pay by instalments, the execution first delivered to the constable shall have the preference; and the person against whom it was issued, shall not be compelled to answer to any other execution until the execution first delivered is paid. And notwithstanding the provisions,

On the body of the debtor.

To be committed and remain in prison unless.

May pay by instalments.

Defendant in trespass done wilfully and maliciously, not privileged.

First execution delivered to be first satisfied.

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of paying by instalment aforementioned, the constable who holds such execution, may levy the same on the goods and chattels of the defendant whenever they can be found, before such execution is satisfied. And every constable who shall receive any execution against any person, must endorse on such execution the time at which he received the same, in order that it may be determined which execution has the preference.

Constable may levy on goods notwithstanding the privilege of paying by instalments.

And in case such constable to whom any execution is delivered, shall not, within twenty days after receiving such execution levy the same on the goods and chattels of the person against whom such execution was granted, and in ten days thereafter, pay the debt and costs so levied, into the hands of the justice who issued the same, or in case of his death or removal from office, to the person in whose favour the execution was granted, or if no goods or chattels can be found whereon to levy, then if the said constable do not, if said execution require it, take the body of the person against whom such execution was granted, if to be found within thirty days from the receipt of such execution as aforesaid, said constable shall be holden to pay the amount of such execution, to be recovered by an action of debt, with costs, by the person in whose favour such execution was granted, in which case, execution shall issue forthwith against such constable.(c)

When constable liable for neglect.

For what amount.

When in any city or town no constable was chosen or appointed, or the constable be absent, or where a process is issued against such constable of any city or town, the justice, on application, may and shall direct the process or execution to the constable

Process in certain cases may be directed to and executed by constables of adjoining towns.

(c) St. N. Y. I. 499, 500. April 7, 1801, and IV. 246, 247. April 19, 1823.

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of the next adjoining town, being nearest where the defendent dwells or can be found, who must execute the same; and when any process shall be issued by any justice, by virtue of the act aforesaid, the constable of the city or town to whom such process shall be directed, must proceed according to the directions aforesaid, and execute such process in his proper person, unless the justice who issued such process, at the request of the plaintiff, depute some other proper person, who will execute the same without fee or reward; but no person may be so deputed to impannel or summon a jury. Any constable may execute any summons or precept, issued by virtue of said act, in any city or town in the the county in which the same was issued.(d)

Constable, may execute process throughout their county.

By an act for establishing courts of justices of the peace, in and for the city of New-York, process issuing out of said courts, of which two are established, must be tested in the name of the justices, and signed by the clerk of the court out of which the same issues, with his name, and with the words "*by the court,*" and sealed with the seal of the said court, which process must be served in the manner before mentioned, for the service of process issuing from justice of the peace in other cities and towns in the state,(e) under the limitations, restrictions and provisions which are herein after particularly stated.

Process from the justices court in the city of New-York, how tested, &c.

Which process, issued from said courts in the manner aforesaid, may be executed by any constable or marshal of said city, (those of the ninth ward excepted,) and in any part of said city, (except said ninth ward,) and where there are joint defendants, must be served on each respectively; but no person may be proceeded against, by summons issued out of

And executed.

(d) St. N. Y. I. 500. April 7, 1801.
(e) Ibid. III. 440. March 24, 1804.

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either of said courts, who does not reside within the limits of the jurisdiction thereof.(f) CONSTABLES.

When any defendant is taken on a warrant, issued out of either of the said courts, and the court from which the same issued is not sitting, the constable, marshal, or other proper officer, having such warrant, must take in his own name, and in his official capacity, bail, or security of some sufficient person or persons, bound by bond, conditioned for the appearance of the defendant on the next court day, (for which bond he shall have two shillings,) and if the defendant do not appear in person in court at the time mentioned in such bond, and if the plaintiff approve of the bail or security taken by accepting an assignment of the bond, the constable or marshal must return the said warrant, in the same manner as if the defendant had been brought into court in person; but if such defendant, when taken by virtue of such warrant, refuses or neglects to give bail or security for his appearance as aforesaid, the constable, marshal, or other proper officer having such warrant, may take such defendant to the gaol of the city and county of New-York, and deliver him or her to the keeper of said gaol, who must receive such defendant, and him or her keep in safe custody, in said gaol, until the next court day, when the constable or marshal who served such warrant, or some other constable or marshal who may be directed by the court in writing, must bring such defendant before said court. But such keeper cannot lawfully detain such defendant in custody more than forty-eight hours.(g)

When court is not sitting, officer must take bail of person arrested.

Bail bond may be assigned.

If defendant neglect to give bail, to be committed.

Keeper of gaol may not detain prisoners more than 48 hours.

(f) St. N. Y. III. 441, 442. March 24, 1804.
(g) Ibid. IV. 321, 322. April 4, 1806.

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CONSTABLES.

When the defendant, in any action commenced in either of said courts by warrant, is brought into court, and the court by reason of other business, or other cause, cannot immediately try the cause, the constable or marshal having the warrant, must take the defendant before the clerk of the court, who must thereupon take security for such defendant's appearance in court the next court day.(*h*) And reasonable time must be allowed by the court to such defendant to procure the same; and the officer in whose custody such defendant is must go with him or her to obtain such security.(*i*) But if such defendant refuse or neglect to give such security, he or she must be committed to gaol, and afterwards brought into court, or discharged, in the same manner and form as when committed by the officer for refusal or neglect to give bail, being taken on such warrant, the court not being in session.(*j*)

Execution against goods and chattels, how executed.

Any execution, issuing from either of said courts, against goods and chattels, may be made returnable at any time the court may deem proper to appoint, not exceeding twenty days from the time of issuing the same; and the constable or marshal to whom the same is delivered, must, within the time mentioned in the execution for the return thereof, levy on the goods and chattels, if any are found, according to the tenor of such execution; and on receiving the debt or damages, and costs, forthwith pay the same to the clerk of the court out of which such execution issued, or the person in whose favour it was granted; and if such constable or marshal shall neglect to levy such execution as aforesaid, or on receiving the debt or damages and costs as aforesaid, neglect to

(*h*) St N. Y. IV. 522. April 4, 1806.
(*i*) Ibid. III. 445. March 24, 1804.
(*j*) Ibid. IV. 522. April 4, 1806.

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pay the same as aforesaid; or where the execution is against the body, if the constable or other officer shall not take the body of the person against whom such execution was granted, if to be found, or shall neglect to return such execution at the time mentioned therein for return thereof, whether served or not, in every such case, the said constable or other officer is liable and held to pay the amount of said execution, to be recovered by an action of debt, with costs, by the person in whose favour such execution was granted; in which case execution issues forthwith. And in every such case, or in case such constable or other officer shall be prosecuted for any money collected by him in his official capacity, and retained by him, and judgment be thereupon entered against him, or shall be guilty of any disorderly or improper conduct in or towards the said courts, or either of them, such courts in their discretion may prohibit such constable, or other officer, to serve or execute any process or execution thereafter issued out of such courts, or either of them, in any case whatever.(k) In all other respects the constables of the city of New-York possess the same powers and authority, have the same duties to perform, and are subject to the same liabilities as the constables of other towns and cities of the state.

CONSTABLES. Against the body. Penalty for neglect. Disorderly or improper conduct of constables how punished.

Every person appointed to the office of constable or marshal in said city, must, before permitted to execute such office, enter into bond with one or more sufficient sureties, to the mayor, aldermen and commonalty of the said city of New-York, in the penal sum of five hundred dollars, jointly and severally to answer the said mayor, aldermen and commonalty,

Constables and marshals must give bond when appointed to office for a faithful discharge of its duties.

(k) St. N. Y. IV. 522, 523. April 4, 1806. III. 452. March 24, 1804.

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CONSTABLES.

and the parties, if any complain; and conditioned that such constable or marshal shall well and faithfully, in all things, execute and perform the duties of said office of constable or marshal, without fraud, or deceit, or oppression, which said bonds must be delivered to the said mayor, who shall judge of and determine the competency of the sureties, and must file the said bonds in the office of the clerk of the said city and county; and in case of any recovery by any person aggrieved, against either such constable or marshal, for any default or miscarriage in office, the presiding judge or judges of the mayor's court, upon motion in open court, and upon showing that such recovery hath been had, and that such judgment is at the time of making such motion unsatisfied, may order the bond so given by such constable or marshal to be put in suit against such constable or marshal, or his surety or sureties, or all, or any, or either of them; and when judgment is obtained on such bond, said court must, upon the like motion, direct so much money to be levied thereon as will be sufficient to pay the party the debt or damages so recovered, with costs, and to be paid to such party aggrieved; but if such constable or marshal, or his surety or sureties, or either of them, pay the debt or damages so recovered, with costs, the suit on such bond must be stayed, and no further prosecuted. And if, after judgment obtained upon such bond, any other party aggrieved, and who shall have recovered any debt or damages against such constable or marshal, for any default or misconduct in his office, shall apply as aforesaid to said court for relief, said court must direct such further sum to be levied on such bond as will be sufficient to pay the debt or damages so recovered, with costs, and to be paid to such party aggrieved, and so as often as any recovery shall be had against such constable or mar-

Mayor to judge of the sufficiency of the sureties.

Bond may be put in suit by direction of the presiding judge of mayor's court.

On payment of debt, &c. to party grieved, suit on bond to be stayed.

Mode of proceeding for reviects after bond has gone into judgment.

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shal for any misconduct or default in office. But the surety or sureties in such bond cannot be charged beyond the amount of the sums in which they are bound in such bond. And if any two or more such recoveries are had against such constable or marshal at the same time, amounting together to more than the whole amount contained in such bond, the court must order the monies levied thereupon, to be distributed to the parties respectively, in proportion to the amount of their respective recoveries.(*l*) CONSTABLES.

When any constable of any town or city, shall receive a warrant under the hands and seals of two justices of the peace of such city, or of the county in which such town lies, directed to, and commanding *him* to bring before them any stranger who shall have come to reside in such city or town, not having obtained a legal settlement therein, such constable must execute such warrant according to the directions thereof. And when any such constable shall receive a like warrant from such two justices of such city or county, commanding him to convey or transport such stranger to the constable of the next city or town through which such stranger shall have wandered unapprehended, and so from constable to constable, or in such other manner by the nearest and most convenient rout, as the said justices shall think fit to direct, to the place whence he last came; such constable must execute such warrant according to the requirements therein contained, and deliver such stranger with such warrant, to or at the house of some constable of such city or town, which constable must receive such stranger, and convey him to the next constable, and so from constable to constable, unless such justices shall otherwise direct, until such stranger shall be transported to the place of his last legal place of settlement, if any he have in this Constables to remove paupers by warrant from two justices.

(*l*) St. N. Y. IV. 523, 524. April 4, 1806.

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CONSTABLES.

state; and if he have not, until he be transported out of this state into the state whence he came. And every constable for taransporting any stranger as aforesaid, shall receive so much money as the supervisors of the city or county shall judge he reasonably deserved to have.(*m*)

Constables must serve warrants of commitment, of persons liable to maintain any pauper, who refuse to give bond.

When two justices having adjudged that any inhabitant of this state, is by law liable for the support of such stranger, by such inhabitant neglecting to notify the overseers of the poor of his receiving and entertaining such stranger, for the space of fifteen days, and shall order that such inhabitant shall enter into bond that such stranger shall not become a charge to such city or town where so received, and entertained; and if such inhabitant shall refuse to become bound as aforesaid, such two justices may, by warrant under their hands and seals directed to any constable of such city or town, cause such inhabitant to be committed to the common gaol of such city, or of the county in which such town lies.(*n*)

Constables must inflict corporal punishment by order of court of general sessions.

Whenever any person is convicted of petit larceny, before any court of general sessions of the peace, where any corporal punishment shall be directed to be inflicted, it is the duty of such court to direct any constable or constables attending such court, to inflict such punishment, which direction such constable must obey and execute.(*o*)

Justices in 9th ward in New-York city, may imprison in gaol of city and county of New-York.

Justices of the peace, appointed for the ninth ward in said city of New-York, in all cases where they are by law authorised to imprison, may commit the person so subject to imprisonment, to the goal of the city and county of New-York.(*p*)

(*m*) St. N. Y. IV. 567, 568, 569. April. 8, 1801.
(*n*) Ibid. I. 568, 569. April 8, 1801.
(*o*) Ibid. V. 338.
(*p*) Ibid. III. 457. March 24, 1801.

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XVIII. ACTIONS AGAINST SHERIFFS, &c.

ACTIONS.

Actions against sheriffs and others for acts done by virtue of their offices, declared local.

IF any action upon the case, trespass, battery, or false imprisonment, be brought against any sheriff, coroner, bailiff, constable, marshal, &c. or their deputies, or any of them; or any other person who in their aid or assistance, or by their commandment, do any thing touching his or their office, for or concerning any matter or thing by them or any of them done, by virtue of their office, the said action shall be laid within the county where the trespass or fact be done and committed, and not elsewhere; and it shall be lawful for every person aforesaid, to plead thereunto the general issue, and give the special matter in evidence. And if upon the trial of such action, the plaintiff do not prove that the cause thereof arose within the county wherein such action is laid, the jury shall find the defendant not guilty, regardless of any evidence given by the plaintiff on the merits of the case. And if there be a verdict for the defendant, or the plaintiff be nonsuit, or suffer a discontinuance, the court shall allow the defendant or defendants, his or their double costs, to be recovered as in other cases of costs given to the defendant.(a)

General issue may be pleaded.

Double costs against plaintiffs.

Persons sued for any acts done by authority of any statute how to plead.

And if any action shall be brought against any person for taking any distress, making any sales, or any thing done by authority of any statute of the state, the defendant in such action may plead not guilty, or otherwise make avowry cognizance or justification, for the taking such distress; making such sale, trespass, or other thing, done by virtue of such statute, alleging therein that such distress, sale,

(a) St. N. Y. I. 233, 234. March 21, 1801.

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ACTIONS.

trespass, or other thing whereof the plaintiff complains, was done by authority of such statute, without expressing any other matter or circumstance contained in such statute, to which the plaintiff may reply that the defendant did take such distress, make such sale, or do any other act or trespass supposed in his declaration of his own wrong, without any such cause alleged by the said defendant, whereupon the issue in every such action shall be joined, to be tried by a jury, and upon the trial of that issue, the whole matter may be given in evidence by both parties; and after such issue found for the defendant, or nonsuit of the plaintiff, after appearance, the defendant shall recover treble damages with his costs, which damages shall be assessed by the same jury which shall try the issue, or upon a writ to inquire of the damages as the case may require.(b)

Replication of the plaintiff.

Treble damages to the defendant.

(b) St. N. Y. I. 234. March 21, 1801.

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XIX. OATHS.

OATHS. Sheriffs, coroners, and marshal of Hudson, and their deputies to take an oath.

EVERY person appointed sheriff or coroner of the city and county of New-York, or Albany, or of any other county of the state, and the chief marshal of the city of Hudson, and every of their deputies, except such persons as may be at any time deputed by any sheriff to do any particular act only, must, before he or they or any of them enter into the execution of such office, take the following oath, to wit:

"I sheriff, (*or* coroner, *or* chief marshal, *or* one of the deputies of the sheriff, *as the case may be,*) of the city and county of New-York, (*or* of Albany, *or* Hudson, *or* of the county of ——, *as the case may be,*) do solemnly swear and declare, that I will well and truly serve the people of the state of New-York in the office of sheriff, (*or* coroner, *or* chief marshal, *or* under sheriff, *or* one of the deputies of the sheriff, *as the case may be,*) of the said county, (*or* city and county, *or* city, *as the case may be,*) during my continuance therein: and will faithfully and truly execute or cause to be executed (*the words,* or cause to be executed, *to be omitted in the oath to be administered to an under sheriff, or deputy sheriff, or deputy marshal,*) all writs and precepts which shall be delivered to me, or come to and remain in my hands for that purpose, according to the best of my knowledge, skill and judgment; and that I will not corruptly or unjustly, use or exercise the said office, during the time I shall remain therein, neither will I directly or indirectly accept, receive, or take, by any color, means, or device whatsoever, or consent to the taking any manner of fee or

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OATHS.

reward whatsoever, of or from any person or persons whomsoever, for summoning, impannelling, or returning of any inquest, jury, or *tales*, in any court, for the people of this state, or between party and party, other than such fees or reward as now are, or hereafter shall be allowed by law for the same; and that I will not directly or indirectly exact or demand any manner of fee or reward whatsoever, of any person or persons whomsoever, for serving or returning any writ, precept, or process whatsoever, or for any other service whatsoever, in my said office, other or more than such fees or reward, as now are, or hereafter shall be allowed by law: but that I will demean myself honestly and impartially in all things that belong to the duty of my said office, according to the best of my knowledge, skill, and ability."(*a*)

Constable's oath.

I do solemnly and sincerely promise and swear, that I will in all things to the best of my knowledge, understanding and ability, well and faithfully execute and perform the trust reposed in me as a constable of the —— (here insert the name of the place,) in the county of —— (here insert the name of the county.)(*b*)

(*a*) St. N. Y. I. 402, 403. April 2, 1801.
(*b*) Ibid. 328, 329. March 27, 1801.

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XX. FEES.

1788. Sheriff, &c. to serve bills of cost eight days before suit.

NO sheriff or coroner shall commence any action for recovery of fees or charges, until eight days after he shall have delivered to the party to be charged therewith, or left for him at his dwelling house, or last place of abode, a bill of such fees and charges, written in a common legible hand, in the English language, except law terms, and the names of writs and words at length, except times and sums, and such abreviations as are commonly used in the English language, subscribed with the proper hand writing of such sheriff or coroner: and no sheriff, coroner, constable nor other person, may exact, demand, or ask any greater or other fee or reward, for, or in respect of any service done or performed, than such as is specified in the following tables.

Sheriff's fees in the Supreme Court.

Sheriff's fees in the supreme court.

For serving a writ, fifty-six cents.

Every mile only, six cents: to be computed in the counties of Tioga and Broome, from the court-houses in their respective counties, and in every other county from the sheriff's place of abode.

A bail bond on a defendant's appearance, endorsed, thirty-seven and a half cents.

Returning a writ, if served, twelve and a half cents.

Each demand of a defendant upon an exigent, and every proclamation upon a writ of proclamation, or in a real action, twelve and a half cents.

Summoning a jury, one dollar.

A copy of the pannel of the jurors, twelve cents.

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FEES.

Serving an execution for or under two hundred and fifty dollars, two cents and four mills per dollar, and for every dollar more than two hundred and fifty, one cent and two mills. The poundage on writs of *fieri facias*, and all other writs for levying monies, to be taken only for the sum levied.

Advertising lands or tenements for sale on any execution, one dollar eighty-seven and a half cents, to be recovered in like manner as his poundage; and half that sum, if such execution be stayed or settled, after advertising, and before sale: And no farther sum may be demanded for continuing such advertisement more than six weeks.

Serving a writ of possession or restitution, without the aid of the *posse comitatus*, one dollar and twenty-five cents; and with the aid of the *posse comitatus*, three dollars and seventy-five cents, and mileage from the place fixed by law, six cents.

Every person committed to prison, thirty-seven and a half cents.

Discharging every person from prison, thirty-seven and a half cents.

Bringing up a prisoner by *habeas corpus* in civil causes one dollar and fifty cents; and mileage for every mile from the gaol, twelve and a half cents.

Executing a writ of inquiry, summoning the jury for that purpose, and returning the inquisition, one dollar and fifty cents.

For attending a view, one dollar and eighty-seven and a half cents per day; and going and returning one dollar and twenty-five cents per day.

Attending with a prisoner before a judge, on his being surrendered by his bail, and for receiving the prisoner into custody, one dollar.

Summoning the jury to inquire of a forcible entry, or detainer, two dollars and fifty cents.

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Copy of every writ, when demanded, nineteen cents. FEES.

Serving an attachment against the estate of an absconding or absent debtor, so much as the judge who issued the warrant shall certify to be reasonable.

Serving a notification issued by the comptroller on any person, to account for monies recorded to the use of the people of this state, the like fees as on serving common process, and all services done by them in their offices for the public, whether in the supreme court or elsewhere, the like fees as are allowed for the like services in causes between private parties.

Provided, that no sheriff shall be allowed any fee for the service of any execution on any mesne process, returnable on the first day of any term, unless the same shall be returned during such term: nor on any such process, returnable on any subsequent day of any term, unless the same shall be returned within twenty days after the return day.(a)

Sheriff's fees in the Courts of Common Pleas, and Mayor's Court.

In court of common pleas and mayor's court.

For serving a writ, thirty-seven and a half cents.

Mileage to be computed as in the supreme court, six cents per mile.

Every bail bond thirty-seven and a half cents.

Returning a writ, if served, nine cents.

Summoning a jury, seventy-five cents.

A copy of the pannel of the jurors, twelve cents.

Attending a view, one dollar and twenty-five cents per day; and going and returning, one dollar per day.

(a) St. N. Y. ll. 77, 78. (IV. 607.) April 8, 1801. IV. 607. April 7, 1806.

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FEES.

Every demand of a defendant upon an exigent, and every proclamation on a writ of proclamation, or in a real action, twelve and a half cents.

Serving an execution, for, or under two hundred and fifty dollars, six cents for every two dollars and fifty cents; and for every two dollars and fifty cents more, three cents. The poundage on writs of *fieri facias*, and all other writs for levying money, to be taken only on the sum levied.

For serving a writ of possession or restitution, with the aid of the *posse comitatus*, two dollars and fifty cents; and without such aid, one dollar and twenty-five cents; and mileage, going only, for every mile from the place fixed by law, six cents.

Every person committed to gaol, thirty-seven and a half cents.

Discharging every person from prison, thirty-seven and a half cents.

Executing a writ of inquiry, summoning a jury for the purpose, and returning the inquisition, one dollar and fifty cents.

Attending before a judge with a prisoner, on his being surrendered, by, or in discharge of his bail, and receiving the prisoner into custody, fifty cents.

Copy of every writ, when demanded, twelve and a half cents.

Serving an attachment against the estate of an absent or absconding debtor, so much as the judge who issued the warrant, shall certify to be reasonable.

Provided, that no sheriff shall be allowed any fee for the service or execution of any mesne process, returnable on the first day of any term, unless the sum shall be returned during such term; nor on any such process returnable on any subsequent day of any term, unless the same be returned within twenty days after the return day.(*b*)

(*b*) St. N. Y. II. 83, 84. April 8, 1801.

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Coroner's fees.

FEES.

Coroner's fees.

For the view of each body, three dollars and seventy-five cents; *except* in Richmond county, where the coroner's fees shall be no more than two dollars and fifty cents.

For serving writs in all cases, the like fees as are allowed to the sheriff in like cases.

And the fees of the coroner for taking inquests in each county, must be certified by at least two of the supervisors, and paid by the treasurer of such county. And in the city of New-York the same shall be paid, in the same manner as the other contingent charges in said city are directed to be paid.(c)

Constable's fees.

Constable's fees.

For serving a warrant, nineteen cents.

Serving a summons, twelve and a half cents.

Mileage for every mile, going only, six cents.

Levying a fine or penalty to the amount of two dollars and fifty cents or under, twelve and a half cents; and small sums above two dollars and fifty cents, at the rate of twelve and a half cents for every two dollars and fifty cents.

Taking a defendant into custody on a mittimus, twelve and a half cents.

Conveying a person to gaol, twelve and a half cents, if within one mile, for every mile more, going only, six cents.(d)

Serving a subpœna, on each witness, twelve and a half cents.(e)

(c) St. N. Y. II. 84, 85. April 8, 1801.
(d) Ibid. 85.
(e) Ibid. 87.

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fees.

Fees to Constables and Marshals in the City of New-York.

Constables and marshals fees in justices courts in city of New-York.

In all actions brought by virtue of "*An Act establishing Courts of Justices of the Peace, in and for the City of New-York,*" wherein the sum or thing in demand shall not exceed twenty-five dollars. the following and no other or greater fees to constables and marshals, may be allowed, taxed, or taken, by virtue of said act, that is to say,*(f)*

For serving every summons, twelve and a half cents.

For serving every warrant twenty-five cents.

For taking a defendant into custody on a mittimus or commitment, twelve and a half cents.

For serving an execution for two and a half dollars or under, twenty-five cents; and at the rate of twelve and a half cents for every two and an half dollars more.

For conveying a person to gaol, twelve and a half cents.

For travelling, if the person arrested is taken above one mile from the place where the court is holden, for every mile, going only, ten cents.

For summoning a jury of twelve men, forty and an half cents.

For going with the plaintiff or defendant to procure security, in cases where it is ordered by the court, twenty-five cents.

For notifying defendant to give security, in cases where it is ordered by the court, twenty-five cents.

To the gaoler, for receiving a person committed on a warrant, mittimus, or recommitment, twenty-five cents.*(g)*

(*f*) St. N. Y. III. 437, 453. March, 24, 1804.
(*g*) Ibid. 454.

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And in all actions brought by virtue of said act, where the sum or thing demanded exceeds twenty 1824. five dollars, the following, and no other or greater fees to constables or marshals shall be allowed, taxed, or taken, by virtue of said act: that is to say,

For serving every summons, eighteen and a half cents.

For serving every warrant, thirty-seven and a half cents.

For summoning a jury of twenty men, seventy-five cents.

For taking the defendant into custody on a mittimus or commitment, for conveying a person to goal, for serving an execution, for travelling, if the person is arrested, above one mile from the place where the court is holden, for going with the plaintiff or defendant to procure security in cases where it is ordered by the court, for notifying the defendant to give security on oath of danger when the defendant is not in court, the same as is allowed in cases wherein the sum or thing in demand does not exceed twenty five dollars.(*h*)

For serving a subpœna, on each witness, whether the sum be twenty five dollars, or less, or more, twelve and a half cents.

Fees to Gaoler.

Fees of gaoler of the city and county of New-York.

The gaoler of the city and county of New-York may ask, demand, and receive, of and from every person committed to his custody, within said gaol upon, or by virtue of any warrant, execution, mittimus, or commitment, issued out of, or from the court of justices of the peace, in and for the city

(*h*) St. N. Y. III. 454, 455. March 24, 1804.

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FEES.

of New-York, for any sum exceeding twenty-five dollars, fifty cents. And also the like fees for bringing up any prisoner by any rule or order of any court, as are by law allowed to a sheriff for bringing up a prisoner on *habeas corpus*, in civil causes.(*i*)

Penalty for extortion.

No person or other officer by color of their office, shall directly or indirectly, ask, demand, or receive for any service or act, to be by them performed, in pursuance of the duty of their office, any greater or more fees than are by law allowed, on pain of forfeiting for every such offence, to the party grieved, his treble damages, to be recovered with costs of suit; and also the sum of two hundred and fifty dollars, the one moiety thereof to the people of this state, and the other moiety to the party who shall sue for the same; to be recovered with costs of suit in any court of record having cognizance thereof, by action of debt or by information.(*j*)

(*i*) St. N. Y. III. 441. March 24, 1804.
(*j*) Ibid. I. 209. March 20, 1801.

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CHAP. II.

Statute Regulations in the Commonwealth of Massachusetts.

I. SHERIFF.

SHERIFFS and coroners are nominated and appointed by the governor, by and with the consent of the council. The nomination must be made at least seven days prior to such appointment.(*a*) Before undertaking the duties of the office, each must take and subscribe the oath of abjuration, and also the oath of office.(*b*) In case, however, of a quaker's being appointed to either office, an affirmation may be substituted for an oath.(*c*) They must also be commissioned in the name of the commonwealth of Massachusetts, and the commission be signed by the governor, tested by the secretary or his deputy, and be under the seal of the commonwealth.(*d*)

SHERIFFS.

Sheriff, by whom appointed.

Must be sworn, *vid. Book. ii.*

And commissions.

Each sheriff and coroner must also give sufficient security, at the discretion of the court of common pleas in his county, for his faithful performance of the duties of his office, and to answer the malfeasance of all his deputies.(*e*) And the justices of the

And give security to the state for faithful performance of their duties.

(*a*) St. M. 52. Const.
(*b*) Ibid. 41, 150. Const.
(*c*) Ibid. 42. Const. March 12, 1784.
(*d*) Ibid. 43. Const.
(*e*) Ibid. 153, 150. March 12, 1784. Feb. 27, 1793.

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SHERIFF.

Justices of the court of common pleas empowered to require new security.

courts of common pleas, in the term of said court held next in course after the last Tuesday of June annually, are authorised and required, to consider of the sufficiency of the security given by the sheriffs in their respective counties. And in case such securities be found insufficient, to cause a record thereof to be made by the clerk, and an attested copy thereof to be served upon such sheriff, and require him to procure and give new security, to the satisfaction of said justices, on or before the term of the court next following. And if any sheriff shall neglect to give security as required on his first appointment, or shall neglect to give the new security which may be required, he shall forfeit and pay to the use of the commonwealth the sum of one hundred and fifty dollars for each month's neglect, to be recovered by an action of debt in any court proper to try the same. And it is the duty of the attorney general to prosecute therefor, and the name of such sheriff neglecting to give or renew his security as aforesaid, must be certified by the court of common pleas in his county, to the governor and council, and also to the attorney general; and the governor, with the advice of the council, shall thereupon remove such sheriff from his office, and appoint some other person in his stead, unless reasonable cause, to the satisfaction of the governor and council, within twenty days after such certificate shall have been made as aforesaid.(f)

Forfeiture of sheriff in neglecting to give security.

Liable to be removed.

No person compellable to accept the office—held during good behaviour—may resign it at

No person is compelled to accept the appointment of sheriff: and having accepted and complied with the conditions aforesaid, may hold the office during good behaviour, and resign it at pleasure.(g) For mal-administration he is liable to impeachment by

(f) St. M. II. 662, 663. Feb. 27, 1795.
(g) Ibid. I. 28. Const.

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SHERIFF.

the house of representatives, before the senate; and on conviction may be removed, and disqualified to hold or enjoy any place of honour, trust or profit under the commonwealth. He is also removeable by the governor and council, for non payment of executions issued against his goods and chattels, on complaint to them made by the creditor in such execution, made for that purpose.(*h*)

pleasure—For malfeasance liable to impeachment and removal—Removeable also by governor and council for non payment of executions.

No person, while sheriff, can hold either the office of judge of probate, register of probate, or register of deeds, or a seat in either house of the legislature.(*i*)

Cannot hold certain other offices.

The sheriff of each county, and each of his deputies, is respectively authorised and required to serve and execute, within his county, all writs and precepts to him or them directed and committed, issued from good and lawful authority. And the sheriff of each county has the custody, rule and charge of the gaol, or gaols therein, and of all prisoners within such gaol or gaols; and must keep the same by himself personally, or by his deputy, for whom he shall be answerable.(*j*)

Authorised and required to serve all lawful writs, &c.

Has the custody of gaols and prisoners.

The supreme judicial court, and the court of general sessions of the peace, shall audit and settle the sheriff's accounts, for such fines as shall have been by them imposed, and for forfeitures arising in them respectively, and thereupon grant the sheriff a full discharge.(*k*)

His accounts audited.

No sheriff or deputy sheriff may be suffered to appear in any court, or before any justice of the

May not act as attorney.

(*h*) St. M. I. 154. March 12, 1804.
(*i*) Ibid. 43. Const.
(*j*) Ibid. 153. March 12, 1784.
(*k*) Ibid. 154.

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SHERIFF.

Nor draw any process.

peace, as attorney, to, and in behalf of, or assisting or advising any party in a suit. Nor may any sheriff, or his deputy, be allowed to draw, make or fill up any plaint, declaration, writ or process, or to draw or make any plea for any other person. And all such acts done by either of them shall be void.

Penalty for detaining money.

And if any sheriff, or his deputy, unreasonably neglect or refuse to pay to any person any money received by him upon execution, to the use of such person, upon demand thereof being made, he shall forfeit and pay to such person five times the lawful interest of such money, so long as he unreasonably detain the same after such demand.(*l*)

Sheriff not liable to arrest in civil process.

No sheriff shall have his body arrested, upon mesne process, or upon an execution awarded upon a judgment consequent upon a civil action. And when judgment shall be rendered against any person holding the office of sheriff, either in his official or private capacity, for any sum of money, the execution thereof may be issued against his goods, chattels and lands, but not against his body: and if any execution issued against the goods, chattels or lands of any person who holds the office of sheriff, shall be returned not satisfied, the creditor may file before the governor and council an attested copy of such execution and return, and also serve such sheriff with a copy of such copy filed, attested by the secretary, together with a notice under the hand of the secretary, of the day of filing such copy. And if such sheriff shall not, within forty days after being served with such copy and notice, pay the creditor the full amount of his debt, together with reasonable

Execution against the goods, &c. of the sheriff not satisfied, the creditor may make complaint to the governor and council.

If execution not paid within 40 days, with cost, she-

(*l*) St. M. I. March 12, 1784.

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costs, of the copies and notifications aforesaid, the governor, with the advice of the council, shall remove such sheriff from his office, and shall appoint some other person to the same.(m)

SHERIFF. Sheriff to be removed.

And all sheriffs, when removed from office, and their deputies, may execute all such precepts as may be in their hands at the time of their removal from office. And such sheriffs shall be answerable for the delivery over to their respective successors of all prisoners who may be in their custody at the time of their removal, and for that intent, may retain the keeping of the gaol or gaols in their respective counties, and the prisoners therein, until their successors shall be appointed and qualified as the law directs. And when a sheriff shall be removed from his office, the clerk of the court from whence executions have been issued and returned not satisfied, may, as soon as another sheriff shall be appointed and legally qualified, make out executions, as well against the body as against the goods, chattels and lands, of such person so removed.(n)

Judges of probate have full power and authority to issue such process or processes, as may be needful for the discharge of the trust reposed in them. And all sheriffs, deputy sheriffs, and constables, are required duly to serve and execute all legal warrants or summonses to them directed, by any judge of probate:(o) and in like manner to serve any warrant to them directed, issuing from a justice of the peace, and his command for assistance when present at any affray, riot, assault or battery, to obey, under penalty not exceeding forty shillings, to be assessed by such

(m) St. M. I. 154. March 12, 1784.
(n) Ibid. 155. March 12, 1784.
(o) Ibid.

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SHERIFF. justice of the peace, and disposed of for the benefit of the town where the offence shall be committed.(p)

Sheriffs, their deputies, and constables to execute warrants for transporting offenders apprehended in another state.

Whenever any offender shall be apprehended in another state, and it may be necessary to carry him through this commonwealth, in order to his being conveyed to the state in which the offence was committed, it shall be lawful for any justice of the peace, in any county, when applied to, to order such offender to be carried by warrant: and all warrants for sending offenders to the confines of, or conveying them through this commonwealth as aforesaid, may be directed to, and must be executed by the sheriffs, or their deputies, of the several counties through which it may be necessary to send or carry the offender, or to any or either of the constables of the several towns in such counties respectively. All which officers shall be directed to proceed with such offender, or offenders, to the confines of the next adjoining county, and there deliver him or them to some proper officer of such county, which process shall be repeated and continued, until such offender or offenders shall have been carried through this commonwealth, and conveyed to the next adjoining state.(q)

Officers of other states may convey prisoners across parts of the state when necessary for the execution of writs or warrants issued in other states.

The sheriffs, deputy sheriffs, constables, or other officers of justice of the neighbouring states, New-Hampshire, Connecticut, Rhode-Island and New-York, with their assistants, in the execution of any writs, warrants or other process issuing from and returnable to courts in their respective states, may have full liberty, power and authority to pass and repass, and also to convey such persons or things as they may have in their custody, by virtue of any

(p) St. M. I. 150. March 16, 1784.
(q) Ibid. 86, 87. Nov. 6, 7, 1784.

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writ or warrant in or by any of the roads, lying in or leading through any towns or lands of Massachusetts, in as full, free and ample manner, as the officers of justice of the commonwealth of Massachusetts do use and exercise in the discharge of their duty and office, and are entitled to the same legal protection from insult and abuses.(r)

And are by law protected from abuse.

In case of the death of the sheriff of any county, any gaoler by him specially appointed, shall continue in the office of gaoler, and retain and have the custody, rule and charge, of the goal of which he had the custody, rule and charge under such sheriff, and of all the prisoners within such gaol, or who may be afterwards committed to his custody, until a successor to such deceased sheriff shall be appointed, and qualified as the law directs, or until the governor, by and with the advice of the council, shall remove such gaoler and appoint another person, which removal and appointment, the governor, by and with the advice of the council, is authorized to make. And the gaoler so appointed, must give such bonds, and in the same manner, as is required of a sheriff for the faithful performance of the duties of his office, and shall continue in office during the vacancy of the office of sheriff.(s)

Gaolers continue in office after death of sheriff till new be appointed.

And the defaults or misfeasances in office, of any gaoler or deputy sheriff, after the death or resignation of any sheriff by whom he was appointed, shall be adjudged a breach of the condition of the bond given by such sheriff. But no surety on the bond given by such sheriff, before the twenty-fourth day of February, 1809, is rendered liable to any suit, by

(r) St. M. 87. Nov. 6, 7, 1784.
(s) Ibid. 433. Feb. 24, 1809.

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SHERIFF.

reason of any such fault or misfeasance in office, of any such gaoler or deputy sheriff, committed after the death of such sheriff.(t)

And in every case of a vacancy in the office of sheriff, in any county, by death, resignation, removal, or otherwise, every deputy sheriff in office under such sheriff, having any writ or precept in his hands at the time of such vacancy, has the same authority, and is under the same obligation to serve, execute and return such writ or precept, as if such sheriff had continued in office.(u)

When the condition of any bond, given to the treasurer of the commonwealth by any sheriff for the faithful performance of the duties of his office, and to answer for the malfeasance of all his deputies, shall be broken to the injury of any person, such person may institute a suit upon such bond at his own cost, but in the name of the treasurer, and the like endorsements must be made on the writ, and the like proceedings be had thereon to final judgment and execution, as may be made and held by a creditor, on administration bonds given to a judge of probate. But no such suit may be instituted by any person for his own use, until he shall have recovered judgment against the sheriff, his executors or administrators, in an action brought for the malfeasance or misfeasance of the sheriff, or his deputy, or for non payment of any monies collected by the sheriff, or his deputy in that capacity, or a decree of the judge of probate, allowing a claim for any of the causes aforesaid. And such judgment or decree, or so much thereof as may be unsatisfied, with the interest due thereon, shall be the

(t) St. M. V. 435. Feb. 24, 1800.
(u) Ibid.

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portion of the penalty for which execution shall be awarded. And actions for the malfeasance or misfeasance of any sheriff, or of his deputy, may be sued against the executors or administrators of such sheriff, in the same manner as if the cause of such action survived against the executor or administrator, at the common law. It is, however, provided, that no surety in any bond given by the sheriff as aforesaid, before the 13th day of March, 1806, shall be liable to any suit to which he was not legally subject before the enacting this law, subjecting executors, &c. to actions as aforesaid.(v) SHERIFF.

To enable any person aggrieved to institute a suit on such bond, the treasurer must deliver an attested copy thereof to the person applying and paying for the same, which copy will be legal evidence in the case; but if the execution of the bond be disputed, the court may order the treasurer to bring the original bond with him into court.(w)

The supreme judicial court may, by warrant under the seal directed to such officer or officers as they may think proper, require them to remove any convict or convicts who shall have been sentenced to confinement to hard labour, within the state prison, or precincts thereof, situate in Charlestown, in the county of Middlesex, from any gaol in the commonwealth to such state prison. And all officers, keepers of said prison, and keepers of the several gaols, are bound to do and perform all such duties and services as may be set forth by such warrant. And the accounts of the officers performing such service, shall be liquidated and paid in such manner as the

(v) St. M. IV. 348. March 13, 1806.
(w) Ibid. 344. March 13, 1806.

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SHERIFF.

governor, with the advice of the council, shall direct.(x)

Exempt from serving on juries, and from militia duty.

While in office, sheriffs and deputy sheriffs, are exempted from serving on juries.(y) Sheriffs are also exempted from all militia duty.(z) And deputy sheriffs and coroners, are also exempted from militia duty, excepting that of keeping themselves constantly furnished with arms and equipments required by the laws of the United States, and the duty of carrying or sending them on the first Tuesday of May, annually, to the place of inspection, or view of arms of the company within whose bounds they may reside, and in which they are enrolled, and the duty of attending elections of company officers: provided they respectively pay to the treasurer of the town or district in which they reside, two dollars annually, and produce his receipt therefor to the commanding officer of the company, on or before the first Tuesday in May of each year.(a)

Sheriffs, constables, &c. to inform against profane cursers and swearers.

If any person profanely curse or swear in the hearing of any sheriff, deputy sheriff, coroner, constable, grand juror, or tithing man, it is the duty of such officers respectively, forthwith to give information thereof to some justice of the peace of the county wherein the offence was committed.(b)

Every sheriff, deputy sheriff, or constable, being in the execution of his office, for the preservation of the peace, or for the apprehending or securing any person or persons for breach of the same, or for any

(x) St. M. IV. 354, 355. March 14, 1806.
(y) Ibid. V. 383. March 12, 1808.
(z) Ibid. VI. 157. March 6, 1810.
(a) Ibid. 158. March 6, 1810.
(b) Ibid. II. 830. June 29, 1798.

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other criminal cause, may require suitable aid and assistance therein. And if any person, being required by any sheriff, or deputy sheriff, or constable, in the name of the commonwealth of Massachusetts, to aid and assist him in the execution of his office as aforesaid, shall neglect or refuse so to do, and be thereof convicted before any court proper to try the same, such offender shall be fined, not less than three dollars, nor more than fifty dollars, according to the circumstances of the case. And if any such offender shall be unable, or shall not forthwith pay such fine, such court may punish him by imprisonment, not exceeding thirty days.(c)

Any constable of any town or district in the state may, in the execution of any warrant or suit to him directed by lawful authority, convey any prisoner or prisoners, or things he may have taken into his custody, either to the gaol, or house of correction of the county where such constable is an inhabitant, according as in the writ or warrant may be directed.(d)

When any sheriff, or deputy sheriff, shall have any writ or process issued by competent authority of the commonwealth, to him directed to be served and executed; and when any surveyor, or other person, shall be ordered or empowered, by the supreme judicial court, or any court of common pleas, to survey any land, and such sheriff or deputy sheriff, surveyor or other person, shall be obstructed or interrupted in the performance of the duty or service required or enjoined by such order or precept, or shall apprehend that such order or precept cannot be obeyed or

(c) St. M. II. 724. Feb. 26, 1796.
(d) Ibid. 725. Feb. 26, 1696.

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SHERIFF.

executed, without endangering his personal safety, such sheriff, deputy sheriff, surveyor, or other person, lawfully acting in obedience to any such process or order of the courts aforesaid, may apply to any justice of the supreme judicial court, or to any two or more judges of the court of common pleas in any county, and represent to such justice or judges the danger which is apprehended. And if such justice or judges shall be of opinion that such representation is well founded, he or they shall require of the commanding officer of any brigade or regiment, within the division of militia wherein such danger is apprehended, to detach, at the expense of the commonwealth, a sufficient number of the militia, to be specified in the order of such justice or judges, under the command of proper officers, to protect such sheriff, deputy sheriff, surveyor, or other person, in the performance of his duty, or duties, pursuant to the command contained in such writ, precept, process, or order of court; and the part of the militia so detached shall be armed and equipped for actual service, according to law, and it shall be their duty to protect the aforesaid persons in the proper performance of their duties as aforesaid, and to repel by force any attempt to obstruct the same, and to seize, take and arrest, and bring before some justice of the peace, within and for the county wherein the offence may be committed, for examination, any person or persons, who shall forcibly resist or oppose any officer or surveyor in the discharge of the duties aforesaid, or who shall aid or abet therein.(e)

Duty of sheriff, &c. in case of an insurrection.

Whenever an insurrection shall have taken place, in any town in this state, to obstruct the course of justice, or the due execution of the laws, or there

(e) St. M. VI. 218, 219. March 6, 1810.

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is reason to apprehend that a dangerous insurrection for such purposes will be executed, it is the duty of the civil officers in such county, as well the sheriff as the justices of the several courts of judicature within such county, immediately to give information thereof to the governor for the time being; and if in the opinion of the sheriff, or any two of the justices either of the supreme judicial court, or the court of common pleas, in such county, it shall be necessary for the suppression of any insurrection existing, or apprehended as aforesaid in such county, that a force be instantly raised and called forth for that purpose; and if by reason of distance, the necessary aid cannot be obtained by order of the commander in chief, it shall be the duty of such sheriff, or justices, to certify the same under his or their hand to the major general, or commanding officer of the division wherein such county lies, or to the commanding officer of some regiment or corps in the vicinity, and to request him or them to detach the whole, or such number of the militia under command of such officer, for the support of the civil authority, as the said justices or sheriff may think necessary to defeat the purposes of such insurgents, and to apprehend and safely keep them for trial, and as soon as may be to give notice of such application to the commander in chief, that he may take the necessary orders thereupon; and it shall be the duty of such major general or commanding officer, upon such request being made, to detach such number of militia as shall be requested as aforesaid, armed and equipped according to law; and the militia so detached and collected, shall afford their assistance to, and be under the direction of the civil officers or magistrates, unless in case of a rebellion declared by the legislature. *(f)*

To notify the governor thereof. And if in the opinion of the sheriff or two justices, it is necessary a force should be instantly raised, they must certify the same to the major general, &c.

Duty of the major general, and other military officers.

(f) St. M. L. 366, 367. Feb. 20, 1787.

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SHERIFF.

Sheriff to disperse rioters.

If any persons, to the number of twelve or more, armed with clubs or other weapons, or if any number of persons consisting of thirty or more, are unlawfully, routously, riotously, or tumultuously assembled, any justice of the peace, sheriff, or deputy sheriff of the county, or constable of the town shall, among the rioters, or as near to them as he can safely come, command silence while proclamation is making, and shall openly make proclamation in these or the like words:

Commonwealth of Massachusetts.

Form of proclamation.

By virtue of an act of this commonwealth, made and passed in the year of our Lord one thousand seven hundred and eighty six, entitled, "an act for suppressing routs, riots, and tumultuous assemblies, and the evil consequences thereof," I am directed to charge and command, and I do accordingly charge and command all persons being here assembled, immediately to disperse themselves, and peaceably depart to their habitations, or to their lawful business, upon the pains inflicted by the said act.

GOD save the commonwealth.

If persons so assembled do not disperse, officers impowered to command assistance, and seize them.

And if such persons assembled as aforesaid, shall not disperse themselves within an hour after proclamation made, or attempted to be made as aforesaid, it shall be lawful for every such officer to command sufficient aid, and he shall seize such persons, who shall be had before a justice of the peace, and the aforesaid justice of the peace, sheriff, or deputy sheriff, is further impowered to require the aid of a sufficient number of persons in arms, if any of the persons assembled as aforesaid shall appear armed, and if any such person or persons shall be killed or wounded, by reason of his or their resisting the per-

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sons endeavouring to disperse or seize them, the said justice, sheriff, deputy sheriff, constable, and their assistants, shall be indemnified and held guiltless. SHERIFF.

Penalty on such as refuse assistance.

And if any person, being commanded by such justice, sheriff, deputy sheriff, or constable as aforesaid, shall refuse or neglect to afford the assistance required, and shall be thereof convicted upon the oath of either of the said officers so commanding, or other legal evidence, he shall forfeit and pay a sum not less than *forty shillings*, nor exceeding *ten pounds*.(g)

Officers of courts accountable to county treasurer for fines, &c.

All sheriffs, coroners and constables, who may receive any fines, forfeitures, or bills of cost, in pursuance of the judgment or sentence of either the supreme judicial court, or court of general sessions of the peace,* as well where such fines or forfeitures accrue to the commonwealth, as where they accrue to the county, except debt and costs received upon executions in favour of the commonwealth, must forthwith pay the same to the treasurer of the county in which they are received. And if any sheriff, or other officer receiving such fine or forfeiture, or bill of cost, shall neglect to pay the same for the space of ten days after receipt thereof, he shall forfeit and pay double the amount of such fine or forfeiture and bill of cost, to such county treasurer, one third of said penalty to the use of such county treasurer, the other two thirds to the use of the commonwealth, and the same when recovered and received, (if the fine or forfeiture unpaid accrue to the commonwealth) shall, together with all other fines, forfeitures, and

Forfeiture in case of neglect.

* Powers of the courts of general sessions are transferred to the courts of common pleas. Duk. Dig. 88.

(g) St. M. I. 346. Oct. 28, 1786.

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SHERIFF. costs accruing to the commonwealth, by him received as above, be applied to the payment of bills of cost, taxed in the supreme judicial court, and certified to him as aforesaid, otherwise it shall be for the use of the county. And if any sheriff, or other officer aforenamed, or any gaoler, shall permit any person who may be sentenced to pay any fine, forfeiture, or bill of cost, and committed to the custody of such sheriff, or other officer, or gaoler, till such sentence be performed, to go at large, without and before payment, unless by order of law, and shall not pay such fine, forfeiture and costs, to the county treasurer, within twenty days after such escape, he shall be held to pay double the sum of such fine, forfeiture and costs, and the treasurer of the county is impowered to sue for and recover the same, in the same manner, and to the same uses, as when such sheriff or other officer neglects to pay such fine, forfeiture, or costs, as he has actually received as aforesaid. And every sheriff, and other officer aforementioned, shall be held to produce to said courts respectively, at every session thereof in their county, receipts in full from the county treasurer, for all fines, forfeitures and costs imposed by said courts, respectively received and paid, previous to the setting of such court, or to assign the cause why they have not received, or not paid the same, in order that such court may order a prosecution against such as shall appear to be delinquent.(*h*)

Penalty in certain cases.

Obliged to produce receipts.

All actions against sheriffs for misconduct and negligence of their deputies, must be commenced and sued within four years next after the cause of action.(*i*)

(*h*) St. M. II. 532, 533. March 8, 1792.
(*i*) Ibid. 770. March 8, 1797.

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SHERIFF.

Whenever any person is appointed to the office of sheriff of any county, and legally qualified to execute said office, it is his duty to give notice thereof as soon as may be to the respective coroners of the same county.(j)

(j) St. M. II. 554. June 28, 1792.

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II. PROCESS AND SERVICE.

PROCESS AND SERVICE

Writs and processes, to be in the name of the commonwealth of Massachusetts.

ALL writs and processes of the supreme judicial court, must be in the name of the commonwealth of Massachusetts, bear test of the first justice, who is not a party to the suit, and be under the seal of the court, and be signed by the clerk.(*a*) And all writs and processes issuing from the several courts of common pleas, must also be in the name of the commonwealth of Massachusetts, bear test of the first justice, who is no party to the suit, and be under the seal of the court, and signed by the clerk thereof, and have force, and must be obeyed and executed in every county. And all original processes from such courts of common pleas, must be summons, capias or attachment, and be served and executed fourteen days before the day of the sitting of the court whereunto they are returnable.(*b*)

Original writs how directed and endorsed.

And all original writs issuing out of the supreme judicial court, or court of common pleas, must be directed to the sheriff or his deputy, or other proper officer, and before they are served, endorsed on the back thereof by the plaintiff or plaintiffs, or one of them, with their christian and surname, if he or they are inhabitants of the commonwealth, or by his or their agent or attorney, being an inhabitant thereof. And when the plaintiff is not an inhabitant of the commonwealth, then his writ must be endorsed in the same manner by some responsible person, *who is an inhabitant of the commonwealth.*

(*a*) St. M. I. 43. Const. Ibid. 70, July 3, 1782.
(*b*) Ibid. 72. 206, 43. June 3, 1782.

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PROCESS AND SERVICE.

All warrants and processes of the court of general sessions of the peace, for the apprehending and bringing to trial any person against whom an indictment is found, or a complaint filed in the same court for any crime whereof the same court has cognizance, must be under the seal of the court, and signed by the clerk, and run into, and be executed in any county of the commonwealth.(c)

Justices of the peace may issue process, &c.

All manner of debts, trespass, and other matters, not exceeding the value of four pounds, (and wherein the title of real estate is not in question) may be heard, tried, adjudged and determined by any justice of the peace, within his county; and the justices are severally empowered to grant summons, capias and attachment at the request of any person applying for the same, directed to some proper officer within the same county, empowered by law to execute the same. And such summons, or capias and attachment, must be duly served by such officer, at least seven days before the day therein set for trial.(d) Justices of the peace may grant subpœnas for witnesses, in criminal cases pending before the supreme judicial court, court of general sessions of the peace, and before themselves, or any other justice: and may issue warrants for the apprehending of persons accused of crimes within their jurisdiction, which must be duly executed by any sheriff, constable, or other officer, to whom the same are directed and delivered.(e)

Service of writs of summons.

In all suits wherein the process is by original summons, as against executors, administrators, or guardians, in ejectments, dower, *scire facias*, error, review, and all other actions where the law does not

(c) St. M. I. 74. June 3. 1782.
(d) Ibid. 146, 147, 148. March 11, 1784.
(e) Ibid. 159, 160. Oct. 30, 1784. Const.

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require a separate summons to be left with the defendant, the service thereof by the proper officer is good and valid in law, either by his reading the writ of original summons to the defendant, or by leaving a true copy thereof at his or her house, or place of last and usual abode, attested by such officer, fourteen days before the day of the court's sitting, whereto the process is returnable. And if the defendant was at no time an inhabitant or resident within the commonwealth, the service thereof must be in like manner, by the officer's reading the same writ, or original summons to, or leaving a like copy duly attested with the tenant, agent or attorney of the defendant, the like number of days before the day of the court's sitting whereto the process is returnable. And in an action of dower, or other real action, wherein the possession of lands or buildings is demanded, not of the tenant in the actual possession or occupancy thereof, in addition to such service on the defendant in the writ or summons, there must be also a service on such tenant, or occupant in possession, the like number of days before the day of the court's sitting, by the officer's reading to him or her the same writ, or original summons, or leaving a like attested copy at his or her house, or place of usual abode, or the premises, which must be also certified by the proper officer. *(f)*

When the defendant has never lived in the state.

Tenants summoned tho' not defendants.

Writs to be served on towns, &c. 30 days before the court.

When any such suit is brought against any town, parish, precinct, or village, or against the proprietors of any common and undivided lands, or other estate, the writ or summons must be served by a copy thereof being, by the officer serving the same, left with the clerk of such town, parish, precinct, village, or proprietors, or one or more of the principal

(f) St. M. II. 808, 809. Feb. 17, 1798.

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inhabitants or proprietors respectively, at least thirty days before the day of the sitting of the court to which the same is returnable.(g)

PROCESS AND SERVICE.

When the goods or estate of any person is attached at the suit of another, in any civil action, a summons in form prescribed by law must be delivered to the party whose goods or estate are attached, or left at his or her dwelling house, or place of last and usual abode, fourteen days before the sitting of the court where such attachment is returnable; and in case the defendant was at no time an inhabitant or resident within the commonwealth, such summons to be left with his or her tenant, agent, or attorney. And the serving thereof, in either case, to be certified by a sworn officer, who executed the attachment, or by affidavit made in court by the person who delivered the same, and by one other credible witness, then also present.(h) But when two or more of them are jointly obligated, by act of law or agreement, and one or more of them are without the commonwealth, having property or estate, but no tenant, agent, trustee or attorney within the same, the property of those so without the commonwealth, may be attached, and the summons being left by the officer serving the writ with those within the commonwealth, is legal service on those without the same.(i)

Where goods, &c. are attached, summons, to be left, &c.

Joint obligors to be considered summoned when one is notified and the others out of the state.

The share, or shares, or interest, of any person in any turnpike bridge, canal, or other company, incorporated by the legislature of the commonwealth, with all the rights and privileges appertaining to such shares, may be attached on mesne process; and when any such shares or interest shall be so at-

(g) St. M. I. 141, 318. March 10, 1784. March 23, 1786.
(h) Ibid. II. 808. Feb. 17, 1798.
(i) Ibid. 810. Feb. 17, 1798.

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PROCESS AND SERVICE.

tached, an attested copy or copies of such writ, must, by the officer holding the same, be left with the clerk and treasurer, or cashier of such company. And an attachment of such shares or interest on mesne process so made, shall hold the same, and also all dividends growing due after such attachment, to respond the final judgment therein, until the final expiration of thirty days after the rendition of such judgment; and in case the same are not within that time taken in execution on such judgment, by an attested copy or copies of such execution being left with the clerk and treasurer, or cashier of the corporation, and an advertisement of the time and place of sale, being once published within said thirty days in some public newspaper printed in the county where the sale is to be made, if any such be printed therein, and if no such paper be therein printed, in some public newspaper in the nearest county wherein a newspaper shall be printed, such attachment is dissolved.(*j*)

All goods and estate attached on mesne process, must be held for the space of thirty days after final judgment to be taken in execution.(*k*) And the body of the debtor, if attached on mesne process, and in prison thereon, must be held for the like space after such judgment, subject to be charged in execution. But in all cases, wherein execution is not within thirty days after final judgment as aforesaid levied upon such goods, estate or body, as the case may be, the attachment is dissolved,(*l*) excepting in the Island of Nantucket, where such goods and estate must be held for the space of sixty days, for the purpose of being taken in execution, but no longer.(*m*)

(*j*) St. M. IV. 261, 262. March 8, 1805.
(*k*) Ibid. I. 207. Oct. 30, 1784.
(*l*) Ibid. 206. Oct. 30, 1784.
(*m*) Ibid. V. 106. Feb. 28, 1807.

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PROCESS AND SERVICE.

The wearing apparel, beds, bedstead, bedding, and household utensils, of any debtor, necessary for himself, his wife and children; the tools of any debtor necessary for his occupation; the bibles and school books in actual use in his or her family, together with one cow and one swine, are altogether exempted from attachment on mesne process, provided such beds and bedding do not exceed one bed, bedstead and necessary bedding for two persons, and the household furniture the value of fifty dollars, upon a just appraisement.(*n*) And every citizen enrolled, and providing himself with arms, ammunition and accoutrements required by law, also holds them exempted from attachment and seizure as aforesaid.(*o*)

Neither may the body of an executor or administrator, nor their own proper goods or estates be attached for the debts or legacies of the deceased.(*p*) Nor may the body of a sheriff be attached to answer on mesne process.(*q*)

Foreign attachment, how served.

The officer to whom any writ of foreign attachment is directed, must serve the same, by attaching the goods and estate of the principal, in the hands and possession of his trustee, of the value required, if so much can be found in his precinct, by reading to him the writ, or by leaving an attested copy thereof at his last and usual abode, if he has been an inhabitant or resident within this commonwealth at any time within three years next before the suing out of such writ, and by reading the same to each of the trustees, or by leaving an attested copy thereof

(*n*) St. M. IV. 544. March 13, 1806.
(*o*) Ibid. II. 587. June 22, 1793.
(*p*) Ibid. I. 192. March 4, 1764.
(*q*) Ibid. 154. March 12, 1784.

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PROCESS AND SERVICE.

at such trustee's usual place of abode, which service must be made fourteen days at the least before the day of the sitting of the court to which such writ is returnable, and such writ must be made returnable in some county in which at least one of the trustees dwells.(r)

When any party against whom any review is commenced, is not an inhabitant of the commonwealth, the writ may be served upon such person as appeared for him in the former trial, or upon the agent of such party, his attorney or trustee, which shall be sufficient service.(s)

Writ of scire facias on outlawry, how executed.

Whenever the sheriff receives a writ of *scire facias* on outlawry, he must execute the same by leaving a certified copy thereof at the offender's dwelling house, or last place of abode, sixty days at the least before the same process is returnable, and must cause an abstract or notification of the subject matter in the writ mentioned, sixty days before the return day at the least, to be printed in one of the most public weekly newspapers, and to be continued five several weeks inclusive. And must cause him to be publicly called in every court of general sessions in his county, which is held while the same process is in his custody.(t)

If any person shall execute any civil process, from midnight preceding, to midnight following the Lord's day, such execution will be void, and the person guilty thereof liable in damages to the party grieved, as if done without such such process.(u)

(r) St. M. II. 674, 675. Feb. 28, 1795.
(s) Ibid. I. 371. Feb. 27, 1787.
(t) Ibid. 76. Oct. 2, 1782.
(u) Ibid. II. 538. March 8, 1792.

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When any sheriff of the county of Essex, or any of his deputies, or any constable of the town of Marblehead, by virtue of a warrant from any justice of the peace, directed to such officer or officers, commanding him or them, with a member of the board of health of such town, forcibly to enter any dwelling house, cellar, store or other building, ship or vessel, to search for any nuisance, or any cause injurious to the health of the inhabitants of such town, shall have obtained admission or made entry into such dwelling house, cellar, &c. no such sheriff, deputy sheriff, or constable, may execute any civil process, either by arresting the body, or attaching the goods or chattels of any persons under colour of such entry, unless such service could by law have been made without such entry. And all services so made, under colour of such entry will be utterly void, and the officer making such service a trespasser.(v) And the sheriff of the county of Suffolk and his deputies, when executing a warrant issued by a justice of the peace, at the request of the board of health of the town of Boston, and predicated upon a complaint under oath, directed to such sheriff or deputy, may also forcibly enter and search all houses, stores, cellars, vessels and boats, between the hours of sunrise and sun set, where there may be just cause to suspect any nuisances or sources of filth to exist, and the same to remove or destroy, as the case may require. Yet neither may they execute any civil process, either by arresting the body, or attaching the goods or chattels of any person or persons, unless such service could by law have been made without such entry. And all services so made, under colour of such entry, are utterly void, and the

PROCESS AND SERVICE.

(v) St. M. IV. 45. Feb. 22. 1803.

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officer making such service liable as a trespasser from the beginning.(w)

Sheriffs and other officers charged with, or lawfully employed, apprehending or arresting any person accused of larceny or robbery, or as accessary therein, must seize and secure the money, goods or other articles alleged to have been stolen or obtained by robbery, and which shall be found in the possession of the accused, or which shall have been waived by him or her, in flying from justice. And of such money, goods or other articles which shall be so found or secured, a true inventory or schedule must be made in or annexed to the return of such sheriff or other officer, upon the warrant or process which shall have been issued for the arrest of the person accused. And such sheriff or other officer must be accountable for the money, goods, or other articles, thereby seized and secured.(x)

Whenever a writ for the adjournment of the supreme judicial court, under the hands and seals of two of the justices of said court, or a writ for the adjournment of the court of common pleas, under the hands and seals of two of the judges thereof, shall be delivered to the sheriff of the county in which either of said courts was to be holden, and of which such adjournment is ordered, the sheriff or his deputy, must read such writ audibly in the court-house, or place where the court to be adjourned was to have been held, and must also put up a copy of such writ in some public and conspicuous place there, and cause publication of the same to be made in some other of the most public places in the county.(y)

(w) St. M. II. 868. June 20, 1799.
(x) Ibid. IV. 300. March 16, 1805.
(y) Ibid. I. 71, 72. July 3, 1782.

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III. BAIL.

BAIL.

IF bail on mesne process, in any civil action for the appearance of the defendant to answer to the suit, and to abide the order and judgment of the court thereon, bring their principal into court before judgment is given upon the scire facias, and there deliver him to the order of the court, and pay the cost which may then have arisen upon the scire facias, such bail will be discharged, and the principal must be committed to gaol, there to remain for the space of thirty days, in order to his being taken in execution. And if the creditor shall not, within thirty days next after the surrender of the principal, take him in execution, the sheriff shall discharge him, upon his paying the legal prison fees. And no scire facias shall be served upon the bail, unless it be done within one year next after entering up final judgment against the principal.(a)

If the bail upon mesne process, triable before a justice of the peace before final judgment is rendered therein, or before final judgment shall be rendered against the bail on *scire facias*, returned before such justice, bring the principal before the same justice, and procure the sheriff of the county, or his deputy, or any constable of the town wherein said justice may reside, to attend and secure him, such justice shall thereupon order him into the custody of such officer, and any such officer must, upon the request of any such bail, repair to said justice's court to receive such principal, and when so surrendered, such justice must order him into custody, and make out

(a) St. M. I. 195, 196. June 30, 1784.

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BAIL.

and deliver to the officer receiving such principal a warrant or mittimus for his commitment to gaol, which must be duly executed by such officer, and such principal must there remain, and be proceeded with in manner above said. And if the plaintiff shall not, within thirty days next after such surrender, in case the same shall be made upon the scire facias, or if the same shall be made upon the original process, then within thirty days next after final judgment, take such principal in execution, he shall be discharged upon his paying the legal prison fees. And such officer shall be allowed and paid by the bail, for his receiving and committing such principal on such warrant or mittimus, the same fees as are by law provided for committing any defendant to prison on mesne process. And all and every such officer or officers have the like power and authority, and are under the like obligation in every respect whatsoever, to execute and return such warrant or mittimus issued by such justice, upon such surrender, as he or they by law have and are under to execute and return any writ or execution whatever; and are subject and liable to like actions for fraud or falsehood, and neglect of duty, as is by law provided in other cases.(*b*)

(*b*) St. M. 1V. 225, 226. March 7, 1804.

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IV. EXECUTIONS.

EXECUTION.

Execution, how tested, signed, directed, and returnable.

EXECUTIONS issuing from the supreme judicial court, must be under the seal of the court, bear test of the first justice, (who is not a party thereto,) be signed by the clerk, and are returnable to the next court, except in those counties where such court is held but once a year, there at the end of six months, unless such court shall sit in that county within that time. And executions issuing from the court of common pleas, must in like manner be under the seal of such court, bear test of the first justice, (not a party,) be signed by the clerk, and are returnable to the next court of common pleas to be holden in the same county, excepting when there are but two or three courts in a year, in which case they must be returnable within three months, unless the court of common pleas shall sit within that time, and in that case, they must be made returnable to the next court. And executions issuing from a justice of the peace, must be under the seal of the justice issuing the same, be signed by him, and made returnable within sixty days. And executions issued upon a recognizance, before a justice of the peace, may be issued at any time within three years after the taking such recognizance, or within three years after the last payment made thereon, and run throughout the commonwealth, and be executed in all respects and by the same officers as executions which issue from any court of record.

Executions issued on any judgment of the supreme judicial court, or court of common pleas, must be directed to the sheriff of the county where the same are to be executed, or to his deputy, or to a coroner

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EXECUTION.

of the county where the sheriff or his deputy is a party. But where the judgment recovered in a personal action does not exceed seventy dollars, the execution issued thereon may also be directed to the constables of the town where service is to be made. And all executions issuing from a justice of the peace, may be directed to the sheriff of the county where the same are to be executed, or his deputy, (if neither be a party) or to the constables of the town wherein service is to be made.(a)

Property liable to be taken on execution.

All lands and tenements belonging to any person in his own right, in fee, (b) and all his rights in equity of redeeming lands mortgaged, reversions and remainders,(c) and all his rents issuing out of the lands,(d) and all his shares or interest in any turnpike, bridge, canal, or other company incorporated by the legislature, with all the rights and privileges appertaining to such shares,(e) and all his personal estate,(f) (excepting wearing apparel, beds, bedsteads and bedding, not exceeding one bed and one bedstead, and necessary bedding to two persons, household utensils necessary for himself, his wife, and children, not exceeding fifty dollars value on a just appraisement, tools necessary for his trade or occupation, bibles and school books which may be in actual use in his family, one cow, one swine,(g) his arms, ammunition and accoutrements required by law, all which are exempted from executions,(h) stand charged with the payment of all his just debts,

Property exempted from execution.

(a) St. M. I. 200, 201, 168, 204, 81, 82, 58, 150. II. 709. Oct. 30, 1784. March 16, 1784. March 12, 1784.
(b) Ibid. II. 982. Book II. ch. 13. Oct. 10, 1782. May 18, 1781. Feb. 13, 1796.
(c) Ibid. I. 171. March 17, 1784.
(d) Ibid. 170. March 17, 1874.
(e) Ibid. IV. 261. March 8, 1805.
(f) Ibid. II. 982. Book II. ch. 13.
(g) Ibid. IV. 344. March 13, 1806.
(h) Ibid. IV. 587, June 22, 1795.

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owing by such person, and are liable to be taken in execution in satisfaction of the same.(i) Executions, where money only is recovered, as a debt or damages, are issued against the goods, chattels, lands and body of the debtor,(j) or against his goods, chattels and lands, or against his goods and chattels,(k)* or against his goods, chattels and body.(l) And when either the seizin or possession of lands or tenements, and also damages and costs are recovered by the same judgment, the execution issued thereon includes a direction to deliver seizin or possession of the premises recovered, and also to levy the damages and costs of the goods and chattels,(m) or goods, chattels and lands of the defendant,(n) and for want of such goods or chattels, or goods, chattels or lands, his body may be taken and committed to prison, as in cases of execution issued on judgments in personal actions.(o)

EXECUTION.

Execution, forms of.

All goods and estates, attached upon mesne process for the security of the debt or damages sued for, must be held for the space of thirty days after final judgment to be taken in execution, and if the creditor do not take them in execution within that time, his attachment becomes void.(p)

Goods or estate attached must be taken in execution in thirty days.

Executions may be taken out at any time after the expiration of twenty-four hours after judgment ren-

Executions when to be taken out.

* Execution may not issue against the body of the sheriff, nor against the body of an executor, administrator, heir or devisee, nor against the body of a debtor discharged from prison, on being admitted to take the oath by law for poor prisoners for the same debt.

(i) St. M. II. 982, Book II. ch. 13.
(j) Ibid. I. 200. Oct. 30, 1784.
(k) Ibid. 154, 122. March 4, 1784, March 12, 1784.
(l) Ibid. 204. Oct. 30, 1784.
(m) Ibid. 144. March 11, 1784.
(n) Ibid. 201. Oct. 30, 1784.
(o) Ibid.
(p) Ibid. 207.

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EXECUTION. dered,(q) and within one year after the entering up of such judgment, and an *alias* and *pluries* within one year after the return of a prior execution not satisfied, but if more than a year elapse between the rendering final judgment and the taking out execution thereon, or between the return of a prior execution and the taking out another, the party is driven to his scire facias, before he can compel satisfaction of the judgment by execution.(r)

Goods taken by execution to be sold at public vendue.

When any goods or chattels are taken, to satisfy an execution issuing upon a judgment obtained, such goods or chattels must be safely kept by the officer, at the expense of the debtor, for the space of four days next after they are so taken, and if within that time the owner shall not redeem them, by otherwise satisfying the execution, such goods and chattels must be sold at public vendue, to the highest bidder, having first been advertised by the posting up notifications of the time and place of sale, forty-eight hours before the expiration of the four days, in the town or place where the sale is to be, and the money arising from such sale must be applied to the paying charges and the satisfying the execution, and the officer must return the overplus (if any there be) to the debtor. And the officer who is possessed of the execution, must make return of the same, with his doings thereon, particularly describing the goods taken and sold, and the sum for which each article was struck off; and if any officer be guilty of any fraud in the sale, or in the return, he is liable to the debtor to pay him five times the sum defrauded, to be recovered by action of the case.(s)

Officer must make particular return.

Penalty on officer for fraud in sale, &c.

(q) St. M. l. 168. March 17, 1784.
(r) Ibid. 169. March 17, 1784.
(s) Ibid. 171. March 17, 1784.

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EXECUTION.

Execution issued in process of foreign attachment, how levied.

When on process of foreign attachment, the plaintiff has recovered a judgment against the principal, and it shall have appeared by the answer of the trustee that he was at the time of service on him, holden or bound to deliver to the principal at some future day any specific articles whatever, other than money, such trustee may on demand by the officer having the execution in his hands, issued upon the judgment recovered on such process, deliver to him such specific article or articles, or so much and such part thereof as may be necessary to satisfy such execution, with the legal fees thereon. The value of such article or articles, as between the principal and trustee, to be estimated and ascertained by the appraisal of three disinterested and discreet men, one to be chosen by the trustee, one by the officer, and one by the principal if he see cause, or if he neglect or refuse, then the officer must appoint two of the appraisers, who must be sworn before a justice of the peace in and for the county, where such article or articles are to be delivered, faithfully and impartially to appraise the same. And the said justice and appraisers must make on such execution a certificate of their respective doings. Provided, however, that in all cases where by the terms of the contract between the principal and the trustee, any mode is pointed out for ascertaining the value of such specific articles, the principal and trustee, or either of them, may have their value thus estimated and ascertained. And in either case, the officer must proceed to sell such articles, and conduct in the sale thereof as in other cases of sales of personal property on execution, the overplus, (if any shall be,) after satisfying the execution and officer's fees, he must pay over to the principal if within his precinct, otherwise to the trustee.(*t*)

(*t*) St. M. II. 679. Feb. 28, 1795.

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EXECUTION.

Turnpike shares, &c. liable to be taken in execution.

When any share or shares, or interest of any person in any turnpike bridge, canal, or other company incorporated by the legislature of the commonwealth, shall be taken on execution, an attested copy or copies of such execution must, by the officer holding the same, be left with the clerk and treasurer, or cashier, of such company, and so many of said shares, or so much of said interest may be sold on execution, at public vendue to the highest bidder, as shall be sufficient to satisfy the same, and the charges of the sale, after the officer shall have given notice in writing of the time and place of sale to the judgment debtor, by leaving the same at his last and usual place of abode, if within the county in which the officer dwells, and shall have given public notice of the said time and place of sale, by posting up notifications thereof in one or more public places in the town, district or plantation where such sale is to be made, and also in one or more public places in the two adjoining towns, thirty days at least before the time of sale; and further, shall have caused an advertisement, expressing the time and place of sale, and against whom such execution shall have issued, on which such shares or interests have been taken, to be published three weeks successively before the day of sale, in some public newspaper printed in the county where the sale is to be made, if any such be therein printed, and in case no such paper is printed therein, then shall have caused such advertisement to be published in some public newspaper printed in the nearest county wherein a newspaper shall be published. But in case the judgment debtor has at no time resided, or does not then dwell in such county, the posting up such notifications and publishing such advertisements in manner

Levy, how executed, and notice given.

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aforesaid, shall be deemed sufficient notice of such sale.(u) EXECUTION.

In case the shares or interest so notified for sale shall not, for want of purchasers, be disposed of at the time appointed for sale, the officer must adjourn the sale for a time not exceeding three days, and from time to time, until the sale be completed, and the surplus monies, if any there be arising from such sale, beyond satisfying the execution and necessary intervening charges, the officer must pay to the debtor, or deposit the same with the treasurer or cashier of the corporation, for the benefit of the debtor, and subject to his order.(v)

Vendue may be adjourned.

And in case the officer making such sale, or the purchaser or purchasers of any such shares or interest, do cause an attested copy or copies of such execution, and the officer's return thereon to be left with the clerk and treasurer, or cashier, within fourteen days after the sale is completed, and pay for the recording the same, such purchaser or purchasers will be thereby entitled to such shares or interest, with all the privileges appertaining thereto; and the income and dividends which may have accrued, or been made, subsequent to the attachment thereof on mesne process.(w)

Whenever an officer, having a writ of attachment or execution against any person interested in any such company, shall exhibit to the clerk or cashier thereof such writ or execution, and request a certificate from him of the number of shares or amount of interest owned by the debtor in such company, it

(u) St. M. IV. 261, 262. March 8, 1805.
(v) Ibid.
(w) Ibid. 262, 263. March 8, 1805.

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EXECUTION.

shall be the duty of such clerk or cashier to give such officer a certificate of the number of shares, or amount of interest held and owned by the debtor in such company, and therein express the numbers or other marks whereby such shares or interest are designated. And in case such clerk or cashier shall refuse to make and deliver to the officer such certificate, or shall wilfully make and deliver a false certificate thereof, such clerk or cashier shall be liable to pay to the creditor the full contents of such execution, and the amount of the judgment which may be recovered by the plaintiff on such writ of attachment, and the same may be recovered by the judgment creditor in an action of debt, in any court proper to try the same.(x)

Execution may be satisfied by real estate taken and appraised.

Whenever any judgment is obtained in any court in this state, for a sum of money, or other specie, and such judgment is not satisfied by the person or persons against whom it was rendered, by money or other specie, and the creditor can find no personal estate to his acceptance, wherewith to satisfy his execution, and shall think proper to levy the same upon the debtor's real estate, the officer to whom the execution is directed and delivered must cause three disinterested and discreet men, being freeholders, in the county, one to be chosen by the creditor or creditors, and by the debtor or debtors whose land is to be taken, if they see cause, and a third by the officer; and if the debtor or debtors neglect or refuse to choose as aforesaid, the officer must appoint one for such debtor or debtors, to be sworn before one of the justices of the peace of the same county, faithfully and impartially to appraise such real estate as shall be shown to them, who shall appraise

Appraisers, who, and how appointed.

(x) St. M. IV. 263. March 8, 1805.

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the same, to satisfy the same execution with all fees, and must set out such estates by metes and bounds, and the officer must deliver possession and seizin thereof to the creditor or creditors, his or their attorney. And when the real estate of the debtor is held in joint tenancy, in coparcenary, or tenancy in common, with the real estate of other persons, the said officer may extend execution on such debtor or debtors' real estate held as aforesaid, or part thereof, describing the same with as much precision as the nature and situation thereof will admit, and give the creditor or creditors, his or their attorney, seizin or possession of such debtor or debtor's real estate held as aforesaid, or part thereof, to hold in common with the said other persons, which execution being returned, with the doings thereon, into the clerk's office, and before such return into the clerk's office, or afterwards, and within three months recorded in the registry of deeds in the county where the land lies, shall make as good title to such creditor or creditors, his or their heirs and assigns, as the debtor had therein.(y)

EXECUTION.

Such estate to be set out by metes and bounds.

How to proceed on lands held in joint tenancy, &c.

Execution title to lands good when recorded within 3 months.

And when the real estate extended, cannot be divided and set out by metes and bounds as before prescribed, nor by the description before directed, the rents and profits of such real estate may be extended upon execution, and the officer shall give seizin thereof to the creditor or creditors, his or their attorney, and cause the person in possession and improvement to attorn and become tenant to such creditor or creditors, and pay the rent to him or them accordingly, and upon refusal thereof to turn the person so refusing out of possession, and give seizin and possession of the same to the creditor.(z)

Rents and profits may be extended on execution, if necessary, to enable the creditor to satisfy his execution.

(y) St. M. I. 169. March 17, 1784.
(z) Ibid. I. 170, 171. March 17, 1784. II. 99 Appendix xxxv.

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EXECUTION.

Equities of redemption to be sold at vendue.

When any right in equity, of redeeming real estate mortgaged, is taken by execution, the officer must make sale of the same at public vendue, and make, execute and deliver to the highest bidder, a good and sufficient deed or deeds, of the estate so sold. And in case of such taking, the officer must give notice, in writing, of the time and place of sale, to the debtor in person, or by leaving the same at his last and usual place of abode, and must post up notifications thereof, in two or more public places in the town, district, or plantation in which such mortgaged estate is situated, and also in one or more public places in two adjoining towns, thirty days at least before the time of sale, and must cause an advertisement of the time and place of sale, to be published three weeks successively before the day of sale, in some public newspaper printed in the county in which such real estate lies, if any such newspaper is there printed. And such notifications being given, or posted up within thirty days after judgment given, whereon such execution issued, the attachment will hold the equity so attached, until the levy of such execution can be completed, in manner herein after described. And if the estate so notified for sale, shall not be disposed of at the time and place appointed, the officer must adjourn the vendue, not exceeding three days, and so from time to time until the sale is completed. And the surplus monies (if any there be,) arising from such sale, beyond satisfying the debt, costs, and necessary intervening charges, the officer must return to the debtor.(a)

Surplus money received on officer's sales may be

Whenever an officer shall have in his hands any money, arising from the sale of shares or interest of any person in any turnpike bridge, canal, or other

(a) St. M. II. 854, 855. March 1, 1799.

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company, incorporated by the legislature, or from the sale of any equity of redemption, or personal property, more than sufficient to satisfy the execution or executions on which such share or interests, equity of redemption, or personal property were taken and sold, such officer shall apply the same surplus, or such part thereof as may be necessary to the payment of any other execution which he may have in his hands against the same debtor, or which may be delivered to him before he shall have paid over such surplus. Provided, however, if such share or interest, equity of redemption, or personal property shall, before such sale, have been attached on original process, other than that on which such execution shall have issued, or shall have been taken on some other execution, and the said officer is duly notified thereof, he shall hold such surplus monies subject to such attachment or execution, and must apply the same to the payment of the execution which shall issue on the judgment, which may be rendered on such original process, and delivered to him within thirty days after the rendition of such judgment, or to the payment of the execution by which such shares or interest, equity of redemption, or personal property had been taken, according to the priority in regard to time of such attachment or taking in execution.(b)

EXECUTION. applied to satisfy other executions against the same debtor.

The sheriff or other officer, to whom a writ of seizin of dower is directed, must cause the dower to be set forth by three disinterested freeholders of the same county, under oath administered by any justice of the peace, to set forth the same equally and impartially, without favour or affection, as con-

(b) St. M. IV. 263, 264. March 8, 1805.

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EXECUTION.

veniently as may be. And where no division can be made by metes and bounds, dower must be assigned in a special manner, as of a third part of the rents, issues, or profits, in manner aforesaid.(c)

No person upon whom sentence or judgment of death shall be passed, or given by the justices of the superior court of judicature, court of assize, and general gaol delivery, shall be executed and be put to death, in pursuance of such judgment, before the whole record of such proceedings or case be certified by the clerk of the same court, under the seal thereof, to the supreme executive authority of the state, nor until a warrant shall be issued by the said supreme executive authority, under the great seal of the state, with a copy of the record thereto annexed, directed to the sheriff of the county where the trial of the person so attainted as aforesaid was held, commanding the same sheriff to cause execution to be done upon the person so attainted as aforesaid, in all things according to the judgment against him. And the sheriff to whom such warrant is directed, is authorized and required to execute the same in due form of law.(d)

Whenever any person, sentenced by the justices of the supreme judicial court to suffer the punishment of death, shall make application to the governor for pardon, and the governor shall think proper, by and with the advice of the council, to grant such pardon, on condition that the person thus sentenced be imprisoned, or confined to hard labour during his or her natural life, or for a certain term of years, in the condition of such pardon to be expressed, the

(c) St. M. I. 142, 143. March 11, 1784.
(d) Ibid. II. 1052. Appendix lxxii.

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governor is authorized, in order to carry the same into effect, to issue his warrant or warrants, directed to all proper officers, and the said officers are holden to serve, execute, and obey the same, in the same manner as if such imprisonment or confinement had been the punishment in the original sentence.(e) EXECUTION.

(e) St. M. IV. 212, 213. March 6, 1804.

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V. WARRANTS OF DISTRESS.

WARRANTS OF DISTRESS.

WHENEVER any officer shall receive a warrant of distress, issued on any judgment, recovered in the name or for the use and benefit of the commonwealth, for any sum or sums of money, in any of the courts of law within the commonwealth, reciting such judgment, and directed to such officer under the seal of such court, signed by the clerk thereof, and bearing test of the chief or first justice thereof, and made returnable in the same time and manner as other judicial writs are, such officer may levy the monies mentioned and expressed in such warrant, of the money, goods or estate, of the debtor, or debtors therein named, and for want thereof, his or their body or bodies take, and him or them commit to the keeper of the common gaol of the county where apprehended. But in all cases, the sum or sums of money mentioned in such warrant, must be satisfied out of the personal estate of the debtor, where it can be done. And before the sale of any personal estate by virtue of such warrant, notice must be given of the time and place of sale, by posting up notifications thereof, by the officer executing such warrant, in two or more public places in the town or plantation where the warrant is executed, and within which the sale must be, four days at least before the time of such sale. And when it shall be necessary to dispose of real estate, to satsify such warrant in whole or in part, the officer executing the same must give public notice of the time and place of sale, by posting up notifications thereof, in two or more public places, in the town or plantation where the estate lies, and in two or more public places in two adjoining towns, thirty days before such time of sale; and if the sum necessary to be

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raised by levy on real estate amount to one hundred pounds, the officer must also cause an advertisement of the time and place of such sale, to be published in some public newspaper printed in the county wherein such real estate lies, three weeks successively before the day of sale, if any such newspaper be there printed; but if not, in a newspaper printed in the commonwealth, nearest the county where such land lies. And if the estate so notified for sale, be not disposed of at the time and place appointed, the officer must adjourn the vendue not exceeding three days, and so from time to time until the sale shall be completed; and such officer must make, execute, acknowledge, and deliver, to the highest bidder, a good and sufficient deed or deeds of such real estate so by him sold, which shall be effectual to all intents and purposes, to convey the debtor's title in such real estate to the vendee, his heirs, executors or administrators, as if the same had been made by such debtor or debtors, subject to redemption within one year, in manner by law provided. But if judgment be moved against any person or persons, whose estate or estates are confiscated, become forfeit, or otherwise transferred to the use of the commonwealth, execution must be levied in the same manner as in case of judgments moved by one individual against another, in their private capacities respectively.(a) WARRANTS OF DISTRESS.

When any sheriff shall receive from the treasurer and receiver general, such warrants as he shall from time to time be ordered to issue, for the assessing any rate or tax, such sheriff must immediately dispose of and transmit the same to the assessors of the several towns, districts and plantations, within his Sheriff to transmit rate warrants to assessors.

(a) St. M. I. 172, 173. March 17, 1794.

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WARRANTS OF DISTRESS.

And to have a reasonable allowance therefor, if, &c.

county, according to the directions thereof, for which he shall have a reasonable allowance, ordered by the court of sessions, of the same county, to be paid out of the county treasury, upon his laying the amount thereof before said court; but no allowance shall be so made, unless the sheriff produce a certificate from one of the assessors, or the clerk of each town, district or plantation in his county, or other satisfactory evidence of their having respectively received such warrants as aforesaid.(b)

Sheriff must execute distress warrants against deficient constables and collectors.

Whenever a sheriff, or deputy sheriff, shall receive any warrant of distress against any deficient constable, or collector, directed to such sheriff, or deputy sheriff, under the hand and seal of the treasurer, and receiver general of the commonwealth, or under the hand and seal of any treasurer or receiver of any county, town, district, plantation, precinct or parish, every such sheriff and deputy sheriff, so receiving such warrant as aforesaid, must without delay execute the same, according to the directions therein given, and make return of his doings thereon unto the treasurer who issued the same, within a reasonable time after the return day in the same mentioned, with the money, if any, that he hath received and collected by virtue thereof. And where the same shall necessarily be returned unsatisfied, or satisfied in part only, such treasurer may issue an alias for such sum as may remain due on the return of the first; and so *totics quoties*, which reasonable time after the return day shall be computed at the rate of forty-eight hours for every ten miles distance from the dwelling house of the sheriff, or his deputy, to the place where the warrant may be returnable; and any sheriff or deputy sheriff, who shall make

And make return in a reasonable time.

Reasonable time 48 hours for ten miles.

(b) St. M. I. 265. Feb. 16, 1786.

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default in accounting for and paying in the monies he may have collected and received of any deficient collector or constable, by warrant of distress as aforesaid, or in making return of his doings within a reasonable time as aforesaid, shall be liable to pay the whole sum in such warrant of distress mentioned; and the treasurer and receiver general of the commonwealth, and the treasurers of the counties, towns, districts, precincts, and parishes respectively, are authorized to make out their warrants respectively, directed to the coroner of such county, where any sheriff or his deputy is deficient as aforesaid, requiring them respectively as aforesaid, to distrain for the same, upon the estate real and personal of such deficient sheriff, or his deputy, as is before directed, with respect to the sheriff or his deputy making distress upon the estate of deficient constables or collectors, which warrant the coroner of any county respectively is empowered and required to execute.(c)

WARRANTS OF DISTRESS.

Liable to distress if he make default of execution, payment or return.

Coroner to serve distress warrants against sheriffs and deputy sheriffs.

When any warrant of distress, issued by the treasurer of the state or treasurer of any county, town, district, plantation, precinct or parish, to the sheriff or his deputy, or to the coroner, shall be levied on the lands, tenements, or hereditaments of any deficient constable, sheriff, or deputy, the officer executing such warrant of distress shall make sale thereof, at public vendue to the highest bidder, and execute a good deed or deeds of bargain and sale thereof to the purchaser, having first given notice of the time and place of sale, by putting up advertisements, at least fourteen days previous thereto, in two or more public places in the town or place where such lands or tenements lie; as also, in the two adjacent towns; and all deeds and conveyances of any such land,

Officers executing such warrants of distress, must sell at vendue real estate, and give deeds after having posted such estate fourteen days.

(c) St. M. I. 266, 268, 269. Feb. 16, 1786.

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WARRANTS OF DISTRESS.

duly executed as aforesaid, shall be good and effectual in law unto the purchaser, his heirs and assigns forever, to all intents and purposes, as though executed by the deficient constable, sheriff or deputy. And in case the produce of such lands and tenements shall not satisfy the sum or sums mentioned in the said warrant or warrants of distress, together with reasonable charges arising thereon, then the treasurer issuing such warrant, shall issue an alias warrant of distress for such remaining sum or sums, and the officer executing the same, for want of estate shall take the body of such deficient constable, collector, or deputy sheriff, and him commit unto the common gaol of the county whereto he belongs, until he shall pay the same. And when so committed, every such constable, collector and deputy sheriff, shall be admitted to the liberty of the gaol yard, on their procuring sufficient bonds, in the same manner as by law is prescribed for other debtors.(*d*)

For want of estate may commit constable, collector, and deputy sheriff, who may, on bonds, enjoy the liberty of the gaol yard.

Arms and household utensils, tools for tradesmen and beasts of the plough, exempt from distress.

In no case whatever shall any distress be made or taken from any person, of his arms, or household utensils, necessary for upholding life, nor of tools or implements necessary for his trade or occupation, beasts of the plough, necessary for the cultivation of his improved land, nor of bedding or apparel necessary for him and his family.(*e*)

Sheriff to levy warrant from state treasurer, on assessors who neglect to assess state tax.

Whenever the assessors of any town or district fail of the duty required of them, in not assessing and apportioning any rate or tax on the inhabitants, or estates of such town or district, such assessors having received a warrant from the treasurer and receiver general, commanding them to make such assessment,

(*d*) St. M. I. 269, 270. Feb. 16, 1786.
(*e*) Ibid. 270.

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&c. and a warrant shall be issued by such treasurer against such assessors, directed to the sheriff of the county, or his deputy, in which such town or district lies, by distress and sale of the estate real and personal of such deficient assessors, to levy the sum which they ought to have assessed and apportioned as aforesaid, and for want of such estate of such assessors to take their bodies, and them imprison until they pay the same, it is the duty of such sheriff or his deputy to execute the same accordingly.(f)

WARRANTS OF DISTRESS.

When any town or district shall neglect to choose a constable or collector, or any plantation shall neglect to choose a collector, to gather the rates or tax granted by the general court, the sheriff of the county or his deputy, having received an assessment made of the proportions of the several persons rateable in such town, district, or plantation, together with a warrant under the hands of the assessors of such town, district, or plantation, duly chosen by them respectively, or under the hands of such assessors, appointed by the court of general sessions of the peace in the county where such deficient town, district, or plantation lies, are empowered and directed to collect such rates or taxes.(g)

When towns, &c. neglect to choose constables or collector, sheriffs are empowered to collect taxes, &c.

And the sheriff, or his deputy, upon the receiving such assessment and warrant for collecting it, must forthwith post in some public place of the town, district, or plantation assessed, an attested copy of such assessment and warrant, and shall make no distress for any of the sums so assessed, until after thirty days from the posting it as aforesaid; and any person or persons paying the sum or sums respective-

Sheriff to make no distress till 30 days after posting up the assignment and warrant for collecting it.

(f) St. M. 1. 277. Feb. 20, 1786.
(g) Ibid. 305. March 16, 1786.

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WARRANTS OF DISTRESS.

His fees.

ly assessed on him or them to the sheriff, before the expiration of the aforesaid thirty days, shall pay at the rate of five per centum, over and above the sum assessed to the sheriff, for his fees, and no more; but all such as shall neglect to pay the sums assessed, beyond the thirty days aforesaid, shall be proceeded against by the sheriff by way of distress, or commitment to gaol, in the manner collectors are by law to distrain or commit to gaol. And the sheriff, or his deputy, may require suitable aid for that purpose, and they shall each one pay the fees for the sheriff's service and travel, as in other cases where distress is made on the person comitted.(*h*)

Towns, &c. neglecting to choose assessors, state and county treasurer to issue warrants to sheriff for amount of tax againstinhabitants of such towns, &c.

Sheriff or his deputy to execute such warrants, unless—

And if the inhabitants qualified to vote in town affairs of any town, district, or plantation, from which any state or county tax is due, or shall be required, neglect to choose and keep in office assessors to assess the same as the law requires, the treasurer of the state, or of the county for the time being, is authorized and directed to issue his warrant under his hand and seal, directed to the sheriff of the county, or his deputy, requiring him to levy and collect the sum mentioned, by distress and sale of the estates real and personal of any inhabitant or inhabitants, of such deficient town, district, or plantation. Which warrant the said sheriff, or his deputy, is empowered and directed to execute, observing the same rules and regulations as are by law provided for satisfying warrants against deficient collectors of public taxes. And it is the duty of the said sheriff, or his deputy, on receiving the said warrant, forthwith to transmit an attested copy thereof to the select men, or clerk of the town, district, or plantation named therein;

(*h*) St. M. I. March 16, 1786.

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and if the assessor shall within sixty days from the receipt of such attested copy, deliver to the said sheriff, or his deputy, a certificate according to law of the assessment of the tax or taxes required by said warrant, and pay the officer his legal fees, he shall forthwith transmit the same certificate to the treasurer from whom such warrant issued, and return the same unsatisfied.(i)

WARRANT OF DISTRESS.

And if such inhabitants shall choose assessors, who shall neglect to assess the tax required by the warrant issued to them, or to reassess any tax on the failure of any collector, and to certify the assessment as the law directs, and the estates of such assessors shall be found insufficient to pay the same tax, as by law is provided, the treasurer of the state or of the county for the time being, is authorized and directed to issue his warrant under his hand and seal, directed to the sheriff of the county, or his deputy, requiring him to levy and collect so much of the sum mentioned therein, as the estates of the assessors shall be insufficient to pay, by distress and sale of the estates real and personal of any inhabitant of such deficient town, district, or plantation, which warrant the sheriff or his depnty must execute, observing the same rules, regulations and provisions above mentioned to be observed, in executing warrants against inhabitants where no assessors had been chosen.(j)

If assessors are chosen and are deficient in estate, sheriff to levy warrant on inhabitants.

Where any warrant by virtue of an act, entitled "an act for the choice and appointment of assessors, and for assigning their powers and authority," is to be

Warrants against sheriff, to be served by a coroner.

(i) St. M. II. 893. Feb. 25, 1800.
(j) Ibid. 894.

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WARRANTS OF DISTRESS.

directed to the sheriff of any county, or his deputy, and the person, or any one of the persons against whom such warrant may be granted, may be a sheriff, or deputy sheriff for such county, the warrant shall be directed to and served by a coroner of the same county.(*k*)

(*k*) St. M. I. 232. Feb. 20, 1786.

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VI. PRISONS AND PRISONERS.

PRISONS AND PRISONERS.

Justices of courts of general sessions to provide gaols.

THE justices of the court of general sessions of the peace in each county, must order and direct the building and keeping in good and sufficient repair a gaol in each town in such county, where a court by law is to be holden, the expense whereof must be defrayed by a tax on the county.(*a*)

Sheriff has the custody of the gaols in his county.

And the sheriff of each county has the custody, rule and charge of the gaol or gaols therein, and of all prisoners within such gaol or gaols, and must keep the same himself personally, or by his deputy, for whom he is answerable.(*b*)

Sheriff chargeable for escape of prisoners.

And where the escape of any prisoner happens through the insufficiency of the gaol or the negligence of the sheriff or gaoler, the sheriff of the county is chargeable to the plaintiff, creditor, or other person at whose suit or for whose debt he was committed, or to whose use any forfeiture was adjudged against such prisoner; and if the escape happen through the insufficiency of the gaol, the court of general sessions of the peace in the county, have power and authority to assess the sum or sums upon the polls and estates of the county, and to order the county treasurer to pay the same over to such sheriff; and if such court do not make such assessment, and if the treasurer do not pay such sum or sums within six months next after the demand be laid before said court, such sheriff may bring his action against the inhabitants of such county, to be heard and tried, either in that or one of the next adjoining counties, at his election. And an attested copy of the writ, being left thirty days before the

And if by reason of insufficiency of gaol, county liable to sheriff.

His remedy by action in his own or an adjoining county.

(*a*) St. M. I. ¶ 8. Feb. 21, 1785.
(*b*) Ibid. 5 March 12, 1784.

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PRISONS AND PRISONERS.

sitting of the court with the county treasurer, by the coroner of the same county, shall be sufficient notice of the suit; and the justices of the court of general sessions of the peace have power to appoint an agent or agents, to appear and defend against such action. And when the suit is commenced in another county, and no court of sessions is holden in the county sued, between the time of the service of the writ and the setting of the court before which the action is brought, the cause must be continued one term, and all advantages be saved to the defendants, as though they appeared at the first term; and if judgment be given against the county, the debt may be levied by execution, upon the goods, chattels or lands of any inhabitant or inhabitants of the county.(c)

His execution against the county, how collected.

If any person shall directly or indirectly, by any ways or means however, without the knowledge or privity of the keeper, convey any instrument, tool, or other thing whatsoever, to any prisoner, or into any prison, whereby any prisoner might break the prison, or work himself unlawfully out of the same, every person so offending shall forfeit and pay such fine as by the discretion of the court shall be imposed, not exceeding *one hundred pounds*, according to the nature of the case of the prisoner's commitment, suffer such corporal punishment, not exceeding forty stripes, as the court shall inflict; and if any prisoner shall escape by means of any instrument, tool, or other thing, so conveyed without the knowledge and privity of the keeper, the person so conveying the same shall be liable to pay all such sums of money as the prisoner stood committed for, and shall have inflicted on him all such punishment as the escaped prisoner would be liable to, if he had

Penalty for conveying any instrument or tool into prison.

And if any prisoner thereby escape, further penalty.

(c) St. M. I. 218, 219. Feb. 21, 1785.

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been convicted of the charge for which he stood committed, unless such prisoner would have been liable to capital punishment, in which case the person assisting in such escape, shall be punished by fine, imprisonment, whipping, pillory, or sitting on the gallows with a rope about his neck, or any one or more of the said punishments, as the court shall think proper to inflict.(d)

PRISONS AND PRISONERS.

And every gaoler or prison keeper, who shall voluntarily suffer any prisoner committed unto him to escape, shall suffer and undergo the like pains, punishment, and penalties, as the prisoner so escaping should by law, for the crime or crimes wherewith he stood charged, if he had been convicted thereof. And if any gaoler or prison keeper shall, through negligence, suffer any prisoner accused of any crime to escape, he shall pay such fine as the justices of the court before whom he is convicted, shall in their discretion inflict, according to the nature of the offence for which the escaped prisoner stood committed. But if any person committed for debt shall escape from prison, and the sheriff, the gaoler, or prison keeper, shall within three months next after such escape, recover the prisoner so escaped, and return him to prison again, the sheriff shall be liable to nothing further than the cost of any action which may have been commenced against him for such escape.(e)

Penalty on the gaoler for a voluntary escape.

For a negligent escape.

Proviso in case of escape of debtors.

Every sheriff must keep a true and exact calendar, or register, of all prisoners committed to any prison under his care, and the same must be kept in a large bound book, provided and kept for that purpose only, and in the same book must be distinctly and fairly

Sheriff to keep a true register of all prisoners.

(d) St. M. I. 219. Feb. 21, 1785.
(e) Ibid. 219, 220. Feb. 21, 1785.

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PRISONS AND PRISONERS.

registered, the names of all prisoners who shall from time to time be committed to prison, with their names, places of abode, addition, the time of their commitment, for what cause and by what authority committed; and of such as are committed for criminal offences, a description of their persons: and also from time to time, as any prisoner shall be liberated, the sheriff must also register in the same book the name and description of the person as aforesaid, the time when and the authority by which such liberation took place, and if any prisoner escape, the time and manner of the escape must be noted in the said book.(f)

Gaolers to return a list of their prisoners.

Every gaoler or prison keeper, at the opening of the supreme judicial court, or the court of general sessions of the peace, within the county where he keeps the gaol, must return a list of prisoners in his custody, therein certifying the cause for which, and the persons by whom they were committed, and the names of all persons who are committed during the sitting of either of said courts, with the cause of their commitment, that the justices of said courts respectively may take cognizance thereof, as well for the commonwealth as for the parties, and proceed to make deliverance of such prisoners, according to law, for the crimes proper to the jurisdiction of the same courts respectively, and must also have the said calendar, or register of prisoners, ready to be inspected by the said courts; and if any gaoler make default herein, he shall be fined at the discretion of the court.(g)

Warrants and mittimusses

All warrants, mittimusses, writs, and instruments of any kind, or the attested copies of them, by which

(f) St. M. I. 220. Feb. 21, 1785.
(g) Ibid. 220, 221. Feb. 21, 1785.

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PRISONS AND PRISONERS.

to be filed in their order.

Upon removal or death of sheriff, to be delivered to his treasurer.

any person is committed, enlarged, or liberated, must be safely kept, regularly filed in their order and time, together with the said calendar or register, in a suitable box for that purpose; and upon the death or removal of any sheriff, must be delivered to his successor in the office, on the penalty of fifty pounds, to be paid by the sheriff removed, or his executors or administrators, in case of his death, to be recovered by any person who shall prosecute therefor, in any court proper to try the same.(*h*)

Apartments to be provided for debtors separate from criminals.

Justices must inquire into the state of prisons.

The justices of the court of general sessions of the peace, in the several counties, must provide, at the expense of each county respectively, sufficient and convenient apartments, for receiving and lodging prisoners for debt, separate and distinct from felons and other criminals, and must at the beginning of every quarter sessions, inquire into the state of the prisons in their respective counties, with respect to the security of such prisons from escape, the condition and accommodation of the prisoners; and must from time to time take such measures as may best tend to secure them from escape, sickness, and infection.(*i*) And any person imprisoned for debt, either upon mesne process or execution, must be permitted and allowed to have a chamber and lodging in any of the houses or apartments belonging to such prisons, and liberty of the yard within the same in the day time, but not to pass without the limits of the prison, upon reasonable payment to be made for chamber room, to be set and established once in every year by the court of sessions, and not to exceed *two shillings* a week, if such prisoner shall give bond with sufficient surety or sureties within the

(*h*) St. M. I. 221. Feb. 21, 1785.
(*i*) Ibid.

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PRISONS AND PRISONERS.

county, to the creditor or creditors, in double the sum for which he is imprisoned, conditioned that from the time of executing such bond he will continue a true prisoner, in the custody of the gaoler, and within the limits of the said prison, until he shall be lawfully discharged, without committing any manner of escape; which surety or sureties being approved of, by two disinterested justices of the peace, *quorum unus*, called for that purpose, shall be deemed sufficient; and if the creditor or creditors refuse to take the bond, it shall be left with the sheriff until such creditor or creditors shall demand the same.*(j)*

Disputes as to the price of articles provided for prisoner by gaoler to be determined by court of sessions.

Whenever any dispute shall occur about the price or compensation demanded by the gaoler or prison keeper, for articles provided for a prisoner while in prison under his custody, the court of general sessions of the peace for the county in which such gaol stands, are authorized to hear, and finally determine all such disputes.(*k*)

No person imprisoned on mesne process to be held in gaol above 30 days, unless, &c.

No person imprisoned upon mesne process, may be held in prison upon such process above the space of thirty days next after the entering up final judgment upon the writ whereby he is committed, unless continued there by having his body taken in execution, nor may the prison keeper discharge any such prisoner, unless judgment is given in his favour, until thirty days next after such judgment is entered

* No prisoner in any gaol having given bond for the liberty of the gaol yard, in conformity to law, is guilty of an escape for having entered into or upon any private estate or property, or into any public building, or upon any public highway or town way lying within the limits of such gaol yard. St. M. V. 493, 494.

(*j*) St. M. I. 221. Feb. 21, 1785.
(*k*) Ibid. 222. Feb. 21, 1785.

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up, unless the party at whose suit he was committed shall give order in writing for his discharge, and shall pay the legal fees of the gaoler.(*l*)

PRISONS AND PRISONERS.

No person convicted of theft, and sentenced for the same, shall be held in prison, for, or on account of the treble value awarded to the party injured, for more than the space of thirty days next after such sentence given, unless the party injured, or some one in his behalf, will become engaged or give security to the keeper of the prison to pay and satisfy his charge and expense in keeping such prisoner, both for the time past and future, according to the rate allowed for keeping prisoners in the same gaol by the justices of the quarter sessions; and if the person injured refuse or neglect so to do, and shall not dispose of or take such prisoner in service, the keeper shall be no longer chargeable with such prisoner, but may set him at liberty, and in every such case, the prisoner shall pay and satisfy the costs of court, his own fees, and charges of imprisonment; and if he be unable so to do, on application by the keeper of the gaol to any two justices, *quorum unus*, they are empowered to determine the sum to be paid, and to order and enjoin the prisoner to make satisfaction by service, for such reasonable time as they may assign, for which time the keeper may dispose of such prisoner in service to any citizen of the United States, unless the court before whom the conviction was, shall have sentenced such prisoner to hard labour, to take effect if the party do not dispose of him as aforesaid, in which case the said prisoner shall be delivered over by the prison keeper to hard labour, according to the provisions of law.(*m*)

No person convicted of theft to be held in prison above 30 days on account of treble damages, unless, &c.

(*l*) St. M. I. 206. Oct. 30, 1784.
(*m*) Ibid. 234. March 15, 1785.

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PRISONS AND PRISONERS.

Convicts may be disposed of in service.

The court of general sessions of the peace, of the county where any person convicted of any crime either in the supreme judicial court, court of general sessions of the peace, or before a justice of the peace, has been imprisoned three months for costs of prosecution only, may order the sheriff to dispose of such convict in service to any person whatever, for a time not exceeding two years, for the payment of such costs. And if such disposal cannot be made, the same court may order the sheriff to liberate such convict, on such terms and conditions as they may judge best for the commonwealth and county, all which orders must be duly executed by the sheriffs respectively, and a return of their doings therein made to the court issuing such order.(*n*)

The justices of the supreme judicial court may, on motion, order the sheriff of any county in which such court may then be holden, to liberate from prison any poor convict who was committed to prison by order of such court, and has lain in prison three months for fine and costs only, and stands committed for no other cause, and has not estate sufficient to pay such fine and costs, on condition that such convict give his own note payable to the treasurer of the county for such fine and costs.(*o*)

Poor convicts may be discharged in certain cases by order of court.

And the several courts of common pleas in the commonwealth, at any term of their respective courts, may on motion for that purpose made, order the sheriff of such county to liberate any poor convict, committed to prison by the order of any justice of the peace, or of the court of general sessions of the peace, or of such court of common pleas within

(*n*) St. M. II. 862. (IV. 64.) June 18, 1799. IV. 64. June 4, 1802.
(*o*) Ibid. IV. 329. March 7, 1806.

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such county, if such convict has lain in prison three months for fine and costs only, and stands committed for no other cause, and has not estate sufficient to pay such fine and costs, upon condition that such convict give his own note payable to the treasurer of such county for such fine and costs. And the judge of the municipal court in the town of Boston, has the same powers and authority in the county of Suffolk, for the liberation of prisoners as above, as are possessed by the justices of the court of common pleas.(p)

PRISONS AND PRISONERS.

Person convicted of theft may not be holden in gaol for satisfaction to owner of the property stolen, unless, &c.

No person convicted of theft, and sentenced to fine and imprisonment in the common gaol, and to pay to the owner of the money, goods or other article or articles stolen, and not restored or satisfied for the amount or value of such money, goods or other article or articles, may be held in gaol for such satisfaction of the amount or value as aforesaid, for no longer a term than thirty days, unless such owner shall give security to the keeper of the gaol to satisfy the charge of keeping such prisoner from and after that time, according to the rate allowed for keeping prisoners in the same gaol. And if such owner refuse or neglect so to do, and do not take such prisoner in service, nor dispose of him to some other person according to the sentence of the justices before whom the conviction was had, the keeper may no longer keep such prisoner for that purpose, but may set him or her at liberty after the expiration of the term of imprisonment, if any ordered by the sentence, and after the payment of costs of court and his own charges of imprisonment. And if he or she be unable to pay the same, upon application of the keeper of the prison to any two justices of the quo-

(p) St. M. IV. 339. March 7, 1806.

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PRISONS AND PRISONERS.

rum within the same county, they may determine the sum to be paid, and order such prisoner to make satisfaction by service, for such reasonable time, not exceeding two years, as they may assign; for which time the keeper may thereupon dispose of such prisoner, in service, to any citizen of the United States. And if he or she cannot be so disposed of after being confined three months for costs or fine, and costs only, the justices of the court of common pleas of the same county may, at their discretion, order such prisoner to be discharged, upon such security as they may judge proper.(q)

In Boston, prisoners attacked with contagious disease may be removed to Rainsford Island.

Whenever any person confined in gaol in Boston, shall be attacked with any contagious, malignant fever, and in the opinion of any two respectable physicians, endangers the health of other prisoners in said gaol, or the inhabitants of the neighbourhood, the sheriff or gaoler of the county must make known the situation of such prisoner to the board of health for the town of Boston, who, if they see fit, may assign an apartment for the reception and accommodation of such prisoner upon Rainsford Island, and such sheriff must remove such prisoner, and cause such apartment to be effectually secured, so that such prisoner may not escape from his custody, or to appoint some person to guard him in his confinement. And the apartment in which such person shall be, during his removal and confinement at Rainsford Island, shall be considered as the common gaol of the county, and the whole expense of such removal and safe keeping, and also the expense of such physician as may attend him, and all other necessary expenses which may occur in consequence thereof, must be paid by such prisoner, if able, otherwise in like manner as such expenses have been usually

(q) St. M. IV. 300, 301. March 16, 1806.

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paid. But if such prisoner be confined for debt, his consent to such removal, and also the consent of the creditor, must first be obtained. And if such prisoner has the liberty of the gaol yard in Boston, the consent of the sureties of such prisoner to his removal must be first had in writing. And any act of a prisoner so removed, which would have been an escape had he remained in the gaol in Boston, shall be an escape, and may be assigned as a breach of the condition of the bond given for the liberty of the yard.(r)

Mode of proceeding when poor prisoners wish to take the oath by law provided for their liberation from prison.

When any person, standing committed by force of any execution issuing out of any court in this commonwealth, on a judgment recovered by any person, or issued on confession of the debtor before a justice of the peace, shall complain that he or she hath not estate sufficient to support him or her in prison, the gaoler or keeper of such prison must on such complaint apply to one of the justices of the peace, within and for the county within which such prison is, who must thereupon make out a notification in writing, under his hand seal, thereby signifying to the creditor or creditors such prisoner's desire of taking the privilege and benefit allowed in and by an act, entitled, "*An Act for the relief of poor prisoners, who are committed by execution for debt,*" and of the time and place appointed for the intended caption of the oath or affirmation allowed by said act, and which being served on the creditor or creditors of the said prisoner, (if he, she or they live within this commonwealth,) his or her executor or administrator; and if such creditor or creditors live out of the commonwealth, upon his or their agent or attorney, who brought forward the suit on which

(r) St. M. IV. 161. June 18, 1803.

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PRISONS AND PRISONERS

the judgment whereon the execution by which the prisoner stands committed was rendered, by the sheriff, or his deputy, of the county in which the said service shall be made, either by reading the same to him or her, or by leaving a true and attested copy thereof at the usual place of abode of such creditor or creditors, agent or attorney as aforesaid, at least thirty days before the time appointed for taking the said oath or affirmation, that he, she or they may be present, if they see cause. And if any creditor or creditors live out of this commonwealth, and have no agent or attorney as aforesaid living in the same, an attested copy of such notice must be left with the clerk of the court, or the justice by whom said execution was signed, at least fifty days before such intended caption.(s)

Two justices of the peace and quorum, empowered to administer an oath or affirmation.

Any two justices of the peace, within and for the county where such caption is to be taken, each of whom must be of the quorum, and disinterested, and not related to either creditor or debtor, are authorized and empowered, at the time and place appointed for the taking such caption, to examine the return of such notification, and if it shall appear to be duly made, to administer the said oath or affirmation, after fully examining and hearing the parties, if they, the said justices, shall think proper so to do, to such debtor, which oath or affirmation is in the

Form of oath.

form following, to wit: "I, —— do solemnly swear, before Almighty God, (or affirm, as the case may be,) that I have not any estate, real or personal, in possession, reversion or remainder, sufficient to support myself in prison, or to pay prison charges, except the goods and chattels exempted from attachment and execution, by an act, entitled, "An act to

(s) St. M. I. 401. 402. Nov. 19, 1786. Ibid. 466. June 22, 1789.

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exempt certain goods and chattels of debtors from attachment and execution," and that I have not since the commencement of this suit against me, or at any other time, directly or indirectly sold, leased, or otherwise conveyed, or disposed of to, or entrusted any person or persons whomsoever with all, or any part of the estate, real or personal, whereof I have been the lawful owner or possessor, with any intent or design to secure the same, or to receive or to expect any profit or advantage therefor; or have caused, or suffered to be done, any thing else whatsoever, whereby any of my creditors may be defrauded. So help me God," (or "this I do under the pains and penalties of perjury") as the case may be.

PRISONS AND PRISONERS.

Which oath or affirmation, being administered by the said justices to, and taken by such prisoner, and a certificate thereof made under the hands and seals of the justices administering the same, to such gaoler or prison keeper, he shall thereupon set such prisoner at liberty, if he or she is committed for no other cause, and the body of such prisoner shall not be held in prison any longer upon such execution, which certificate to be made by the justices as aforesaid, must be in the form following, to wit:

Certificate of such oath must be made.

S. —— ss.

To ——, keeper of the gaol at ——.

We the subscribers, two of the justices of the peace for said county of S——, and each of us of the quorum, hereby certify, that A. B. a poor prisoner confined upon execution for debt, in the gaol at C. aforesaid, hath caused D. E. the creditor at whose suit he was so confined, to be notified, according to law, of his desire to take the benefit of an act, entitled, "An Act for relief of poor prisoners, who

Form of the certificate.

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PRISONS AND PRISONERS.

are committed by execution for debt," that in our opinion the said A. B hath not any estate, either real or personal, sufficient to support himself in prison, and that he hath not conveyed or concealed his estate, with design to secure the same to his own use, or to defraud his creditors, and that we have, after due caution to the said A. B. administered to him the oath (or affirmation) prescribed in the act aforesaid.

Witness our hands and seals, this —— day of ——, Anno Domini ——.(t)

Like proceedings on commitment of warrant for collecting taxes.

And by an act, entitled, "An Act for the relief of poor prisoners, confined in gaol for taxes," the like proceedings may be had for their liberation. And in such case, such notifications must be served on the assessors of the town, district, plantation or parish where the rate, tax, or assessment was made; and also on the constable or collector who executed the warrant, by virtue of which such poor prisoner was committed, at least thirty days before the time appointed for the taking the oath or affirmation. And the oath or affirmation is in the form following, to wit:

Form of oath.

"I, ——, do solemnly swear, before Almighty God, (or affirm, as the case may be,) that I had not, at the time of my imprisonment, nor have I at this time, any lands, goods, money or demands, whereby to satisfy the sum at which I am assessed in the list or warrant of taxes, committed to him to collect, and for which I am now holden in prison, or for the payment of any part of that sum, my necessary apparel and some other articles not liable to be dis-

(t) St. M. I. 401, 402, 403. Nov. 19. 1787. IV. 342 March 1, 1805.

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trained for taxes, and what has been expended for my necessary support while in prison only excepted; nor have I at any time before or since my said imprisonment, disposed or entrusted to any person or persons any estate, either real or personal, whereby to avoid such payment. So help me God," (or "this I do under the pains and penalties of perjury," in the case of affirming.) And the certificate to be given by the justices administering the oath, must be in the form following, to wit: PRISONS AND PRISONERS.

"S——, ss. To ——, keeper of the gaol at C——. Form of certificate.
"We the subscribers, two justices of the peace, and of the quorum, for the county of S——, hereby certify, that A. B. a poor prisoner confined by warrant for taxes in the gaol at C. aforesaid, hath caused the assessors of the town, district or parish (as the case may be,) by virtue of whose warrant the said —— was so confined, and also —— (naming the said constable or collector who executed such warrant) to be notified according to law, of the said A. B's desire of taking the benefit of an act, entitled, "An Act for the relief of poor prisoners, confined in gaol for taxes," and no sufficient cause to the contrary being shown, we administered to him (or her) the oath (or affirmation) prescribed in the act aforesaid. Witness our hands and seals, this —— day of ——, Anno Domini ——." On the receipt of which certificate, such prisoner must be set at liberty, as in the case of commitment on execution.(u)

Whenever any person shall be convicted of any offence against government, and shall have suffered the penalties of the law therefor, and cannot therefore be admitted as a witness in any civil or criminal

(u) St. M. I. 505, 506. March 10, 1791.

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PRISONS AND PRISONERS

action, and shall afterwards be committed for debt, and being poor and indigent, shall be unable to pay prison charges, he may be admitted to take the oath by law provided for the relief of poor prisoners, committed for debt, he being otherwise entitled to the privileges thereof.(v)

Gaolers must receive and safe keep prisoners committed under authority of the United States.

The keepers of the several gaols in the state, must under the like penalties as by law are provided for the custody and safe keeping of the prisoners thereof, take custody of and safely keep all prisoners committed under the authority of the United States, until they shall be discharged by due course of the laws thereof.(w)

(v) St M IV. 253. March 1, 1805.
(w) Ibid. I. 487. Feb. 26, 1790.

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VII. HABEAS CORPUS.

HABEAS CORPUS.

Duty of officer or other person on writ of habeas corpus, directed to them.

WHENEVER any officer, or other person, imprisoning or restraining any person of his or her personal liberty, shall have tendered to him a writ of habeas corpus, awarded in term time, signed by the clerk of the supreme judicial court, tested by the first justice, who is not a party thereto, and sealed with the seal thereof; or if awarded in vacation, under the hand and seal of any one or more of the judges of said court, directed to such officer or other person, returnable forthwith to such court or judge, such officer or other person must receive such writ, and upon payment or tender of such charges for bringing the person so imprisoned or restrained from the place of imprisonment, as the court or judge who grants the writ shall order, if the person imprisoned be confined in a common gaol, or under the custody of an officer, otherwise without such payment or tender, to the place mentioned in the writ, such officer or other person, must have the body of the person imprisoned before the court or judge awarding the writ, (unless committed and detained for treason, felony, or for suspicion thereof, or as accessary to the latter before the fact plainly and specially expressed in the warrant of commitment,) or persons convict, or in execution by legal process criminal or civil, or committed on mesne process in any civil action for want of reasonable bail, (and persons with regard to whom the benefit of the said writ shall be suspended by the legislature agreeable to the constitution,) at the place in said writ of habeas corpus mentioned, within three days, if within twenty miles from the place of imprisonment; if more than twenty, but within one hundred miles, then within twenty days after the

Must receive such writ and execute it.

In what time.

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HABEAS CORPUS.

receipt thereof, and must then return the same, and certify thereon the true and all the causes of his or her taking and detaining. But if after awarding such writ by the said court, in term time, but before the return thereof, the said court shall rise or be adjourned, the same with the body of the person imprisoned, and causes of taking and detaining, must be returned and certified before some judge of the supreme judicial court.(*a*)

And must make return of causes of detention of the prisoner to the court or some judge thereof.

Officer must give the prisoner a copy of his warrant of commitment if demanded, under penalty of £50

Penalty for disobedience to writ of habeas corpus, £1 0.

And to action of the party.

If any officer in whose custody any prisoner shall be, shall not, within six hours after demand made, deliver such prisoner a true copy of the warrant or process by which he stands committed, such officer shall forfeit to the party grieved the sum of *fifty pounds*. And if any officer to whom any writ of habeas corpus is directed, shall refuse to receive the same, or after receipt thereof shall refuse or neglect to yield such obedience thereto, as is required by an act, entitled, "*An Act directing the process in habeas corpus*," (the complainant performing the conditions required aforesaid,) unless prevented by the sickness of the prisoner, or other necessity, he for such refusal or neglect in each and every particular, shall forfeit to the party grieved the sum of *one hundred pounds;* and for any false return of said writ shall be further liable to the action of the party.

And to attachment by the court or judge.

And the court or judge respectively, may further punish every disobedience to such writs as for a contempt, and compel obedience thereto by process of attachment.(*b*)

Prisoner may not be shifted from one prison or officer to another, unless,—

And to prevent any attempts being made to deprive any prisoner of the benefit of his habeas corpus, by shifting the custody of such prisoner from one prison

(*a*) St. M. 237, 238. March 16, 1785.
(*b*) Ibid. 1. 239.

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or one officer to another, or sending him away, every person duly ordered to be committed for any criminal or supposed criminal matter, must be carried as soon as may be, and confined in some common gaol, and not elsewhere, (except persons sent to the workhouse or house of correction, for due cause,) and must not be delivered from one officer to another, except for the more easy and speedy conveyance of the prisoner to such gaol, nor be removed without his consent, from one county to another, unless by *habeas corpus* or some other legal writ, under the penalty of forfeiting for every offence, to the party grieved, one hundred pounds.(c)

HABEAS CORPUS.

Penalty therefor, £100.

(c) St. M. I. 239. March 16, 1783.

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VIII. DE HOMINE REPLEGIANDO.

HOMINE REPLEGIANDO.

On writ de homine replegiando, sheriff must take bonds before deliverance.

WHEN the plaintiff is delivered by a writ *de homine replegiando*, returnable into the supreme judicial court, having been committed for any offence, and from which commitment he is repleviable, he shall, before he is delivered, recognize before the sheriff of the county in person, with sufficient surety or sureties, in a reasonable sum for his appearance at the same court, to answer, abide and perform the order and sentence of the same; which recognizance must be returned into court by the sheriff. And when the plaintiff shall be delivered by a like writ, returnable into the court of common pleas, he shall before his deliverance give bond to the use of the defendant, with sufficient surety or sureties, at the discretion of the sheriff, to appear at the court to which the writ is returnable, and there to prosecute his replevin against the defendant, to have his body there ready to be redelivered as the court shall order, and to pay all damages and costs that may be awarded against him. And the sheriff will be answerable if the sureties prove insufficient, unless they are such as the defendant agrees to. And if the sheriff shall return upon the writ *de homine replegiando*, issuing from the court of common pleas, that the defendant hath eloigned the plaintiff's body so that he cannot deliver him, the plaintiff shall, on motion to the court, have a *capias in withernam*, to take the defendant's body, and to keep the same until he shall produce the plaintiff, to be delivered according to the commandment of the original writ; but if the defendant shall give full and sufficient bail for

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his appearance at the court to which the writ is returnable, then and there to traverse the return of the sheriff upon the writ *de homine replegiando*, the sheriff must take such bail.(a)

HOMINE REPLEGIANDO.

(a) St. M. I. 363, 364. Feb. 19, 1737.

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IX. JURORS.

JURORS.

Sheriff to forward venires to constables.

WHENEVER the sheriff of any county shall receive from the clerk of the supreme judicial court, or court of common pleas, or general sessions of the peace, a *venire* for jurors, he must without delay forward such *venires* to the constables of the several towns whereunto they are directed;(*a*) and for neglect of duty therein, each sheriff will be liable to such fine or amercement as shall be ordered by the court to which such venire was made returnable, not exceeding fifty dollars.(*b*)

By order of court to return jurors, de talibus circumstantibus.

And when from challenges, or otherwise, there shall not be a jury to determine any civil or criminal cause, the sheriff or his deputy must, by order of the court where such defect of jurors shall happen, return jurors *de talibus circumstantibus*, sufficient to complete the pannel: and when the sheriff or his deputy is interested or related, jurors may be returned by the coroner, or such other disinterested person as the court shall appoint.(*c*)

To summon jury to inquire of nuisance.

And when any two justices of the peace, *quorum unus*, on complaint to them made, shall issue any warrant directed to the sheriff of the same county, commanding him in behalf of the commonwealth, to cause to come before them a jury of twelve good and lawful men of the same county, to inquire into any nuisance erected, created, or continued by any person or persons, such sheriff must cause such jury to be drawn in equal proportions out of the

(*a*) St. M. V. 384. March 12, 1808.
(*b*) Ibid 391, 392 March 2, 1808.
(*c*) Ibid. 386. March 12, 1808.

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jury box for the supreme court, by the select men of the three towns next adjoining the town in which such nuisance may be, at a meeting of such select men to be holden forthwith for that purpose. And if by accident or challenge, there shall happen not to be a full jury, the sheriff must fill the pannel, de talibus circumstantibus.(*d*) JURORS.

Whenever any sheriff shall receive any warrant, under the hands and seals of any two justices of the peace, *quorum unus*, both of his county, commanding him in behalf of the commonwealth, to cause to come before them twelve good and lawful men of the same county, each having freehold lands or tenements to the yearly value of *forty shillings*, to be impannelled and sworn to inquire into any forcible entry or detainer, or both, as the case may be, he may select such jurors from the body of the county, without having recourse to the jury boxes in the several towns. And if by accident or challenge, there shall not be a full jury, the sheriff shall fill the pannel de talibus circumstantibus, as in other cases.(*e*)

(*d*) St. M. IV. 30, 31, 33. June 19, 1801.
(*e*) Ibid. I. 190, 191, 192. June 30, 1784.

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X. ELECTIONS.

ELECTIONS.

Sheriff to return votes for governor, lieutenant governor, and senators.

WHENEVER after the first Monday in April, and at least thirty days before the last Wednesday in May in each year, the sheriff of any county shall receive from the clerk of any town, district or plantation in his county, any packet sealed up, directed to the secretary of the commonwealth for the time being, with a superscription expressing the same to contain a copy of the list and record of the votes of such town, district, or plantation, for either governor, lieutenant governor, or counsellors and senators of the commonwealth, taken according to law, such sheriff must cause the same to be delivered into the secretary's office, at least seventeen days before the last Wednesday in May, annually.(*a*)

Penalty for neglect.

And any sheriff who shall neglect to make such return into the secretary's office as aforesaid, within the time prescribed, shall forfeit and pay a sum not exceeding *five hundred dollars*, nor less than *fifty dollars* for each offence.(*b*)

To do the same with votes for representatives in congress.

And whenever an election of representatives in congress shall be held, in pursuance of the statute law in such case made and provided, and within fourteen days after the first monday in November, the day of holding such election biennially, wherein by law such representatives are chosen, any sheriff shall receive from the select men of any town or district within his county, by law entitled to hold meetings for the purpose of such election, a packet sealed up directed to the secretary of the commonwealth,

(*a*) St. M. 26, 31, 35. Const.
(*b*) Ibid. II. 718. Feb. 24, 1796.

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ELECTIONS.

with a superscription expressing the same, to contain a copy of the list and record of votes given in such town or district for representatives as aforesaid, and certified by the select men of such town or district, such sheriff must within forty days next after such first Monday in November, transmit the same to the secretary of the commonwealth. And in case no person shall be chosen by a majority of the votes returned from any congressional district, and the governor shall cause a precept to issue to the select men of the several towns and districts in such congressional district, directing and requiring such select men, to cause the inhabitants of their respective towns and districts to assemble on a day in such precept appointed, to give in their votes for a representative in congress (which precept must be accompanied with a list of the persons voted for in such congressional district, and shewing the number of votes for each person voted for, according to the first return) and such precept shall come to any sheriff in such district, he must seasonably transmit the same to the select men of the several towns and districts, and to the assessors of the several districts and plantations where there may be no selectmen within his county, to whom such precept is directed. And when such selectmen shall make return as aforesaid to the sheriff, in manner aforesaid, within fourteen days next after the meeting to be held in obedience to said precept, the sheriff must make return thereof into the secretary's office, on or before such day as the governor shall appoint in such precept. And the like proceedings must be had as often as any district shall fail of completing the choice of their representatives. For which services in transmitting such precepts to the select men, &c. as aforesaid, sheriffs shall be entitled to receive, out of the treasury of the commonwealth, for each copy of the

Must distribute precepts for elections.

His reward for said services.

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ELECTIONS.

precepts so distributed, fifty cents. But the sheriff who shall neglect seasonably to transmit all and every of the copies and precepts by him received in manner aforesaid, shall be entitled to no compensation for distributing any of such copies or precepts. And for returning the votes as aforesaid, each sheriff shall be entitled to receive twenty cents per mile, computing from the place of abode of each sheriff to the secretary's office. And the sheriffs must present their accounts to the committe of accounts, for examination and allowance. And any sheriff who shall neglect to perform the duties aforesaid enjoined upon him to perform, shall for each neglect forfeit and pay to the use of the commonwealth the sum of two thousand dollars, to be recovered by actionof debt.(c)

Penalty for each neglect £ 600.

(c) St. M. IV. 57, 58, 59. March 10, 1802.

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XI. SICKNESS.

SICKNESS.

SHERIFFS, deputy sheriffs and constables, must execute all warrants issued in the name of the commonwealth by two justices of the peace, with the advice and direction of the select men of the town or place where are any person or persons sick, or infected with small pox, or other malignant distemper, to remove such sick or infected person or persons, or to impress or take up convenient houses, lodging, nurses, attendance, and other necessaries for the accommodation, safety, and relief of such sick.(a)

And warrants issued by a justice of the peace, under his hand and seal, to impress as many men as such justice shall deem necessary to secure any baggage, cloaths, or other goods suspected of being infected with the plague, small pox, pestilential fever, or other malignant, contagious distemper, and such men to post as a guard over the house or place where such baggage, cloathing or goods are lodged.(b) And to impress and take up convenient houses or stores, for the receiving, lodging and safe keeping of such baggage, cloathing or other goods, until the same shall be sufficiently cleansed from infection. And warrants to remove such baggage, cloathing or other goods, to some convenient place, where there shall be least danger of the infection spreading. And such officers respectively, in the execution of such warrants, may if need be, break open any house, warehouse, shop, or other place particularly mentioned in such warrant, where such baggage, cloathing

(a) St. M. II. 790. June 22, 1797.
(b) Ibid.

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SICKNESS.

or other goods may be. And in case of opposition, may requrie such aid as shall be necessary to the execution of such warrants, and repel such opposition. And all persons commanded by any such officer having any such warrant, must assist such officer in the execution of such warrant, under the penalty of *ten dollars*. And all charges incurred in the securing such baggage, cloathing, or other goods, and of airing and transporting the same, must be paid by the owners thereof, at such rates and prices as shall be set by the select men of the town where they are to be removed, in an action of debt, by any person or persons employed in the business.(c)

Constables and other proper officers, must execute all warrants issued by a justice of the peace, for the removal of persons coming from any place out of the state where the small pox or other malignant distemper is prevailing, back to the state from whence such persons came.(d)

(c) St M II. 790, 791. June 22, 1797.
(d) Ibid. 789.

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XII. INSPECTION LAWS.

INSPECTION LAWS.

SHERIFFS, deputy sheriffs and constables, must execute warrants issued by a justice of the peace for the seizure of any tobacco, butter, or hogslard, put on board any ship or other vessel, the casks or kegs containing the same not being marked, or impressed with a burning iron, with the letters A. P. and with the name of the town where approved, and the name of the inspector at large, and also, with the letter I. on casks of tobacco.(*a*)

And all such warrants, to seize any casks of lime sold, or exposed to sale, or attempted to be exported, not impressed on one of the heads with a burning iron, with the name of the manufacturer, and with the name of the town or place where manufactured, both at length, and the contents of such casks in figures.(*b*) And all such warrants for the seizure of any pickled or barrelled fish, put on board any boat, vessel or carriage of conveyance, with an intent to export the same from the commonwealth, not inspected and branded according to law.(*c*) And all such warrants, for the seizure of any green or unmanufactured calf-skins, put on boad of any vessel or float bound out of the commonwealth, with intent to export such calf-skins out of the commonwealth.(*d*)

Sheriffs, deputy sheriffs and constables, must also execute any warrant issued by the inspector of hops, or by any of his deputies, for the seizure of any hops shipped on board of any vessel for exportation out of the commonwealth, such hops not having been inspected and marked as the law directs.(*e*)

(*a*) St. M. I. 254, 255. Nov 8, 1785.
(*b*) Ibid. II. 633, 634. Feb. 26, 1794.
(*c*) Ibid IV 179 June 23, 1803.
(*d*) Ibid. I. 416 March 31, 1788.
(*e*) Ibid. IV. 370. June 24, 1806.

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XIII. CORONERS.

CORONERS.

Coroners authorised to act as sheriffs when sheriffalty is vacant.

WHEN the office of sheriff in any county becomes vacant, by death, resignation, removal or otherwise, the several coroners of such county are respectively authorised and empowered to execute and return all writs and precepts which are by law appointed to be executed and returned by the sheriff, until another sheriff for such county shall be appointed, and legally qualified, and such coroner shall have notice thereof. And the person who may be appointed sheriff of any county, and legally qualified to execute said office, must give notice thereof as soon as may be to the respective coroners of the same county.(*a*)

Sheriff must notify coroners of his appointment.

Coroner must serve writs where sheriff is a party, and also in like case return jurors de talibus, must take inquests of violent deaths.

Every coroner within the county for which he is appointed must, either by himself or his deputy, serve all writs and precepts to him directed, when the sheriff or either of his deputies is a party to the same;(*b*) and if present in court, return jurors *de talibus circumstantibus*, in all cases where the sheriff of the county is interested or related to either party, take inquest of violent deaths committed, and casual deaths happening within their respective counties.(*c*)

And make out warrants for juries of inquest.

Each coroner must, as soon as he is certified of the dead body of any person supposed to have come by his death by violence, or casualty, found or lying within his county, make out his warrant, directed to the constable of the town where the dead body is found or lying, or to the constables of one or more

(*a*) St. M. Ib. 554 June 28, 1792.
(*b*) Ibid. I. 150, 58, 280. May 18, 1781. March 12, 1784. June 25, 1789.
(*c*) Ibid. 150.

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of three or four of the adjacent towns, requiring them forthwith to summon a jury of good and lawful men of the same town or towns, sufficient to make up eighteen in all, to appear before him at the time and place in such warrant mentioned and expressed, which warrant must be in the form following, viz. CORONERS.

"S——, ss.

"[L. S.] To either of the constables of B. in said county of S——. *Greeting:* Form of the warrant.

"These are, in the name of the commonwealth of Massachusetts, to require you immediately to summon and warn —— good and lawful men of the said town of B. to appear before me, one of the coroners of the said county of S. at the dwelling house of ——. (or at a place called ——) within the said town of B. at the hour of ——, then and there to inquire upon the view of the body of ——, there lying dead, how and in what manner he came by his death.

"Fail not herein at your peril. Given under my hand and seal, at B. the day of in the year of our Lord ——.

"W. G."

And every constable to whom such warrant shall be directed and delivered, must forthwith execute the same, and must repair to the place where the dead body is at the time mentioned, and make return of the warrant with his doings thereon, unto the coroner who granted the same, and every constable failing unnecessarily of executing such warrant, or of returning the same as aforesaid, forfeits the sum of *three pounds;* and every person summoned as a juror as aforesaid, who fails of appearance, without having reasonable excuse therefor, forfeits *forty shillings*, which forfeitures are recoverable by action of Constables to execute and return such warrant.

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CORONERS.

debt, before any court which can take cognizance of the same, and must be applied to the use of the county. And the coroner must swear twelve or more of the jurors who appear, and give the foreman (by him appointed) his oath upon view of the body, in form following:

Juror's oath.

"You solemnly swear, that you will diligently inquire, and true presentment make, on behalf of this commonwealth, how and in what manner A. B. who lies here dead, came to his death; and you shall deliver up to me, one of the coroners of this county, a true inquest thereof, according to the evidence which shall be before you, and according to your knowledge. So help you God."

And then must swear the other jurors in the form following:

"Such oath as your foreman hath taken, you and each of you shall well and truly observe and keep. So help you God."

Coroner's charge to the jury of inquest.

And the jurors being sworn, the coroner must give them a charge, upon their oaths to declare, of the death of the person, whether he died of felony, or of mischance, or accident; and if of felony, who were the principals, and who accessaries, with what instrument he was struck or wounded; and so of all prevailing circumstances which may come by presumption; and if by mischance or accident, whether by the act of man, and whether by hurt, fall, stroke, drowning, or otherwise. To inquire of the persons who were present, the finders of the body, his relations and neighbours, whether he was killed in the same place where he was found, and if elsewhere, by whom, and how he was brought from thence, and of

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all circumstances relating to the said death. And if he died of his own felony, then to inquire of the manner, means, or instrument, and of all circumstances concerning it; and the jury being charged, shall stand together, and proclamation shall be made for any person who can give evidence, to draw near and they shall be heard. CORONERS.

And every coroner is further empowered, to send out his warrant for witnesses, commanding them to come before him to be examined, and to declare their knowledge concerning the matter in question, and he must administer an oath to them in form following:

"You solemnly swear, that the evidence which you shall give to this inquest, concerning the death of A. B. here lying dead, shall be the truth, the whole truth, and nothing but the truth. So help you God." Witnesses' oath.

The evidence of which witnesses must be in writing, subscribed by them. And if they relate to the trial of any person concerned in the death, then must the coroner bind such witnesses by recognizance, in a reasonable sum, for their personal appearance at the supreme judicial court to be holden within or for the same county, there to give evidence accordingly, and commit to the common gaol of the county, such witness or witnesses as shall refuse to recognize as aforesaid, and must return to the same court the inquisition, written evidence, and recognizance by him taken. And the jury having viewed the body, heard the evidence, and made all the inquiry within their power, must draw up and deliver unto the coroner their verdict, upon the death under consideration in writing, under their hands and seals in form following: Witness to be recognized.

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Coroner. Inquisition.

"S——, ss.

"An inquisition taken at B. within the said county of S. the day of in the year of our Lord before W. G. gentleman, one of the coroners of the said county of S. upon the view of the body of A. B. there lying dead, by the oath of yeomen, good and lawful men, who being charged and sworn to inquire for the commonwealth, when, how, and by what means the said A. R. came to his death, upon their oaths, do say ——"

[Then insert how, when, and by what means, with what instrument he was killed, and if it appears that he had been murdered by a person unknown, then the inquisition must be concluded in this form, to wit:]

"And so the jurors aforesaid, upon their oaths aforesaid, do say, that the aforesaid A. B. in manner and form aforesaid, then and there, of his malice aforethought, did kill and murder, against the peace and dignity of the commonwealth, and the laws of the same ——"

[If it appears to be self-murder, then the inquisition must be concluded thus:]

"And so the jurors aforesaid, upon their oaths aforesaid, do say, that the said A. B. then and there, voluntarily and feloniously, as a felon of himself, did kill and murder himself, against the peace."

[And if it appears that the death was by misfortune,]

"And so the jurors aforesaid, upon their oaths say, that the said A. B. in manner aforesaid, came to his death by misfortune."

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[If innocently by the hands of any person,] CORONERS.

"The jurors upon their oaths aforesaid, do say, that the aforesaid D. R. the aforesaid A. B. by misfortune, against, and contrary to to the will of him the said D. R. in manner and form aforesaid, did kill and slay. In witness whereof, the said coroner and jurors to this inquisition have set their hands and seals, the day and year abovesaid."

Upon an inquisition found, the coroner must inform one or more justices thereof.

And upon an inquisition found before any coroner of the death of any person by the felony or misfortune of another, he must speedily inform one or more of the justices of the same county thereof, to the intent that the person killing, or being in any way instrumental to the death, may be apprehended, examined and secured, in order for trial.(c)

How coroner must dispose of the body of a person killed in a duel.

And when it appears by the coroner's inquest, that any person hath been killed in fighting a duel, the coroner of the county where the fact was committed is empowered and directed and must take effectual care, that the body of such person so killed be immediately secured and buried, without a coffin, with a stake drove through the body, at or near the usual place of execution, or shall deliver the body to any surgeon or surgeons to be dissected, and anatomized, who shall request the same, and engage to apply the body to that use; but in case the body shall not be delivered to any surgeon or surgeons as aforesaid, it must be buried as aforesaid. But if said place of execution be not within ten miles of the town or place where the person was killed, the body must in like manner be buried, in the most public road in the town or place where the fact was committed. And

(c) St. M. I. 130, 131, 132, 133. March 12, 1784.

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coroners.

How the charge of inquest and burying duellist to be paid.

the charge of the coroner's inquest, as well as of the burial of the body, (if the same shall be buried,) shall be paid out of the estate of the deceased, (if any there be to be found,) by warrant of distress, to be awarded by the supreme judicial court, upon the coroner's presenting a bill of charges therefor. And if no estate shall be found, then the charge shall be paid out of the treasury of the county where the fact was committed.(*d*)

Every coroner, within the county for which he is appointed, must after the return of an inquisition of the jury, upon the view of the dead body of any stranger, bury such body in a decent manner, and the expenses thereof, together with all the expenses of such inquisition, and the coroner's fees, must be paid to him out of the treasury of the commonwealth, an account of such expenses being first examined and allowed by the general court, in the same manner that accounts for state paupers are allowed; provided the coroner who returns such inquisition, certify under oath, that the person found dead was a stranger not belonging to this commonwealth, according to the best of his knowledge and belief. Otherwise the expenses of taking up and burial, must be paid to such coroner by the town where such dead body was found, and repaid to them by the town to which such stranger belonged, if an inhabitant of this commonwealth. And the expenses of such inquisition must be paid to the coroner by the county in which the inquisition was taken.(*e*)

(*d*) St M. I 194. June 30, 1784.
(*e*) Ibid. V. 5, 6. Feb. 6, 1807.

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XIV. CONSTABLES.

CONSTABLES.

Constables in Boston appointed by select men, and under bonds.

THE select men of the town of Boston are authorized, annually to appoint such number of constables within the town as the public service may require; and the constables so appointed, must give bonds to the treasurer of the town, in such sums, and on such conditions, as the select men shall think proper, for the faithful performance of the general duties of their office; and also, for the faithful execution of all warrants committed to them by the treasurer, and collector of said town. And the constables so appointed, have the same powers as are by law vested in constables chosen by the towns in the commonwealth.(a)

Constables how and when appointed in other towns.

In other towns, the choice of constables is confined to town meetings, held annually in the months of March or April throughout the state, at which meetings one or more constables must be chosen in and for each town, but no person in commission for any office civil or military, church officer, member of the council, senate or house of representatives for the time being, nor any one who has served in the office of constable or collector of any town, district, parish or precinct within seven years, shall be obliged to serve in the office of constable; and every person chosen to the office of constable, and not exempted as aforesaid, who shall refuse to take the oath to that office prescribed, and to serve therein, if he be able in person to execute the same, shall forfeit and pay to the use of the town the sum of *five pounds;* and if in Boston, Salem or Newburyport, *ten pounds;*

Who are exempt from serving as constables.

Forfeiture of such as are not exempted, who re-

(a) Dick. Digest, 73. St. M. V. 370. March 12, 1808.

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CONSTABLES.

fine to serve, or neglect to take the oath of office.

and must if present in such town meeting, forthwith declare his acceptance or refusal; and in case he do not declare his acceptance, the town must proceed to a new choice. And so from time to time, until one shall be chosen, accept, and be sworn; and any person who shall be present, and declare his refusal to serve in the office of constable, or who shall neglect after being summoned to take the oath of office for the space of seven days next after such summons, (which summons must be a certificate from the town clerk, or two select men, that the person is so chosen to the office of constable, delivered to a constable in office, together with a warrant to him directed, requiring him within three days after receiving such warrant to notify and summon the person so chosen to appear before the town clerk, within seven days from the time of such notice to take said oath,) and if the person so chosen, shall also neglect to pay the fine aforesaid, he shall, on application of the town treasurer, be summoned before the court of general sessions of the peace in the county in which such town lies, and a certificate under the hand of the clerk, or two select men, shall be admitted as evidence of the fact; and if the person summoned shall make default, or appearing shall not show sufficient cause to the court for his refusal, the court shall order a warrant under the seal thereof, directed to any of the constables in the same town then in office, to levy the fine by distress and sale of the offender's goods and chattels, returning the overplus (if any be) together with the costs arising on such prosecution; and for want of goods and chattels to commit the delinquent to prison until the same shall be paid.(*b*)

(*b*) St. M. I. 313, 314, 315. March 28, 1786.

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CONSTABLES.

Any constable in any town or district may serve, upon any person or persons in the town or district to which he belongs, any writ, summons, or execution, in any personal action, where the damage sued for or recovered does not exceed seventy dollars; and any writ of replevin to him directed, where the sheriff or his deputy are parties, where the sum does not exceed twenty pounds, and return of all such writs, &c. make to any court to which the same are returnable.(c)

Constables may serve writs in personal actions, where demand is not more than 70 dlls.

And may, in execution of any warrant or writ to him directed by lawful authority, convey as well any prisoner or prisoners, as things which he may have taken into his custody, either to the justice issuing such warrant or writ, or to the common gaol or house of correction of the county where such constable is an inhabitant, according as in the writ or warrant may be directed;(d) and must execute coroners warrants for summoning juries of inquest,(e) and warrants signed by a majority of the select men of the town to which he belongs, or by a justice of the peace for the county in which such town lies for calling town meetings,(f) and must execute warrants signed by the town clerk, or by two select men of his town, to notify and summon persons chosen to any town office to take the oath by law prescribed, within three days after receiving such warrant; and must make return of such warrants, at the expiration of ten days from the time of receiving the same,(g) and must in like manner summon persons chosen to office in any parish or

May convey prisoners and things taken, to gaol, &c.

Vide ante p.

Must execute coroners warrants for jury of inquest.

Must serve warrants for calling town meetings.

And notify persons chosen to town offices, to take oaths.

And also parish officers, and is ex-

(c) St M. I. 486. June 25, 1789.
(d) Ibid. II. 709. Feb. 13. 1796. 725. Feb. 26, 1796.
(e) Ibid. I. 450. March 12, 1784.
(f) Ibid. 315. March 23, 1786.
(g) Ibid. 314.

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CONSTABLES.

Exempted from serving as collector.

precinct of his town, if appointed thereto by the clerk or assessors of such parish or precinct.(*h*) And no person who has served as a constable within the term of seven years, is compelable to serve in the office of collector in any such parish or precinct.(*i*)

Must serve warrants of commitment from overseers of work-houses.

Every constable, of any town by law authorised to appoint overseers of any work-house, who shall receive any order of commitment, signed by two or more of such overseers, directed to a constable of the same town, must obey and execute such order according to the terms thereof.(*j*)

Must execute tax warrants

And must execute all warrants for the the collection of taxes, issued by the assessors of any town, district or plantation, or by other lawful authority, according to the terms of, and within the respective time limited by such warrants respectively, and for neglect or default therein, is liable to have the sums for which he is deficient levied upon his goods, chattels and lands, and for want thereof to be committed to prison.(*k*)

Liablity for neglect.

Such constables, in the execution of such warrants for the collection of taxes must keep any distress taken by virtue thereof the space of four days before he makes any sale of such distress, and must for the space of forty-eight hours, within such four days, cause such distress to be posted up in some public place in the same town, district or plantation; and after the expiration of which four days, if the rate or tax and incidental charges have not been in the mean time paid, openly sell such distress, at public auction, for the payment of such tax and charges; and the overplus, if any, shall be immedi-

Must keep distress four days, and post it forty-eight hours before sale.

Make sale at public auction.

(*h*) St. M. I. 326. June 23, 1786.
(*i*) Ibid. 325.
(*j*) Ibid. 435, 436. Jan 10, 1789.
(*k*) Ibid. 266, 269. Feb. 16, 1786.

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stely returned to the owner, with an account in writing of the sale and charges.(*l*) And all constables are authorised and empowered, in the execution of such tax warrants, to command and receive all necessary aid and assistance therein, from all persons in such town, district, or plantation, where such tax warrants are to be executed.(*m*)

CONSTABLES. May command all necessary assistance in executing tax warrants.

Warrants of distress against any deficient constable, or collector of taxes, must be executed against their personal property, in the manner, in which by law, executions upon judgments obtained by creditors against their debtors must be, where such property is taken to satisfy the same.(*n*)

Warrants against deficient constable, to be levied as executions on personal estate.

If any constable, or collector of any town, district, plantation, parish, or precinct, shall abscond or secrete himself for the space of one month, having assessments in his hands unsettled, he may be charged therewith before the supreme judicial court, by the select men or assessors of such town, &c. who may thereupon proceed to judgment of outlawry against such constable, &c. but if such constable, &c. during such process of outlawry surrender himself, and confess such charge, or settle such assessment, and pay the rates and taxes in his hands, no further process may be had against him, except judgment for costs. And if after judgment of outlawry rendered against him, such constable, &c. shall surrender himself, and settle such assessments, and pay the rates and taxes, and all costs of the process, and the same be recorded in the supreme court, such record shall be construed a reversal of such judgment of outlawry.(*o*)

May be outlawed.

(*l*) St. M. I. 304. March 16, 1786. II. 525. Feb. 3, 1792.
(*m*) Ibid. 95. March 20, 1783.
(*n*) Ibid. II. 525. Feb. 3 1792.
(*o*) Ibid. I. 272, 273. Feb. 16, 1786.

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CONSTABLES.

Constables are exempt from serving as jurors, and on the reception of venires from the sheriff, issued by any court having authority therefor, must in the usual form notify the freeholders and other of the inhabitants of their towns, qualified to vote in the election of representatives, and particularly the select men and town clerk, to assemble and be present at the drafts and selection of the jurors called for, which meeting must be held at least six days, and not more than twenty days before the setting of the court to which such venire is returnable. And the manner in which such notice must be given, must be the same as has been or shall be established therein for warning their annual town meetings, unless otherwise ordered by such towns respectively. But if any town have, or shall at a legal town meeting order or appoint that the notification shall be by the constable giving notice to the select men, or the major part of them, and the town clerk, or by any other mode, such notice will be sufficient. And when the jurors are regularly drawn as the law directs, the constables must notify the persons so drawn to serve as jurors, that they are so drawn, at least four days before the sitting of the court wherein they are to serve, either by reading the venire and the minutes of their being drawn thereon, or by leaving at their usual abode a written notification of their being drawn as aforesaid, and of the time and place of the sitting of the court at which they are to attend. And in like manner must the constables to whom any venires are directed and delivered for the drawing jurors provisionally, give notice thereof to the persons who shall be so drawn, four days befor the sitting of the court. And when, on account of a deficiency of jurors attending any court, venires shall be issued forthwith, and directed to any constables in the county where such court is sitting, the jurors

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so drawn must be notified to attend on the court immediately. And if any constable to whom any such venire facias is directed and comes, neglects to do his duty in any of the particulars aforesaid, by means whereof there shall be a failure of the jurors from his town, he shall pay such fine as the court in their discretion shall order, not exceeding twenty dollars.(p) CONSTABLES.

All male persons, of the age of eighteen years or upwards, being able of body, or having estate sufficient to hire, are in their respective towns and districts liable to watch and ward, either in their own persons, or by some other sufficient person or persons in their room, when duly warned to attend the same, except persons who live more than two miles from the place where the watch is kept, and except justices of the peace and select men of the town or district, and the sheriff of the county, and settled ministers of the gospel. The justices of the peace and select men of each town and district, and the select men alone, in towns or districts where no justice dwells, may from time to time direct a suitable watch or watches, to be kept nightly within such town or district, from and after nine o'clock in the evening until sunrising in the morning. And also a ward to be kept in the day time and evenings, when they shall think the same watch and ward necessary, and may appoint the number of persons whereof the same shall consist, the place or places wherein they must be kept, and the hour or hours for keeping the same. And may give orders in writing accordingly, signed by a major part of such justices and select men, or select man alone, as the case may be, directed to any constable or constables

Persons liable to watch and ward.

Watches and wards, how directed.

(p) St. M. V. 383, 385, 389. March 12, 1808.

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CONSTABLES.

Constables must warn watch and ward.

of the town or district, empowering or directing, and requiring him or them from time to time to warn such watch or ward, and to see that all persons so warned by him or them do attend and do their duty in such manner as shall be required; and in the warning thereof, to take care that some able householders or other sufficient persons, be joined in each watch or ward.

And must obey the watch.

And such constable or constables must charge the watch, to see that all disturbances and disorders in the night be prevented and suppressed, and must examine all persons whom they shall see walking abroad in the night after ten o'clock, and whom they shall have reason to suspect of any unlawful intention or design; of their business abroad at such season, and whither they are going, and in case they give no reasonable satisfaction therein,

Must secure offenders, and carry them before a justice.

must secure by imprisonment or otherwise, all such disorderly and suspicious persons, to be safely kept until morning, then to carry them before one of the next justices of the peace to be examined and proceeded against according to the nature of their offences.

Must carry badge of office.

And each constable, when attending watch or ward, must carry with him the usual badge of his office.

Penalty for neglect of duty.

And if any constable of the watch shall neglect or refuse to observe and perform the orders he shall from time to time receive, he shall forfeit and pay to the use of the poor, of the town or district to which such constable belongs, a sum not exceeding ten dollars, to be levied by distress and sale of his goods and chattels, and when the said justices of the peace and select men shall think fit to walk by night to inspect the order of the town wherein they dwell, such of said constables and watchmen must attend them as shall be required to do the same, and obey their lawful commands.

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XV. OATHS.

Oaths to be taken by sheriff, coroner and deputy sheriff. OATHS.

"I, A. B. do truly and sincerely acknowledge, profess, testify, and declare that the commonwealth of Massachusetts is and of right ought to be a free, sovereign, and independent state, and I do swear that I will bear true faith and allegiance to the said commonwealth, and that I will defend the same against traiterous conspiracies, and all hostile attempts whatsoever, and that I do renounce and abjure all allegiance, subjection and obedience to the king, queen, or government of Great Britain, (as the case may be,) and every other foreign power whatsoever; and that no foreign prince, person, prelate, state, or potentate hath or ought to have any jurisdiction, superiority, pre-eminence, authority, dispensing, or other power in any matter, civil, ecclesiastical or spiritual, within this commonwealth, except the authority or power that is or may be vested by their constituents in the congress of the United States. And I do further testify and declare, that no man or body of men hath or can have any right to absolve or discharge me from the obligation of this oath, declaration or affirmation; and I do make this acknowledgment, profession, testimony, declaration, denial, renunciation and abjuration heartily and truly, according to the common meaning and acceptation of the foregoing words, without any equivocation, mental evasion, or secret reservation whatsoever. So help me God."

Likewise: "I, A. B. do solemnly swear and affirm, that I will faithfully and impartially discharge and

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OATHS. perform all the duties incumbent on me as ——, according to the best of my abilities and understanding, agreeably to the rules and regulations of the constitution and the laws of this commonwealth. So help me God."(*a*)

Oath of Constables.

"Whereas you, A. B. are chosen constable within the town of C. for one year now following, and until other be chosen and sworn in your place, do swear, that you will carefully intend the preservation of the peace, the discovery and preventing all attempts against the same; that you will duly execute all warrants which shall be sent unto you from lawful authority, and faithfully attend all such directions in the laws and orders of court as are or shall be committed to your care; that you will faithfully, and with what speed you can, collect and levy all such fines, distresses, rates, assessments and sums of money, for which you shall have sufficient warrants according to law, rendering an account thereof, and paying the same according to the directions in your warrant, and with like faithfulness, speed, and diligence; you will serve all writs, executions, and distresses in private causes, betwixt party and party, and make return thereof duly in the same court where they are returnable; and in all these things you shall deal faithfully whilst you shall be in office, without any sinister respects of favour or displeasure. So help you God."(*b*)

(*a*) St. M. I. 41, 42.
(*b*) Ibid. 311. March 16, 1786.

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XVI. FEES.

Sheriff's and constable's fees.

FEES.

FOR the service of an original summons or scire facias, either by reading the same or by copy, on one defendant, *thirty cents;* if on more than one defendant, then for each defendant so served, *thirty cents.*

For the service of a capias or attachment on one defendant with summons, *thirty cents;* if served on more than one defendant, then *thirty cents* for each defendant so served. And if the officer by the written direction of the plaintiff or plaintiffs, his or their agent or attorney, shall make a special service of any such writ, either by attaching property or taking the body therefor, for such special service on each defendant on whom such suit shall be so served, the sheriff shall be allowed *fifty cents.*

And when the officer is by law directed to leave a copy in order to complete the service, or shall give a copy of any precept upon demand thereof, he may charge at the rate of *twelve cents* a page.

For a bail bond and writing, the same including principal and sureties, to be paid by the person admitted to bail, and taxed for him if he shall prevail, *twenty cents.*

Serving a writ of possession, exclusive of fees for collecting on the costs, *one dollar and ten cents;* if on more than one piece of land, *seventy-five cents* for each piece of land, after the first.

The fees for collecting the costs on a writ of possession the same as on execution in personal actions.

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FEES.

Serving a warrant, *thirty cents.*

Sheriff's aid in criminal cases, to each person for every twelve hours attendance, including expenses, *one dollar;* and so in proportion for a greater or less time; and *four cents* for each mile's travel going out and returning home.

Summoning witnesses in criminal cases, *ten cents* for each witness, and travel, as in civil cases; unless in special cases, when the court may increase the fee to what they may judge reasonable.

For the sheriffs or constables attending the court and keeping the prisoner in criminal cases, *seventy-five cents* for every twelve hours: and so in proportion for a greater or less time.

Levying executions in personal actions, for the first *one hundred dollars, four cents for every dollar;* above that, and not exceeding *two hundred dollars, two cents* for every *dollar;* and for all above *two hundred dollars, one cent* for every *dollar.* Travel for the services of such executions, and also of mesne processes and warrants directed to *him, four cents* a mile, the travel to be computed from the place of service, to the court or place of return, by the usual way only; one travel shall be allowed for one writ, execution, or warrant, and if the same be served on more than one person, then the travel shall be computed from that place of service which shall be most remote from the place of return, with all further necessary travel for serving such execution, writ or warrant. But if the travel from the place of service to the place of return be more than fifty miles, then only *one cent* a mile shall be allowed for all travel exceeding that distance.

The travelling fees and fees of service shall be endorsed by the officer serving the same, otherwise they shall not be allowed.

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FEES.

Serving an execution upon a judgment of court for partition of real estate or assigning of dower, *one dollar* a day, and *four cents* a mile out from the place of his abode.

And no sheriff shall demand or receive from any of his deputies more than at the rate of *twenty-five per cent.* on the amount of fees for travel and service.

Every trial in a court of record, *fifteen cents*; every default *eight cents.*

For returning the certificates of the several towns of votes for a governor, lieutenant governor, counsellors and senators, to the secretary's office, *eight cents* a mile, computing from the place of his abode to the secretary's office, to be paid out of the treasury of the commonwealth, and but one travel shall be allowed for the whole.

To the officer attending the grand jury, for each day's attendance, *seventy-five cents.*

The officer attending the petit jury, for any cause, to be paid, with the jury fees, *twenty-five cents.*

For dispersing *venires* for jurymen, treasurer's warrants, and proclamations of all kinds, *eight cents* each.

To each appraiser of real estate for extending executions or assigning dower, *one dollar* a day, and travel at the rate of four cents a mile, going out and returning home.

For every deputy sheriff or constable, who shall attend the supreme judicial court or court of general sessions of the peace or common pleas, by their order, *seventy-five cents* a day, to be paid out of the county treasury.

And for the encouragement of the sheriff in each county to take and use all possible care and diligence for the safe keeping of prisoners committed to his

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FEES

custody, he shall have such salary allowed him as the justices of the court of general sessions of the peace within the same county shall order, not exceeding *forty dollars* a year, for the county of Suffolk, and not exceeding *twenty-five dollars* a year for any of the other counties within the commonwealth, to be paid out of the treasury of such county.

To the constable for the services of *venires*, *twenty-five cents*; and *four cents* a mile travel to the clerk's office, to be paid out of the county treasury.(*a*)

Gaoler's fees.

Turning the key for each prisoner committed or discharged, *twenty cents*.

Dieting each prisoner, such sum weekly as the court of sessions shall from time to time judge reasonable.(*b*)

For each person taken up in the night, and committed to be secured only till the next day, *twenty-five cents*.(*c*)

Coroner's fees.

For serving a writ, summons, or execution, and for collecting the monies due thereon, and for travel, in returning precepts and inquisitions, the same as is allowed to the sheriffs for similar services.

For a bail bond *twenty-five cents*.

Every trial where the sheriff is concerned, *twenty-five cents*; and the same for attending the jury therein.

(*a*) St. M. 706. 707. 708. Feb. 13, 1796.
(*b*) Ibid. 708
(*c*) Ibid. 774. March 10, 1797.

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Fees.

Granting a warrant and taking an inquisition on a dead body, *one dollar*: if more than one at the same time, and who came to their death by the same means, *twenty cents* for each one after the first.

Travel and expense for taking an inquisition, *one dollar* a day. To each of the jurymen for their travel, if above four miles, three cents a mile each way; and for their services, *seventy-five cents* a day, including time and expenses.

The constable for his attendance and expenses summoning a jury, *ninety cents* a day.

And all the aforesaid charges of the inquisition shall be paid out of the county treasury, except such as are taken upon the bodies of strangers, not belonging to the commonwealth; and in such cases the expenses shall be paid out of the treasury of this commonwealth, an account of such expenses being first examined, and allowed by the court of general sessions of the peace in the county, in which such inquisition shall be taken.(*d*)

Fees require to be specified.

Every officer or other person, upon receiving any such fees as aforesaid, shall, if required by the person paying the same, make out a particular account of such fees in writing, specifying for what they accrued, upon pain of forfeiting to the party paying such fees, treble the sum by him or them so paid, to be recovered with costs by an action of debt in any court proper to try the same.

Forfeiture for receiving excessive fees.

And if any person shall wilfully and corruptly demand and receive any greater fee or fees for any of the services aforesaid, than is above stated, he shall

(*d*) St. M. II. 700. Feb. 18, 1796.

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FEES.

forfeit and pay the sum of *thirty dollars* for every offence, to be recovered with costs; either by presentment in the supreme judicial court or court of general sessions of the peace; in which case the forfeiture shall accrue to the commonwealth: or by action of debt in the court of common pleas; in which case the forfeiture shall be for the use of any person who may sue for the same: but no such presentment or action shall be sustained, unless made or commenced within one year next after the time when the offence may be committed.(*e*)

(*e*) St. M. II. 710. Feb. 19, 1796.

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CHAP. III.

Statute regulations in the State of Connecticut.

I. APPOINTMENT AND GENERAL DUTY.

APPOINTMENT AND GENERAL DUTY.

Sheriff to be appointed by governor and council.

Must give bond with 2 sureties.

Must be sworn.

And be commissioned.

Tenure of office.

THERE must be a sheriff in each county qualified to execute the office. His appointment is by the governor and council, before whom he must, with two sufficient sureties, freeholders in the state, become bound in a recognizance in the sum of three thousand three hundred and thirty-four dollars to the treasurer of the state, for the faithful administration and discharge of his office, and to answer such damages as any person or persons may sustain by any unfaithfulness or neglect in the same, and must take an oath prescribed by statute before the governor, or in his absence the lieutenant governor, and from the governor, or in his absence the lieutenant governor, receive a commission expressing him to be qualified as aforesaid, and authorizing and empowering him to execute the office, on which he may enter on the duties thereof,(*a*) and hold the same during good behaviour; but for just cause is liable to removal by the governor and council. Any person may be appointed to this office, and no person is subject to any penalty for refusing to accept an appointment.(*b*)

(*a*) St. C. 599.
(*b*) Swift's Sys. I. 90.

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APPOINTMENT AND GENERAL DUTY.

Constables chosen yearly in town meeting Must be before the 1st of January in each year.

Constables must be chosen by each town yearly, in the month of November or December, in lawful town meeting, and be sworn by some assistant or justice of the peace, or where there are no such authority in any town, by the town clerk of that town, before the first day of January in each year.(c)

Must accept the office, unless—

And any man, if able in person to execute the office, and not oppressed by such choice while others are unjustly exempted, who, when so chosen, refuses to serve and take the oath by law prescribed, forfeits to the treasurer of the town the sum of five dollars.(')

Sheriff and constable to conserve the peace.

Each sheriff in his county, and each constable in the town whereto he belongs, has full power to conserve the peace, and to suppress with force and strong hand, when necessity requires, all tumults, riots, routs, and other unlawful assemblies, and to apprehend without warrant all such as he shall find so as aforesaid, in disturbance of the peace, and cause them to appear before the next assistant or justice of the peace, to be further dealt with according to law.(c)

Suppress riots, and without warrant apprehend peace breakers.

Sabbath breakers, travellers on the Sabbath, if in their view, otherwise must serve a warrant.

And may also without warrant apprehend and carry before the next assistant or justice of the peace, all persons unnecessarily travelling on the Sabbath or Lord's day, if such sheriff or constable is himself witness to such transgression, or has present information thereof from others. And when any sheriff or constable shall receive a warrant from lawful authority, to apprehend any person for so travelling, the officer receiving such warrant may preserve and apprehend such person or persons any where within the limits of the authority of the officer granting such warrant.(f) When any disorders

(c) St. C. 191, 649, 651.
(d) St. C. 649. 650.
(e) Ibid. 599, 600.
(f) Ibid.

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APPOINTMENT AND GENERAL DUTY.

punishable by law shall be committed in any freeman's meeting, town meeting, society meeting, proprietor's meeting, or in any meeting of any other community lawfully assembled, the presiding officer or moderator of such meeting, as the case may be, may order any sheriff, deputy sheriff, or constable, to take the offender or offenders into custody, and to hold him or them, and if need be to remove him or them out of such meeting, until he or they shall conform to order, or until such meeting be closed, and such sheriff, deputy sheriff, or constable, may command all necessary assistance of suitable persons to aid him therein.(g) And whenever sheriffs or constables shall find, to the due execution of their respective offices, they may at their discretion within their respective limits, command such aid and assistance of suitable persons, as they shall respectively deem proper; and any person of sufficient age and ability, who being so commanded, shall refuse or neglect to aid such sheriff or constable in the execution of his office, according to his ability, being thereof convicted, shall pay a fine not exceeding thirty-four dollars, and charges of prosecution.(h)

Riots, routs and tumultuous assemblies.

And whenever three or more persons shall have assembled together, to the intent to do an unlawful act by force and violence against the person of another, to kill or beat, or otherwise to hurt, or against his possession or goods, as to break open or put down any house or fence wrongfully, or to cut or take away any corn, grass, wood, or other goods, wrongfully, or to do any other unlawful act with force or violence against the peace, or to the manifest terror of the people, every sheriff, deputy sheriff,

Sheriffs, deputies, and

(g) St. C. 493.
(h) Ibid. 590, 609.

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APPOINTMENT AND GENERAL DUTY

and constable, being informed of such unlawful and riotous assembly, must immediately repair to the place where such assembly is collected, or as near as he can safely come to such rioters, and there with an audible voice command, or cause to be commanded silence, whilst proclamation is making, and after, must openly, and with an audible voice, make or cause to be made, in manner following, or in words to the like effect, "*In the name, and by the authority of the state of Connecticut, I charge and command all persons assembled, immediately to disperse themselves, and peaceably to depart to their own habitations, or to their lawful business, upon the penalties contained in the act or law of this state, entitled an act for preventing and punishing riots and rioters.*" If such persons, so unlawfully and riotously assembled, or any three or more of them, after proclamation made as aforesaid, shall continue together, and not disperse themselves, every such sheriff or constable, and all such persons as they or any of them may command to assist, may seize and apprehend the persons so unlawfully and riotously continuing together, after proclamation made as aforesaid, and forthwith carry the persons so apprehended before some assistant or justice of the peace, to be dealt with as the law directs. And if any of the persons so unlawfully and riotously assembled, shall happen to be killed, or maimed or hurt in dispersing or apprehending, or in endeavouring to disperse or apprehend them, by reason of their resisting the persons so dispersing or endeavouring to disperse them, every sheriff, deputy sheriff, and constable, and all and singular persons being aiding and assisting to them, or any of them, shall be freed, discharged, and indemnified, as well against the public, as against all and every person or persons whatsoever, of, for, or concerning the killing, maiming, or hurting any

Constables being notified thereof, must repair to place where And make proclamation.

Form of proclamation.

Rioters not dispersing to be apprehended by sheriff, &c.

And carried forthwith

Rioters killed

Officers and persons assisting in quelling riot, indemnified in killing, maiming, &c if, &c.

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such person or persons, so unlawfully and riotously assembled, who shall happen to be so killed, maimed, or hurt as aforesaid (*i*) Sheriffs within their respective counties, and constables within the towns to which they respectively belong, have full power and authority to serve and execute all lawful writs to them directed, coming from lawful authority, and may respectively execute the office of water bailiffs.(*k*) And any sheriff, deputy sheriff, or constable, to whom any process, summons, or capias is directed by name and office, issued by a justice of the peace, to apprehend, &c. any person for any criminal offence for which he ought to be brought before such justice for trial, or examination, may and must execute the same, at any place within the state, when the person or persons against whom the same issued, are not to be found within the precincts of such officer. And both sheriffs and constables must receive all manner of writs, in any place, and at all times, within their counties or precincts, when and wheresoever they shall be tendered to them, and must execute the same and make return according to the directions therein given. And any person may demand of the sheriff or constable to whom he delivers any writ, to give a receipt thereof under his hand, wherein the names of the parties, the sum or thing in demand, the date of the writ, and of its delivery shall be contained, without taking any thing therefor, and on his refusal, others present may set to their hands, as witnesses to such delivery. And if such sheriff or constable shall not execute the writ, or shall neglect to make return thereof, or shall make a false or undue return, on complaint thereof to the court or justice to which it was made return-

APPOINTMENT AND GENERAL DUTY.

Sheriffs and constables may execute all lawful writs, &c. And must receive writs.

And must receive writs in any place and at all times.

And give receipts.

Liable for neglect.

(*i*) St. C. 575, 576, 577.
(*k*) Ibid. 599, 600, 191.

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APPOINTMENT AND GENERAL DUTY

able, the court or justice may inquire thereof by evidence produced, and if he be found in default, the court or justice may set a suitable fine upon him, and award damages to the party aggrieved, having respect unto the quantity and quality of the action, and the peril that might have happened unto him by the delay suffered, which process against such sheriff or constable must be served at least fourteen days before the sitting of the court wherein it is to be tried. And whensoever any sheriff or constable shall be sued for not executing any writ of execution delivered to him to be executed, no appeal shall be allowed if a receipt in writing were demanded or received of such officer for such writ of execution, at the time of the delivery thereof; that if such officer be complained of, or sued before an assistant or justice of the peace for not executing, or for making a false or undue return of any writ of execution granted by an assistant or justice of the peace, on the confession of the debtor, either of the parties in such complaint or suit may appeal from the judgment of such assistant or justice of the peace, to the next county court in the same county.(*l*)

Process against, must be served fourteen days before court.

No appeal allowed in case, &c.

Unless before a single minister, &c.

In case of great opposition may raise militia, &c. by advice of civil authority.

In case great opposition shall be made against any sheriff in executing of lawful writs, signed by lawful authority, or in serving other lawful writs and processes signed as aforesaid, or in case there be a suspicion that such great opposition will be made, such sheriff is authorized, by and with the advice of an assistant or justice of the peace, and of such other assistants and justices present, in case more are present, to raise the militia of the county, or as many of them as they shall judge needful for removing all opposition; and may proceed therein, and shall be

(*l*) St. C. 600, 601.

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indemnified, as is provided by the statute, entitled, "*An Act for preventing and punishing riots and rioters.*" And all military officers are bound to yield obedience to the sheriff's command in such cases, and for disobedience will be subject, on conviction, each officer to a fine not exceeding ten dollars, with costs of prosecution and damages sustained.(*m*)

APPOINTMENT AND GENERAL DUTY.

All military officers and soldiers must obey, under penalty, &c.

Sheriffs have the charge and custody of the gaols in their respective counties, and are constituted the keepers of them; but may, and indeed must substitute an under keeper or gaoler for each gaol, as need may require, and is responsible for all damages which any person may sustain by the escape of any prisoner out of such gaol, through the fault or connivance of such under keeper or gaoler, or any other person whatever, having the charge of such gaols under such sheriffs, as also for all other faults and negligences of such under keepers, by such sheriffs appointed, in any matters respecting said trust.(*n*)

Sheriffs to be keepers of gaols.

Must appoint gaolers, and be responsible for their conduct.

Though the rights of sheriffs to appoint general deputies is recognised, yet each (except the sheriff of Middlesex, who seems to have been accidentally omitted) is limited to a certain number, subject to augmentation or diminution at any time by the legislature. At present the number of deputies permitted to each sheriff is, to the sheriff of Hartford county ten, of New-Haven and New-London each eight, of Fairfield nine, Windham seven, Litchfield ten, and of Tolland four.(*o*) Appointments of gaolers and general deputies must be by warrants in writing, under the hands of the respective sheriffs, and approved by the county courts of the county for which they are re-

May appoint general deputies.

Number of deputies limited in each county.

Appointments of gaolers and general deputies must be by warrants, and aproved by county courts.

(*m*) St. C. 600.
(*n*) Ibid. 366, 367.
(*o*) Ibid. 601, 604, 605, 606.

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APPOINTMENT AND GENERAL DUTY

Warrants must be recorded

General deputies and gaolers must be sworn

Hold offices during pleasure of sheriff, &c.

spectively made, and each warrant of appointment must be recorded in the county court of the county wherein such gaolers or deputy sheriffs shall be respectively appointed to act.(*p*) All which having been completed, and such gaoler or deputy sheriff having taken the oaths by law prescribed, each holds his office during the pleasure of the sheriff from whom he received his appointment, subject however to removal by the county courts, on prosecution for certain offences which will be mentioned in their proper places.(*q*)

Sheriffs may depute each other.

And appoint special deputies at will.

Notwithstanding the provisions and restrictions above stated, the respective sheriffs may appoint each other to serve as deputies in their respective counties, without (*r*) such approbation of the county courts.(*s*) And on special occasions may depute any meet person to serve and execute any particular writ or process, by making a warrant on the back of such writ or process to the person deputed, who must

Special deputy must make oath to his service.

after the service thereof make oath before an assistant or justice of the peace, "*that he faithfully and truly served the same, according to his endorsement thereon, and that he did not fill up said writ, nor give any direction to any person to fill up the same;*"

Which oath must be endorsed on the writ.

which oath must be endorsed on said writ, or properly certified by the authority administering the same, which being done, such service will be good and valid.(*t*)

When sheriff is appointed in recess of county court, may appoint

And whenever the sheriff of any county shall be appointed, and commissioned in the recess of the county court of the county whereof he is appointed,

(*p*) St. C. 604, 606.
(*q*) Ibid 602, 604.
(*r*) Ibid 602
(*s*) Ibid. 604.
(*t*) Ibid. 602, 607.

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such sheriff may appoint the number of deputies allowed by law for such county, to continue in office until the end of the session of the county court, which shall be first holden in such county after the time of such sheriff's being appointed, and no longer, unless then approved by such court ( ) APPOINTMENT AND GENERAL DUTY. deputies t l next court, &c.

Whenever such sheriff shall dismiss from office any gaoler or deputy sheriff, he must deliver or cause to be delivered, to such gaoler or deputy sheriff, his discharge from office in writing, and lodge a copy of such discharge, or a certificate under his hand, of his having discharged such gaoler or deputy sheriff from office, with the clerk of the county court of his county, to be by such clerk recorded in the records of said court. And the clerk shall be allowed for recording each warrant of appointment, deputation, certificate or discharge, twenty-five cents.(v) When any sheriff shall dismiss any gaoler or deputy, it must be in writing and recorded. Fees to clerk for recording.

In case of the death of the sheriff of any county, his gaoler or gaolers, and deputy sheriffs, and each and every of them in office under such sheriff at the time of his death, shall continue in their respective offices, and in all things do and perform the duties thereof, until another sheriff shall be appointed and commissioned, and take upon himself the duties of said office, and that notwithstanding the term for which any such gaoler or deputy sheriff shall have been appointed shall expire, after the death of the sheriff under whom they hold their offices, and before the appointing and commissioning another sheriff, and his taking upon himself the the duties of that office. And the defaults and misfeasances of such gaolers and deputy sheriffs in the mean time, as well Upon death of sheriff, deputies, &c. to continue in office until another is appointed, &c. And that, although his term shall expire. D fault in the mean time, a breach

(u) St. C. 607
(v) Ibid. 606.

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APPOINTMENT AND GENERAL DUTY of sheriff's bond.

as before, shall be judged a breach of the bond of recognisance entered into by the sheriff as aforesaid, at the time of their appointments respectively, for the faithful discharge and administration of his office; and the estate of said deceased sheriffs be liable therefor. And the executors and administrators of such deceased sheriff may have against the gaolers, deputy sheriffs, and their bondsmen, the like remedy for the defaults and misfeasances in office of such gaolers or deputy sheriffs, as such sheriff would have been entitled to, if he had lived and continued in the exercise of the office, until his successor was appointed and commissioned, and had taken upon himself said office.(w)

Executors of sheriff, remedy against deputies and endorsement.

(w) St. C. 607.

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II. PROCESS.

PROCESS.

Ordinary civil process, what.

CIVIL process is of two kinds, summons and attachment. Both must be fairly written, signed by a magistrate, justice of the peace, or clerk of the court, mentioning the court, the time and place of appearance therein, also containing a declaration of the substance of the action, which attachments are granted against, the goods or chattels of the defendant, and for want of them against his lands or person, if the plaintiff when he prays an attachment gives sufficient security to prosecute his action to effect, and answer in case he make not his plea good. Like security must also be given by some substantial inhabitant of the state, on granting a summons, when the plaintiff is not an inhabitant of the state. All writs and processes must be directed to the sheriff, his deputy, or some constable,(x) except in certain cases, when they may be directed to indifferent persons. Criminal process is a warrant of arrest, signed by the assistant or justice of the peace, or by a clerk of a county or superior court, on information duly exhibited to such assistant or justice of the peace, to such county or superior court by an informing officer, or a private person, as well in behalf of the state as of himself. The warrant is annexed to the information, and commands some proper officer to arrest the person informed against, and to bring him forthwith before the assistant or justice of the peace signing such warrant, or before the court by whose authority such warrant is issued, whose clerk signed the same. And when such warrant is issued on information or complaint of a private person, there must be sufficient security for prosecution given by the person complaining at the time of issuing such warrant. Warrants may also be issued by

Criminal process, what.

(x) St. 31, C. 32.

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PROCESS.

assistants and justices of the peace, for arresting persons guilty of profane swearnig. cursing, drunkenness, or of breaking the Sabbath, when such assistant or justice has plain view or personal knowledge of the offence, without such information; but such warrants must contain a statement of the facts whereon they are issued.(y)

Sheriffs and constables must serve all writs, &c directed and delivered to them.

Sheriffs and constables are authorised and commanded to serve and execute all lawful writs and processes, issued and signed by lawful authority, and directed to them.(z) The lawful authoirty by which writs and other processes may be signed, justices of the peace who may respectively sign any original writ or process to be served or executed in any part of the county to which they respectively belong, and returnable before any single minister or court of justice therein,(a) excepting writs of *habeas corpus cum causa*, which when returnable before a single judge of the superior court must be signed by such judge.(b) They may also issue writs of execution, on judgments rendered by themselves respectively, to be executed in any part of the state in which the person dwells, or the estate whereon the same is to be levied is, at the time of granting such execution.(c)

Lawful authority to sign writs, are justices of the peace, who may sign writs to be served throughout their counties.

And into an adjoining county, in case, &c.

And may issue writs of attachment, summons, and subpœna, into either of the counties adjoining those in which they respectively dwell, returnable to any court to be holden within the county in which the justice issuing the same dwells.(d) They may likewise issue process to be served in any part of the

And criminal process through the state, in case, &c,

(y) Swift Sys. II. 385, 386. St. C, 231.
(z) St. C. 599, 600.
(a) Ibid. 31.
(b) Ibid. 69.
(c) Ibid 283.
(d) Ibid. 425.

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PROCESS.

state, to arrest and bring before the justice signing such process, any person against whom complaint is made for a criminal offence, for which he ought to be brought before such justice for trial or examination, and may in like manner grant summons or capias for witnesses in such cases.(*e*)

Judges of c. c. and justices of quorum in civil process through the state.

Judges of the county courts, and justices of the quorum, may respectively issue process in civil matters, to be served in any part of the state, in all respects as fully as justices of the peace may in their respective counties.(*f*)

Governor, lieutenant governor, assistants and judges of s. c. civil process through the state.

The governor, lieutenant governor, assistants and judges of the superior courts for the time being, are justices of the peace throughout the state, and may issue process civil and criminal, to be served or executed in any part of it, and returnable before any single minister or court of justice therein.(*g*)

Clerks of county courts through their counties returnable to their courts.

Clerks of the county courts may respectively sign original writs and processes, to be served any where in the county, and to be returned to the courts of which they are respectively clerks.(*h*) and may issue writs of execution to be executed in any part of the state.(*i*)

Clerks of superior courts returnable to their courts.

Clerks of the superior courts may respectively sign mesne process and judicial writs, to be executed in any part of the state, and returnable to the courts whereof they are respectively clerks.(*k*)

(*e*) St. C. 428.
(*f*) St. C. 424.
(*g*) Ibid. 423.
(*h*) Ibid. 209.
(*i*) Ibid. 283.
(*k*) Ibid.

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III. SERVICE.

SERVICE.

Writs returnable to county courts and superior courts must be served 12 days before courts sitting, and to a justice, &c. 6 days before trial.

Process against sheriff or constable in default and foreign attachment must be served 12 days before court.

Summons, how served.

All writs and processes requiring any person to answer in any civil action, if returnable to the superior or county court, must be served upon the defendant, at least twelve days inclusive before the day of the courts sitting, or if returnable to an assistant or justice of the peace, must be served six days inclusive as aforesaid.(*l*) When the suit is by foreign attachment, or against some officer for default in his office, or against a sheriff or constable for not returning an execution, or making a false or undue return thereof, the writ must be served fourteen days inclusive before the sitting (*m*) of the court, as well when such writ is returnable before an assistant or justice of the peace, as when returnable to a county court. A summons must be served by reading the same in the hearing of the defendants, or by leaving an attested copy thereof at the place or places of his or their usual abode, if within the state,(*n*) and if the defendants are not all inhabitants of the state, and the suit be on joint contract, service on such of them as are, will be sufficient.(*o*) And if a corporation be defendant, a copy of the writ and declaration must be left with the clerk thereof, or in case of a town or society, with a select man, as one of the committee.(*p*)

Attachments, how served.

Attachments must be served by attaching the goods or estate of the defendant, and for want thereof, his

(*l*) St. C. 52.
(*m*) Ibid. 62, 60.
(*n*) Ibid. 32.
(*o*) Ibid. 34.
(*p*) Ibid. 188.

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body.(q) When personal estate can be found, the officer must take it, whether shown and tendered to him by the defendant or not, instead of taking the body, though offered, and though he refuse to offer personal estate. If personal estate cannot be had, the officer must attach real estate, but not otherwise.(r) When personal estate is attached, the officer must take it into custody, and retain it till sixty days after rendering final judgment. He must hold it ready to be taken by execution, but if it be not so taken within that time, it is discharged from the attachment.(s) SERVICE.

In actions on foreign attachment, whether they be in form of summons or attachment, the officer serving the writ must leave an attested copy thereof with each person therein named, as attorney, factor, agent, trustee, or debtor, to the defendant in the action, or at the usual place of abode of such attorney, factor, agent, trustee or debtor, at least fourteen days before the time of trial. Foreign attachment, how served.

When any estate, real or personal, is attached by virtue of a writ of attachment in any civil action, the officer who serves the same must leave with the person whose estate is so attached, or at the place of his usual abode within the state, a true and attested copy of the writ, and of his return thereon, describing the estate by him so attached. And when any real estate is so taken, the officer serving the writ must leave a true and attested copy thereof, and a description of the estate so taken at the town clerk's office in the town wherein such estate lies: and until

(q) St. C. 32, 33.
(r) Swift Syst. II. 191.
(s) St. C. 60.
(t) Ibid. 62.

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SERVICE.

the service be so completed, the estate so attached shall not be holden by such attachment, against any other creditor or *bona fide* purchaser, unless such copy be left in service within seven days next after attaching such estate, and before the time limited by law for the service of such writ be expired.(u) When any personal estate is so taken by attachment, the officer who takes the same must hold it in safe custody, until sixty days after final judgment in the case, unless sooner taken in execution, or otherwise legally discharged.(v)

Bank and other stock liable to attachment.

All the rights or shares which any person has or owns in the stock of any bank, insurance company, turnpike company, or other corporation, together with the interests, rents and profits due, and growing due thereon, are liable to be attached in any action at law, and levied upon and sold to satisfy any judgment and execution against the owner thereof. And whenever any proper officer shall, with a writ of attachment or execution, apply to the cashier of such bank, or to the secretary or clerk of such company, for the purpose of attaching or levying upon such rights or shares, such cashier, secretary or clerk must furnish such officer with a certificate under his hand, in his official capacity, ascertaining the number of rights or shares the defendant holds in the stock of such bank, company, or corporation, with the incumbrances, if any, and the amount of the dividends due thereon. And the attachment of any such rights or shares shall be, by leaving a true and attested copy of the writ, with his proper endorsement thereon by the officer serving the same, as in other cases with the defendant, or at his usual place of abode, if within the state, and also a like

Cashier, &c must give a certificate of amount of stock, when by an officer required, &c.

Attachment, how executed on such stock.

(u) St. C. 59, 60.
(v) Ibid. 60.

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SERVICE.

true and attested copy with the cashier, secretary or clerk, and such rights or shares, together with the interests, rents, and profits thereon, will thereby be holden to respond the judgment which may be recovered in such action, for the term of sixty days after the rendering thereof, and no longer.(w) And whenever any such rights or shares are so attached, the owner thereof may cause the same to be replevied, as in cases of other property attached. And the officer serving the writ of replevin issued in such case, must leave a true and attested copy thereof with the cashier of such bank, or the secretary or clerk of such company or corporation, as the case may be, the rights or shares in which have been so attached. And on a copy being left in such manner, the shares or rights so attached will be released from such attachment, and become in as ample manner as before subject to the controul of the owners. And the persons giving bond on any writ of replevin, are not liable to pay any greater sum in any suit brought on such replevin bond, than the value of the property replevied by such writ.(x)

How long holden.

May be replevied, and how.

Surety in replevin bond liable for no more than the value of the property.

And when for want of goods or estate, the body of any defendant is taken by virtue of a writ of attachment, the officer serving the writ must read the same in the hearing of said defendant.(y) And if the person whose body is so attached shall offer as bail one or more substantial inhabitants of the state, of sufficient ability to respond the judgment which may be recovered in the case, to become bound to such officer, whether sheriff, deputy sheriff, or constable, in a sufficient sum, conditioned for the appearance of the person so attached, before the court to which

When the body is taken, the officer must take bail if offered.

(w) St. C. I. 60, 61.
(x) Ibid. II. 21, 22.
(y) Ibid. 33.

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SERVICE.

such writ is made returnable, such officer must accept such bail, and thereupon discharge the body of such defendant. And no recovery shall be had against the officer who served the attachment and took the bail, unless he shall have taken insufficient bail, or shall refuse to let the plaintiff have the bail bond, that he may have remedy thereon.(z)*

If the officer will assign bail bond, he will not be liable, unless, &c.

If the defendant whose body has been so attached is unable, or refuses, or neglects to procure bail for his appearance at court as aforesaid, the officer so holding him attached must apply to some civil authority, whose duty it is on such application and being satisfied of the facts of such attachment and neglect, &c. of the defendant to procure bail, to grant a mittimus expressing the ground and cause of commitment, and requiring the gaoler, master, or keeper of the prison in the county in which such attachment has been made, and if there be more prisons than one in such county, to the gaoler, &c. of the prison nearest the place where such person was attached, to receive and keep such defendant within the prison, until discharged according to law.(a)

Bail on civil process.

* Whenever in Connecticut a prisoner is committed to gaol in any civil case on mesne process, it is the duty of the sheriff having charge of the gaol to take good and sufficient bail when offered, and the bail bond so taken is assignable, and of the same legal effect, and may be proceeded on in the same manner as a bail bond taken after arrest, and before commitment. And the sheriff taking such bond, is entitled to the usual compensation for his services, and his legal fees for travel.(1)

Bail on criminal process.

And any person committed to gaol on criminal process, for having neglected or refused to recognizance before the magistrate by whom he was committed, may be relieved by entering into a proper recognizance before any judge of the superior court, or before the judge of the county court or justice of the quorum of the county wherein such prisoner is confined.(2)

(1) St. C. II. 34. (2) Ibid. 28.

(z) St. C. 68, 69.
(a) Ibid. 58, 60.

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SERVICE.

When the body of any person shall have been so attached, and for want of bail committed to pri on, he shall not be holden therein by virtue of such attachment longer than five days after the rising of the court in which final judgment in such case shall be rendered. And in case such person shall not be taken in execution on such judgment, within five days as aforesaid, the keeper of the gaol upon his fees being paid, may not hold such prisoner any longer by virtue of such attachment.(*b*)

But no member of the general court, during the session thereof, or in going to or returning from such court, may be arrested, imprisoned, or sued, except in cases of high treason or felony only.(c) Nor is the master of Newgate prison, nor the officer nor privates of the guard under his command, liable to arrest or imprisonment on mesne process or execution in any civil suit, for and during the period of their respective service at the prison.(*d*)

Service of criminal process or a warrant of arrest is always by apprehending the body of the person on whom service is to be made. And the officer, when he has so arrested the person, must forthwith, according to the directions of his warrant, convey his prisoner before the court, assistant or justice who issued such warrant, and the same, together with the prisoner, deliver to the court, &c.

All writs made returnable to the county courts, must be returned to the clerk of said courts, on the

(*b*) St. C. 60.
(*c*) Ibid. 208.
(*d*) Ibid. 59.

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SERVICE.

day before the sitting of such county courts, and not afterwards.(e)

Petitions brought to general assembly, how served.

Whenever a petition is brought to the general assembly, it must be served by a copy of such petition being given or offered to each respondent therein named, (if living within the state,) or left at the place of his or their usual abode, if brought to the May session of such assembly, at least twelve days before the first Tuesday which shall be next after the opening of said assembly, and must be returned before such Tuesday; and if brought to the October session, at least twelve days before the second day of the session to which the same is returnable, and must be returned to the secretary on or before the first day of such session.(f)

Officer who serves original writs or mesne process, must endorse there on items of fees.

Every person who shall serve any writ or process, excepting executions, must endorse on such writ or process the fees by him charged for such service, with the number of miles by him travelled, and the other items constituting the amount thereof; and if by such endorsement it shall appear that such fees are charged at a greater sum than by law they ought to have been, such fees shall be reduced by the court, assistant or justice of the peace to whom such writ or process is returnable, to such sum as is by law allowed for such service.(g)

Travelling fees no more than actual travel.

How computed.

And no sheriff, constable, or other officer, shall be allowed fees for travel to serve any writ or execution for any greater distance than he shall actually travel to serve and return the same, to be computed

(e) St. C. 33.
(f) Ibid. 550, 551.
(g) Ibid. 603.

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from the place of the officer's abode to the place of service, and thence to the place of return(*h*) SERVICE

No sheriff, deputy sheriff or constable, may appear as attorney in any case, nor fill up or draw any writ.

No sheriff, under sheriff, sheriff's deputy, or constable, may fill up any writ, process or declaration in any case whatsoever, nor appear in any court as attorney for and in behalf of any other person or persons whatsoever. And if it shall appear in any case that the writ, process, or declaration, was drawn or filled up by any sheriff, sheriff's deputy, or constable, (their own cases only excepted,) the same shall abate and be dismissed.(*i*)

(*h*) St C. 994. 602.
(*i*) Ibid. 602, 603.

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IV. EXECUTIONS.

EXECUTION.

Executions, forms of.

THE usual form of execution in this state, is against the money, goods, chattels and lands of the debtor, and for want of such money, goods and chattels, against the body of the debtor;(a) but where execution is issued against a sheriff, or an insolvent debtor declared to be such by the superior court, and in some cases of special acts of insolvency granted by the general assembly, and on judgments against executors and administrators, the command to take the body is omitted.(b) So also it is in executions against bodies corporate, which cannot be imprisoned. Though executions run against the lands of a debtor, which may be taken and set out in satisfaction of executions, yet the creditors are not obliged to take them, and may, notwithstanding any tender of lands to satisfy the execution, take the bodies of their debtor and commit them to prison;(c) but if the debtor at any time before commitment on execution, tender to the officer sufficient money, goods, or chattels, to satisfy the same, the officer is obliged to accept such money, goods and chattels, and omit to take the body of such debtor, if not already taken, and if already taken to release it, if such debtor give satisfactory evidence to such officer that such goods and chattels so tendered are in fact the debtor's property.(d) Executions issued on judgments rendered by assistants, or justices of the peace, must be signed by the assistant or justice who rendered such judgment, and must be made returnable in six-

From an assistant or justice of the peace now signed.

(a) St C. 361.
(b) Kirb. 48, 68, 179.
(c) St C. 382.
(d) Boot. 1. 120. Kirb. 180.

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EXECUTION.

When returnable from city court, county or superior court, how signed and when returnable.

ty days from the date of such execution; and if issued on judgments rendered by a city, county, or superior court, must be signed by the clerk of the court which rendered such judgment, and be made returnable within sixty days next coming, or at the election of the creditor to the next term of such court, in case sixty days are remaining between the date of the execution and the next court.(e) And executions issued by the supreme court of errors, or by the general assembly, must be signed by the secretary of the state for the time being, and are made returnable in the same manner as executions issued by the superior court.(f)

From general assembly, and supreme court of errors, signed.

How directed.

All executions (except when in form of *sheriff against town*) must be directed to the sheriff of some county, or his deputy, or to the constable of some town or parish, or to a city sheriff, or to the bailiff of a borough, and may run throughout the state when signed by a justice of the peace or clerk of county court, as well as when signed by an assistant or clerk of the superior court.(g)

Run through the state.

Supreme and county courts may depute indifferent persons to serve executions in certain cases.

But when the sheriffs of the several counties receive executions from the treasury of the state, against the inhabitants of any towns for the arrears of public taxes, and levy the same on the estate of such inhabitants, or any part of them, and take their receipt for such estate, to be delivered at the place of sale according to law, and on failure of the delivery of such estate shall obtain judgment and execution thereon against the inhabitants of such towns, or any part of them, the judges of the court of common pleas in each county, may at the request

(e) St. C. 351, 283.
(f) Ibid.
(g) Ibid. 283.

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EXECUTION. of the sheriffs, depute and empower some suitable and indifferent person to serve and return such executions. Which persons deputed as aforesaid, shall have the same power and authority in serving such executions as sheriffs and constables; and the sheriffs shall be responsible for any neglect or default of every person deputed at their requests as aforesaid, in the same manner as they are for their deputies.(*h*)

Execution how served.

When any sheriff, constable, or other officer to whom an execution is directed, receives the same for service, he must repair to the debtor's usual place of abode, (if within his precincts) and there make demand of the debt or sum due on such execution, with all necessary charges of executing the same, and upon refusal or neglect of payment thereof, the officer

On personal estate.

must levy the execution upon any of the personal or moveable estate of the debtor, (except necessary apparel, bedding, tools, arms, or implements of household necessary for upholding his life, and upon such goods also if they shall be presented by the debtor.(*i*) Every debtor is also privileged to keep one cow, two swine and ten sheep, which may not in any case be taken on execution.(*j*) (And it would seem that if presented by the debtor to be taken, it would not protect the officer from an action.) When the officer shall have seized and taken the goods personal or estate of the debtor, he must forthwith draw an account of the particulars of the goods or estate so taken, and set up the same on the signpost in the parish or society wherein he seized the same, whether such signpost stands in the town whereof he is constable, and wherein the goods were seized or not, and with the account of the said goods, must set up a decla-

(*h*) St. C. 285.
(*i*) Ibid 280, 281.
(*j*) Ibid. 284.

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ration that the said goods so posted are to be sold at the place where posted, at public vendue, at the end of twenty days, after naming the day of the month; and if the debtor shall not within the said twenty days pay the debt and all the cost and charges arisen thereon, the officer must cause a drum to be beaten at the signpost to give notice to the customers to come, and must sell the said goods (or as many as shall be necessary) then, at an outcry to the highest bidder, and of the effects thereof must pay debt and charges due to the creditor, and satisfy himself for his own fees and charges, and the overplus if any there be return to the owner thereof.(*k*) EXECUTION.

The levying any execution on any rights or shares of the debtor in the stock of any bank, insurance-company, turnpike-company, or other corporation, with the interests and profits thereon, must be by leaving a true and attested copy thereof with the cashier, secretary, or clerk of such bank, company, or corporation, with an attested certificate by the officer making such levy, that he levies upon and takes such rights or shares to satisfy such execution. And such officer must thereupon post the same according to law, and as in other cases, must at vendue sell the same, together with the interests, rents and profits, or so many thereof as shall be sufficient to satisfy such execution, or so much thereof as such rights or shares may produce. And such officer must thereupon give to the purchaser an instrument in writing, conveying to him such rights or shares, and must also leave with such cashier, secretary or clerk, a true and attested copy of the execution, and of his return thereon, and the purchaser will thereupon be entitled to all dividends and stock, and to the same On bank shares, &c.

(*k*) St. C. 282, 622.

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EXECUTION

privileges as a member of such company or corporation to which such debtor was before entitled.(l)

On real estate.

In case moveable or personal estate of the debtor sufficient to satisfy the debt and charges thereon cannot be found, if the creditor so direct, the officer must seize such of the debtors lands and tenements, *belonging to him in his own proper right in fee*, as the creditor may elect to take, and must thereupon call upon the creditor and debtor, each to choose an indifferent freeholder of the town wherein such lands or tenements lie, and to agree upon a third indifferent freeholder of such town, to appraise the lands or tenements so seized, unless such town be a party to such execution, in which case such choice and agreement must be of freeholders from the next adjoining town. And if either party refuse or neglect to make such choice, or if the parties do not agree upon a third appraiser, the officer must apply to the next assistant or justice of the peace who by law may judge between the parties in civil causes, which authority must appoint one or more appraisers, as the case may require, which appraisers must be sworn according to law. All which having been done, and the lands or tenements appraised by such appraisers agreeably to their oath, according to the true and just value thereof, such officer after having endorsed upon said execution all the proceedings aforesaid, according to the truth of the facts, must cause the execution, with his endorsement thereon, to be recorded in the records of lands in the town wherein such lands or tenemens are situate, an then return the said execution so endorsed into the office of the clerk of the court out of which it issued.(m)

(l) St. C. 59.
(m) Ibid. 282, 283, 540.

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But if moveable or personal estate of the debtor, sufficient to satisfy the debt and charges cannot be found, and the creditor shall not agree to accept or take the debtor's lands in satisfaction thereof, the officer must levy the execution upon the debtor's body, and him commit to the common gaol in the county in which the execution is levied, where the debtor must remain until he shall have paid the debt and charges, with the officer's and prison keeper's fees,(*n*) unless otherwise legally discharged.

EXECUTION. On the body of the debtor. Must commit it to prison.

And every officer who shall commit any person to prison, by virtue of distress or execution, must deliver a copy of the writ or execution, attested by such officer, to the gaoler or prison keeper, which copy so attested and delivered shall be a sufficient warrant or order to the gaoler to receive such person or persons, and him or them to hold in safe custody until delivered by law.(*o*)

Warrant of commitment, what.

Every person authorized to levy and collect any execution, must in all cases in which it is by law necessary to make demand of the debt due on such execution, endorse thereon the time when and place where he has made such demand.(*p*) And must endorse on all executions when levied and collected, the amount of his fees for such levy or collection, with the items constituting the same, and at any time previous to the return of such execution into the office whence it issued, he must, if thereto required by such debtor, deliver to said debtor without any fee or reward, a bill of such fees by him charged as aforesaid, signed by him, containing the items as

Officers having execution, must endorse the demand, &c. And the items of fees. And deliver a bill thereof to debtor if required.

(*n*) St. C. 282.
(*o*) Ibid
(*p*) Ibid. 284.

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EXECUTION.

aforesaid, and expressing the name of the creditor in such execution, the court which issued the same, together with the date and amount thereof. And in case of refusal or neglect to make such endorsement or deliver such bill if required, such person shall forfeit and pay to such debtor a sum equal to threefold the amount of his fees on such execution.(q)

Must not take more than one receipt, &c. for goods seized, or for security of debt on execution.

And if any person authorized to collect any execution, shall for the payment or security of such execution, or any part thereof, take more than one bond, bill, note, receipt, or other instrument to himself directly, or to any other person for his use, or in which he shall be directly or indirectly interested, every such bond, bill, note, receipt, or other instrument so taken, shall be void.(r)

Penalty for charges of illegal fees on execution, &c.

And if any person authorized either generally or specially to serve any kind of process, shall for any such service by him performed, endorse as his fees on such process more than by law he ought to have endorsed, or shall in any way demand or receive for such service more than his lawful fees, such person shall forfeit and pay a sum threefold greater than the amount of such excess, to be recovered by the person against whom such illegal charge has been made.(s)

No appeal allowed in actions or recourse to officers for goods taken on execution.

When any sheriff or constable, by virtue of any writ of execution shall seize any goods or chattels, to answer and satisfy such execution, and any person shall appear to receive such goods and chattels into his care, and shall give to such officer a writing well executed by such person, therein expressing the re-

(q) St. C. 603.
(r) Ibid.
(s) Ibid. 604.

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ceipt of such goods and chattels, and thereby promising to redeliver the same to such officer, and shall fail of performing accordingly, and any action shall be brought by such sheriff or constable, there shall be no appeal in such case allowed or granted.(t) EXECUTION.

(t) St. C. 602.

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V. PRISONS AND PRISONERS.

PRISONS AND PRISONERS

All prisoners may provide for themselves while in prison

Gaoler may not demand more than lawful fees, nor otherwise injure a person, under penalty, &c.

ALL prisoners must be permitted to provide, and send for their necessary food where they please, and to use such bedding, linen, and other necessaries as they may think fit, without having the same purloined or detained, or paying any thing for such privilege; nor may any keeper of a common gaol demand of them greater fees for their commitment, discharge, or chamber room, than what is allowed by law. And if any keeper of a common gaol shall do, or cause to be done to any prisoner committed to his custody, any wrong or injury, contrary to the foregoing, he shall pay treble damages to the party aggrieved, and also such fine as the county court of the county wherein the offence is committed, upon information or complaint to them made, shall on considering all circumstances think fit to impose upon him.(*a*)

Gaoler not chargeable with support of prisoner.

Admitted to take the poor prisoner's oath.

Form of the oath.

And when any person or persons are committed to prison, in any civil matter or action, the keeper of the prison shall not stand charged with his or their supply of victuals, or other necessaries; and in case the prisoner hath no estate, and do take before an assistant or justice of the peace the following oath, viz. "You, A. B. do solemnly swear that you have not any estate real or personal, in possession, reversion, or remainder, of the value of *seventeen dollars* in the whole, or sufficient to pay the debt or damages for which you are imprisoned, (excepting what is by law exempted from being taken on execution.) And that you have not directly or indirectly sold, or

(*a*) St. C. 365.

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otherwise disposed of all, or any part of your estate, thereby to secure the same, to receive or expect any profit or advantage thereof, or to defraud or deceive your creditors. So help you God."(b) PRISONS AND PRISONERS.

But such oath may not be administered to any such prisoner, until his creditor or creditors, if inhabitants within the state, otherwise the attorney or attornies of such creditor or creditors, be duly notified to appear and show reason (if any be,) why such oath should not be administered, at least four days inclusive before the day on which the same is to be administered.(c) Which notification must be served by a sheriff or constable, or by an indifferent person specially named in such notification, by leaving a true and attested copy thereof with the creditor or creditors, or at his or their usual place or places of abode, if inhabitants of the state, otherwise with the attorney or attornies of such creditor or creditors, or at his or their usual place of abode; and if the same is served by an indifferent person, such indifferent person must make oath before an assistant or justice of the peace that he hath duly served the same, according to his endorsement thereon, and said oath must be certified by the authority administering the same on the back of such notification, and without such service such notification shall be void.(d) Notice to be given to creditors before oath can be administered. How notice must be served.

When any such debtor shall make application to take such oath, and be refused, he shall not at any time afterwards be allowed to make application therefor, unless the same shall be made to the judge of the county court, and one justice of the peace or

(b) St. C. 370.
(c) Ibid. 365.
(d) Ibid. 369.

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PRISONS AND PRISONERS

two justices *quorum unus*, (giving due notice as aforesaid,) who are authorized to determine the same.(e)

Creditor must support prisoner after taking the oath, or he is discharged by law.

And the authority aforesaid, upon application made and notice given in manner aforesaid, (no sufficient reason being shown to the contrary,) must administer the said oath to such imprisoned debtor, after which the keeper of the gaol shall not stand charged with such prisoner, unless the creditor shall allow him a weekly maintenance, such as three justices of the peace *quorum unus* shall appoint, till the next session of the county court, which court shall then determine how much the same shall be. And such charges as the creditor shall be at, he shall have power to levy with the execution before the prisoner be discharged from prison. But whenever such oath shall have been administered by a single justice upon the first application, the creditor may apply, if he see cause, to the judge of the county court and one justice of the peace, or two justices *quorum unus*, to review said cause; and if upon a full hearing thereof, the creditor shall make it appear to the satisfaction of the triers, that the debtor is not by law entitled to the benefit of such oath, they may order his support to cease, and such debtor shall be thence forward held in prison, in the same manner as though said oath had never been administered.(f)

When the oath has been administered by a single justice, creditor may appeal.

Court of appeal may order support to cease.

Prisoners may not be permitted to go without the limits of the prison.

No person committed to prison upon attachment or execution in civil causes, nor for non payment of fines or taxes, may be permitted by the keeper of the prison to go at liberty without the precincts of the prison, but by licence of the court that com-

(e) St. C. 366.
(f) Ibid.

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mitted him, or of the creditor for whose cause he was arrested and imprisoned, upon penalty of paying the fine or tax imposed upon him, or satisfying the debt or damages for which he is committed, to him to whom the same is due.(g) Nor may any prisoners for debt, and felons, be lodged together in the same room in any common gaol or prison. And if any gaoler or keeper of a prison shall offend herein, he shall forfeit and pay to the party aggrieved treble damages, to be recovered by an action on the statute.(h)

PRISONS AND PRISONERS.

If they do, sheriff liable, &c.

Debtors and felons may not be lodged together in the same room.

Whenever any person is committed or held in any gaol, by virtue of an execution for debt, damage, fine or cost, the superior court where the judgment on which such execution issued is rendered by said court, and in every other case, the county court for the county in which such prisoner is committed or held, may at their discretion, on notifying the parties concerned, or the attorney of the party belonging out of the state, and on due inquiry and examination, give order to the sheriff of the county in which such gaol is, from time to time for the close confinement of such prisoners as they shall think proper. And whenever such courts shall respectively (pursuant to the above,) order any sheriff to confine any such prisoner within the walls of the prison of which such sheriff is keeper, he must conform to and obey such order; and in case he shall neglect or refuse so to do, such neglect or refusal shall be deemed a voluntary escape in such sheriff, and he shall thereupon be liable to an action for the debt, damage, fine or cost for which such prisoner is committed or held, in the same manner as though such prisoner had escaped by permission of such sheriff. But no

Court from which execution issued, may order prisoner confined within the walls.

(g) St. C. 366.
(h) Ibid.

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PRISONS AND PRISONERS.

If execution amounts to more than seventeen dollars.

prisoner committed on an execution issued on a judgment, for a sum not exceeding seventeen dollars, is liable to be confined within the walls of any prison by virtue of any such order as aforesaid. And the sheriff of course is not liable to disobedience thereto.(*i*)

Sheriffs liable to escapes from their gaols.

Sheriffs are respectively liable for all escapes from the gaols or prisons in their respective counties, unless such escapes happen through the defect or insufficiency of the gaol or prison from which such escape is made, and that without the default or negligence of the sheriff in whose custody such gaol or prison is.(*j*)

Prisoners may be removed in cases of sickness, in towns where, &c.

Whenever the prisoners in any gaol in the state are exposed to any prevailing or malignant sickness, and the judge of the county court, or two justices of the quorum in the county where such sickness prevails, shall make an order for the removal of any prisoner or prisoners to the next gaol in the same or an adjoining county, there to be kept until such sickness shall abate in the place or places from whence by such order such prisoner or prisoners are to be removed, it is the duty of the sheriff having the custody of such prisoner or prisoners, to remove him or them in pursuance of such order; and all keepers of gaols to which such prisoner or prisoners may be removed, must receive such prisoner or prisoners, agreeably to such order of such judge or justices; and him, her, or them, safely keep, until duly remanded: and when such sickness shall abate as aforesaid, (on a like order from such judge or justices, such prisoner or prisoners must be removed

(*i*) St. C. 567.
(*j*) Ibid. 568

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back to the gaol or gaols from which they were taken by the sheriff, who removed them therefrom. And the expense of removing and returning such prisoner or prisoners, in manner and for the cause aforesaid, must be defrayed by the state.(*k*)

Prisoners committed for any offence or misdemeanor, must bear the charges of their commitment and support.

When any person whatever shall be committed to the common gaol in any county, by lawful authority, for any offence or misdemeanor, they must, having means and ability thereto, defray their own reasonable expenses in conveying or sending them to gaol, and also the charges of such as shall be appointed to guard them thither, and also their support while in gaol before they are discharged; and the estate of such person is subject to the payment of such charge, and for want of estate they may be disposed of in service to answer the same according to the statute, entitled, "An Act concerning delinquents," unless freed from such charge agreeably to the directions of the statute last aforesaid.(*l*)

Sheriffs and Constables must do execution on criminals.

And when any sheriff, deputy sheriff, or constable, shall receive a warrant from any court, assistant, or justice, that hath lawful cognizance of the offence, to do execution of a judgment by them given against any criminal or delinquent, such officer must proceed according to the direction of such warrant, to do execution himself, or by some meet person by him to be procured, to the acceptance of the court granting such warrant, and for doing execution as aforesaid a reasonable compensation shall be made as the court, assistant, or justice shall allow, which shall be taxed as part of the cost against such delinquent,

And be allowed by the court reasonable compensation.

(*k*) St. C. 369, 370.
(*l*) Ibid 365.

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PRISONS AND PRISONERS.

and be paid in like manner as the charges of prosecution.(m)

Gaols to be be under authority of the United States.

The gaols in the several counties may be used and occupied, under the authority of the United States, for the purpose of confining and safe keeping prisoners. And the marshal of the district of Connecticut, or any other officer acting under the authority of the United States, has the same liberty to use said gaols, and the same authority in keeping prisoners in said gaol, under the authority of the United States, as the keepers of said gaol under the authority of this state.(n)

(m) St C 289.
(n) Ibid. 368.

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VI. JURORS.

JURORS.

In cases of forcible entry or detainer, sheriff must when called upon, aid and assist the civil authority in arresting the offenders, &c.

IN cases of forcible entry or detainer, it is the duty of the sheriff of the county to be attendant on the civil authority, assistant or assistants, justice or justices, to whom complaint of such forcible entry or detainer hath been made, and to aid and assist such authority to arrest the offenders, when thereunto called, upon pain of imprisonment, and of paying a fine of three dollars and thirty-four cents to the treasury of the county. And that inquiry may be made into the truth of the facts set forth in such complaint, such assistants or justices must make out their warrant, or precepts, directed to the sheriff of the same county, or his deputy, commanding him on behalf of the state to cause to come before them eighteen sufficient and indifferent persons, dwelling near unto the house, tenement, land, or other possession so entered upon and held, whereof fourteen (at least) must be impanelled, to inquire in that behalf, each of whom must have a freehold estate rated in the common list at nine dollars, (at least,) and if the sheriff shall make default in not duly executing such warrant or precept to him directed, he shall be fined or amerced the sum of seventeen dollars for every such default.

If the sheriff be either a party or stand in the relation of father or son, by nature or marriage, or brother, in the like kind, uncle or nephew, landlord or tenant to either of the parties, either of the constables of the town where the facts are said to have been done, not being interested or related as aforesaid, shall have all the powers and authorities in such case as above are vested in the sheriff, and

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JURORS

shall be under the same regulations, and in case of default shall be subject to the same penalties.(*o*)

Sheriff or deputy to draw and attend jurors to assess damages done by laying out highways.

When an inquiry of damages, incurred or done by the laying out of any road or highway, is ordered by a county court to be made by a jury, the sheriff, if not interested or otherwise incapacitated, (if otherwise, such deputy sheriff of the county as such court may direct,) must in pursuance of an order of said court for that purpose made, draw from the boxes of such towns, in the county where such application is made, as the court shall direct, a jury of six disinterested freeholders, and summon and attend them personally, and if it shall appear to such sheriff, or such deputy as aforesaid, after he shall have drawn said jurors from the boxes as aforesaid, that any of them are taxed in the town or towns where such road lies, or own real estate therein, or are connected with any of the applicants for said jury by blood or marriage, in such a manner as would by law prevent a judge or justice from acting or giving sentence between party and party, such sheriff or deputy as aforesaid must release such person and return his name into the box whence drawn, and summon another or others who are not interested or connected as aforesaid, to supply his or their place.(*p*)

Constables must serve jury warrants for superior court and county court.

Whenever the clerk of any superior or county court in the state shall issue a warrant, directed to either of the constables of any town in the county in which the court is to be holden, to summon and warn so many able, judicious, and lawful freeholders of their town as the warrant directs to attend and serve as jurors at such court, such constable of such town

(*o*) St. C. 347, 348.
(*p*) Ibid. 380.

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as shall receive such warrant to him directed, must repair to the office of the town clerk of the same town, and in his presence (or in his absence, in the presence of one of the select men of such town or a justice of the peace,) draw out of the box, wherein are the names of the persons appointed to serve as jurors for that town, the number his warrant directs him to summon, without seeing the names he draws before he draws them, and having so done, must then proceed to summon the men for jurors whose names he has so drawn. But if any or all of the men whose names are thus drawn, are at the time from home, or sick, or otherwise unavoidably hindered from attending such court, his or their name or names must be returned into said box, and another or others in his or their room drawn and summoned in manner aforesaid. And the constable must make timely return of his warrant to the clerk who granted the same, with an endorsement thereon, certifying whom he has summoned as aforesaid, on pain that every constable failing of his duty therein, shall forfeit and pay to the county treasurer, for the use of the county, a fine not exceeding five dollars, at the discretion of the judges of such court, unless such constable shall seasonably offer an excuse to the acceptance of such court.(q)

Jurors. And how.

Penalty for neglect of duty.

And every constable who shall summon such jurors as aforesaid, shall be allowed therefor, (save only for return of such warrant,) the same fees for travel and service as are by law allowed in processes in civil causes, to be paid out of the county treasury of the respective counties, when such jurors are to attend the county courts, and out of the state trea-

Fees, how paid.

(q) St. C. 426.

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JURORS.

sury, when such jurors are to attend the superior court.(r)

Must summon jury of inquest without fee.

When and so often as any person shall come to any sudden, untimely or unnatural death, or be found dead in this state, the manner of whose death is not known, the next assistant or justice of the peace, or in his absence the constable of the town in which such event may have occurred, must forthwith summon a jury of twelve able and discreet men, who must be sworn by such officer to inquire of the cause, and of the manner of such person's death, and must present upon oath a true verdict thereof under their hands, unto some near assistant or justice of the peace, who must return the same to the next superior court held in the same county, and no fee or reward shall be allowed for any of the services aforesaid.(s)

(r) St. C. 499.
(s) Ibid. 227, 228.

VII. HIGHWAY.

HIGHWAY.

Sheriff to complain to county court of highways out of repair.

AND when the select men of any town neglect to keep in good repair any public highway within said town, which it is the duty of said town to maintain and repair, it is the duty of the sheriff of the county in which such town lies, to make complaint of such neglect, if the same shall come to his knowledge, to the county court of his county.(t)

(t) St. C. 379, 386.

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VIII. CONSTABLES.

CONSTABLES.

Constables to collect state tax.

ONE, and but one constable, must be appointed annually in each town to levy and collect their state taxes, and make up their accounts thereof with the state treasurer.(*a*) And whenever the general assembly grants any rate or tax to be levied upon the inhabitants of the state, the treasurer thereof must issue his writs or warrants in due form, at least three months before the time limited for the payment of such tax into the public treasury, directed to the several constables so appointed as aforesaid, them commanding to collect and without fail pay the same into said treasury, within the time limited for that purpose. And if no particular time be fixed in the grant, the same must be collected and paid in before the last day of August, which shall be in each year respectively.(*b*) And there shall be allowed to each constable, collector of the state taxes as aforesaid, *three and a half cents* on the dollar, for all monies such constable shall so collect and pay into the treasury, which shall be allowed or paid by such treasurer, besides the lawful fees for travel, if such constable shall make a full settlement with the treasurer, of all such taxes as by his warrant he was commanded to collect, within twenty days after the time limited in such warrant for said collection; but if such constable shall neglect to make such settlement within said twenty days, there shall be nothing paid or allowed by the treasurer for any monies by him collected and paid into the treasury.(*c*)

Fees allowed for collection.

(*a*) St. C. 191.
(*b*) Ibid. 560, 561.
(*c*) Ibid. 573.

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CONSTABLES.

Must warn people of their rates.

Constables appointed to collect the state tax, must appoint time and place for paying and receiving such rates as are due, and must give reasonable warning to each inhabitant to pay his proportion, which warning every man must observe and attend to for the payment of such rates or dues, and upon neglect thereof such constables may make distress upon such persons for their rates not paid. And the levying fees shall be seventeen cents, on every tax not exceeding three dollars and thirty four cents, and two and a half cents on every additional dollar for which the levy is made, and their lawful fees for travel and other necessary charges.(*d*) But no constable may proceed to levy or distrain for such rates, or any part thereof, until within two months before the day on which the same are made payable into the treasury.(*e*)

If constables neglect to collect according to his warrant distress issues against him.

And if any such constable shall neglect so to collect and pay such rate or tax, and his account thereof with the treasurer, to settle and adjust by the respective days or times to that end limited, the treasurer must within four months next after such limited time issue a distress, directed to the sheriff of the county wherein such constable dwells, in the name of the state of Connecticut, commanding him of the goods or estate of such negligent constables, the full amount of such rate or tax, or such part thereof as shall then remain unpaid, to levy and pay to said state treasury; and for want thereof to take his body, and him commit until the same be paid, or be otherwise released by due course of law, which writ must be made returnable to said treasurer within sixty days from the date thereof, and the sheriff

(*d*) St. C. 568.
(*e*) Ibid. 561.

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must return the same accordingly, duly certifying and setting forth his doings touching such collection thereon, or a *non est inventus*, or commitment, as the case may require. And such sheriff to whom such distress or warrant shall be directed, is empowered and commanded to serve the same throughout all the counties and towns in the state, agreeably to the directions therein given.(*f*) And so in all other cases where said treasurer shall direct his warrant to such sheriff for such purpose. CONSTABLES.

And the sheriff must proceed in the same manner, in all respects, when the state treasurer shall at any time after such rate or tax committed to such constable becomes due, on the application of the select men of such town, issue an execution against such constable, in the name of such select men, directed to the sheriff or his deputy, to collect the balance on such rate or tax. And also on any lawful execution or warrant of distress issued by such treasurer against the select men or inhabitants of any town, *mutatis mutandis*, for the ballance of any rate or tax, after the same becomes due, according to the directions given in such execution or warrant.(*g*)

And if the sheriff shall be guilty of any failure, breach, or neglect of duty, in the execution of his office in any of the matters aforesaid, he will be subject to and suffer the same pains and penalties, and be proceeded against in the same manner as is provided in the case of neglecting to execute, or for not returning, or for making a false and undue return, of writs delivered to him to serve and execute.(*h*)

(*f*) St. C. 561.
(*g*) Ibid. 561, 562, 563, 564.
(*h*) Ibid. 562.

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CONSTABLES.

In all cases of distress as above mentioned, the officer must distrain goods or chattels if they may be had, and if no goods or chattels can be found, or shall be tendered, the officer may attach the real estate of such person to be found within his precincts; and for want of estate being found or tendered as aforesaid, the officer must attach the body, and him commit to gaol for the payment thereof, with the costs and charges arising thereon, there to remain until delivered by due order of law.(i)

All constables chosen to collect the state tax, (and other collectors of rates and every of them) have the same power and authority in any of the towns of the state as they have in their own precincts, to gather and collect the respective rates of any person or persons, whose polls or estates are in their lists; and and are allowed post wages for their travel, and may collect such rates or taxes, or what may be due thereof, at any time after their respective years shall have expired, as well as before.(j)

When the select men of any town shall, pursuant to their lawful powers, make any rate or tax with a warrant thereto annexed, signed by such select men, directed to any constable of such town, he must collect such rate or tax pursuant to the directions in such warrant given, as in the collection of other rates and taxes.(k)

When real estate shall be taken for the payment of taxes as aforesaid, the officer taking the same must advertise the estate so taken to be sold, for the payment of such taxes, at a time and place set and

(i) St. C. 568.
(j) Ibid. 567, 590.
(k) Ibid. 563.

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mentioned in such advertisement, three weeks in some public newspaper in the state, at least six weeks before such sale. And then and there, at such time and place, proceed to sell and dispose thereof at public auction, sufficient for the payment of such taxes charged against the owner thereof, and the legal costs and fees thereon; and whenever any real estate shall be thus sold, the collector of such tax or taxes must make and give to the purchaser a deed with warranty thereof.(*l*) And all the real estate that any one is seized and possessed of, in his own right in fee within this state, is liable to and stands chargeable with all the public taxes due from the owner thereof, which remain as a lieu thereon, until the same are fully paid, notwithstanding any subsequent sale or transfer thereof, or any attachment thereon. But no real estate is liable to be sold for taxes after a legal transfer has been made of the same, and entered for record, or an execution or attachment has been duly levied thereon, and lodged in the town clerk's office of the town wherein such land lies, when other estate can be found within the limits of such town, sufficient to satisfy the same, with legal cost arising thereon; nor shall any real estate which has been levied upon or transferred as aforesaid, be liable to be sold for the payment of any taxes arising upon any list made up after such transfer or levy. And no real estate shall be liable to be sold for the payment of any taxes, for more than one year after such taxes become due.(*m*) CONSTABLES.

When any person shall be committed to prison for non payment of any tax, he shall not be permitted

(*l*) St. C. 569.
(*m*) Ibid. 570.

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CONSTABLES. to take the oath by law provided for the relief of poor prisoners, until one or more of the select men of the town whereto he belongs have had due and legal notice to appear and show cause, if any be, why said oath should not be administered.(n)

Every constable must duly receive all hue and cries, and the same diligently pursue to effect such as are granted and sent out after capital offenders, at the cost and charge of the state, but such as are taken out by particular persons in their own cases, at the cost and charges of those who take them out, and may put forth pursuits or hue and cries after murderers, peace breakers, thieves, robbers, burglarians and other capital offenders, where no magistrate or justice of the peace is at hand; and without warrant apprehend such as are guilty of drunkenness, profane swearing, sabbath breaking; also vagrant persons, unseasonable night walkers, or any others who shall offend in any of these, if they be taken in the act, and either by the sight of the constable or present information of others; and may make search for all such persons, either on the sabbath or other days, when there shall be occasion, in taverns, and other suspected places or houses; and offenders apprehend and keep in safe custody, until opportunity serves to bring them before the next assistant or justice of the peace for further examination, in order to their being proceeded against according to law. But when any constable is employed, or commanded by any assistant or justice of the peace to apprehend or arrest any person or persons, he must not do it without a warrant in writing. And all constables may, and from time to time must make diligent search, throughout the limits of their

(n) St. C. 564.

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towns, upon the Lord's day, and at all other times, (as often as they shall be informed or see cause) for such offenders as shall lie tippling, in any inn or house of entertainment, or private house, excessively or unseasonably; and after such as retail strong drink without licence, and also warn all those who frequent taverns, and spend their time there idly to forbear; and also warn all those persons that keep such houses, not to suffer such persons in them; and must make due presentment of all breaches of law coming within their knowledge, to some authority proper to receive the same, once in every month. And if upon due information, any constable shall refuse or neglect to make such search, seizure, and presentment, and be thereof legally convicted, he shall pay a fine of eighty-four cents to the treasury of the town whereto he belongs. And if any person shall refuse at any time, to assist any constable in the execution of his office, being by him duly thereto required, he shall forfeit the sum of one dollar and sixty-seven cents. And if such refusal to assist such constable be wilful, obstinate, or contemptuous, he shall forfeit and pay to the use of the town where the offence is committed, seven dollars. And if any constable or other person, upon urgent occasion shall refuse to use his utmost endeavour, in raising and prosecuting hue and cries, either on foot or by horse, (if need be) after capital offenders, he shall forfeit and pay the sum of seven dollars to said treasury. And every constable in the state must be furnished with a black staff, having a head with the arms of the state thereon, which staff he must carry upon proper occasions, as a token or badge of his office, to be provided by the select men of each town, at the charge thereof, upon the penalty of eighty-four cents for each month's neglect, one half to him or

CONSTABLES.

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CONSTABLES. them who shall prosecute for the same, the other half to the town treasury.(*o*)

When any horses, cattle, swine, or other creatures taken damage feasant, shall be impounded, (the owner thereof not being known) and the impounder gives information of such impounding to a constable of the town wherein such impounding has taken place, such constable may *cry* such creatures, with their natural and artificial marks, by posting up the same in the town wherein they are impounded, and in the two next neighbouring towns, from which it may be most likely such creatures came. And if no owner appears (in the case of sheep or swine impounded,) in eight days after such creatures are cried, and posted as aforesaid, and in case of horses or cattle in twenty days after cried and posted as aforesaid, so many of said creatures shall by said constable be sold, at an outcry, as may be sufficient to satisfy the damages and poundage, and for meat and water, with the charges arising for crying and selling the same, who must make return into the office of the town clerk of his doings aforesaid, together with the marks natural and artificial of the creatures so sold, with an account of the charges arisen, and the price of the creatures, and after paying the town clerk for entering the same in his records, pay the overplus, if any be, into the town treasury, to be kept for the use of the owner.(*p*)

When any servant, servants, or apprentices, shall run from their masters, the next assistant or justice of the peace, or any constable, and two of the chief inhabitants in such town, where no assistant or justice

(*o*) St. C. 191, 192.
(*p*) Ibid. 555, 556.

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is, may press men and boats (if need be) at the master's request and charge to pursue such servants or apprentices by sea or land, and to bring them back by force.(q) CONSTABLES.

Whenever any warrant shall be granted by the civil authority of any town, or a major part of them, on application of the select men of such town, for the removal of any person an inhabitant of any of the United States, (this state excepted,) who shall have come to reside in such town, to the state from which he or she came, directed to either of the constables thereof, the constable to whom such warrant is delivered must execute the same, according to the directions therein given, at the expense of such town, to be liquidated and allowed by the select men of such town, and paid out of the treasury thereof.(r)

Each horse, or horse-kind, used or employed in any race on which any bet or wager is laid, or any purse or stake is made, is forfeited to the state, and may be seized at any time within six months thereafter, by any constable of the town in which such race is run. In any case of seizing as aforesaid, the constable so seizing must make information against such horse, or horse-kind to the next court of common pleas in such county.(s)

The justices of the peace, constables, grand jurors and tithing-men, in the respective towns in the state, must annually meet in the towns to which they belong, on the first Monday of January, and on the third Monday of June, at the place where the annual town meetings are held, or at some other place by

(q) St. C. 487.
(r) Ibid. 391, 392.
(s) Ibid. 381, 382.

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CONSTABLES. them appointed, there to advise, consider, and use their joint interest in suppressing vice and immorality; and for the due execution of the laws of the state to which their respective offices have relation. And the constables and grand jurors in their respective towns, must, on the evenings after the Lord's day, and other public days of religious solemnity, walk the streets, and duly search all places suspected of harbouring or entertaining any people, or persons, assembled contrary to law.(*t*) And must in their towns carefully inspect all taverns or licenced houses, and make due presentment to the civil authority of all persons whom they shall find transgressing the laws respecting the regulation of licenced houses, and must warn all tavernkeepers to observe such laws, and not to entertain any of the inhabitants of the town where they dwell, contrary to law.(*u*) And such constables may, each respectively having a special warrant from authority for that purpose, enter into and search any tavern or licenced house, and break open any lock or door, as they may respectively judge there is occasion, and command and cause any inhabitant or person belonging to the town wherein such house is, who shall be found there contrary to law, to depart forthwith, and may arrest all such persons as shall refuse to depart on command so given, and them safely keep until they can be brought before an assistant or justice of the peace; and for the purposes aforesaid, may command all necessary aid and assistance.(*v*)

And if any of said constables or grand jurors, shall find that such tavernkeepers do not observe the laws aforesaid, nor keep due order, they must make

(*t*) St. C. 672.
(*u*) Ibid. 642.
(*v*) Ibid. 641.

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presentment thereof to the next county court in their county,(w) at their first sitting. All constables and grand jurors must, in their respective towns, make diligent search after, and presentment of all breaches of law, which relate to their respective offices.(x) CONSTABLES.

All constables must, in the several towns to which they respectively belong, ex-officio, by themselves, or some person deputed by them, warn the freemen to meet together yearly, on the third Monday in in September, and on the Monday next following the first Tuesday in April, at nine of the clock in the morning, at some convenient place where such meetings are usually held, for the purpose of making the elections of state officers, representatives to the general assembly of the state, and to the congress of the United States, annually or biennially to be elected, according to the different laws regulating freeman's meetings, and designating their powers and rights.(y) And when any vacancy happens in the representation of the people of this state in the congress of the United States, and the governor for the time being shall issue official writs of election under his hand, and directed to either constable in the respective towns in the state, ordering a choice to fill such vacancy, and shall cause such writs to be conveyed to the sheriffs of the respective counties, such sheriffs must forthwith transmit such writs to the constables of the several towns, according to their respective directions, who must thereupon warn a meeting of the freemen on the day directed in said courts; and when such meeting has been held, and the votes taken therein, have, by the presiding officer in such

(w) St. C. 642.
(x) Ibid. 672.
(y) Ibid. 244, 245.

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CONSTABLES.

meeting within six days thereafter been transmitted to the sheriff of the county in which such votes were taken, he must on or before the return day limited on said writ, and not afterwards, convey them to the governour.(z) And all and every constable must attend to their duty in warning the aforesaid annual and special meetings of the freemen, under the penalty of forfeiting the sum of fourteen dollars to the state treasury, for every neglect thereof.(a)

And when such meeting is convened, in case there be no assistant or justice of the peace present in any freeman's meeting, the senior constable present shall preside; and in case of equality between any such constables, so as to render it uncertain which ought to preside, the eldest constable must preside, unless a majority of the constables present shall agree upon and designate some other person, in which case the person so agreed upon may preside. And in all freemen's meetings, if there be not present a sufficient number of the civil authority for the assistance of the presiding officer in the performance of his duties in such meeting, the constables present, if any be, must assist such presiding officer in the business of the meeting, in the receiving, entering, and disposing of the votes, and making out the proper certificate according to law.(b)

If a person not a freeman admitted and sworn according to law, shall vote or give in his proxy in the election of any of the members of the general assembly, or if any freemen shall put in more than one vote or proxy for one person, at the same elec-

(z) St. C. 249, 250.
(a) Ibid. 245, 250.
(b) Ibid. 251, 252.

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tion to one office, he shall pay a fine of seventeen dollars to the state treasury; and if any person or persons shall offer, accept, or receive any sum or sums of money, or other matter or thing by way of gift, fee, or reward for giving or refusing to give any vote or suffrage, for electing any member of the general assembly, or representative to congress, or promise to procure or confer any gratuity, reward, or preferment for or on account of any vote or suffrage given, or to be given in any election, every person so giving, offering, accepting or receiving as aforesaid, shall in every such case, forfeit and pay the sum of seventeen dollars, one half to him or them who shall sue for and prosecute the same to effect, and the other half to the treasury of the town where such offence is committed; and for the second offence the offender shall be disfranchized. And if any person who is elected a representative of any town in the state shall by himself, or any other person, offer or distribute gratuitously among the freemen of the town any spirituous liquors, on the day of their meeting for the choice of representatives, either before or after he shall be chosen, or shall on any previous day entertain the freemen as aforesaid, with the evident intent to procure the votes of said freemen, he shall be considered guilty of using undue influence and illegal practices as aforesaid, for giving money, &c. and in all the cases aforesaid, such representative chosen by means of such illegal practices, in addition to the penalties aforesaid, shall loose his seat in the house of representatives. And every constable and grand juror must enquire after and make presentment of all the offences aforesaid.(c)

(c) St. C. 246—248, 250, 251.

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CONSTABLES.

Persons abusing or resisting sheriffs to be bound to good behaviour.

If any person shall abuse or resist any sheriff, constable, or other officer, in the execution of his office, such person or persons shall find securities for the peace and good behaviour, until the next county court in that county, or on refusal, may be committed to the common gaol, there to remain until the session of such court, which court must take cognizance of the wrongs and abuses done to such officer or officers by such offenders, and lay such penalty upon him or them as the merit of the offence shall deserve, not exceeding five dollars.(*d*)

And no suit or action, either in law or equity, shall be brought or maintained against any sheriff, sheriff's deputy, constable, or any other person whatsoever, for any default or neglect of such sheriff, sheriff's deputy, or constable, in their office and duty, unless commenced within two years next after the right of action shall have accrued; unless such right of action accrue in favour of a feme covert, or minor under the age of twenty-one years, either of whom may in such case, bring her or his action at any time after coming of full age or discoverture.(*e*)

(*d*) St. C. 546.
(*e*) Ibid. 460, 461.

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IX. CITY SHERIFFS AND BOROUGH BAILIFFS.

CITY SHERIFFS, &c.

SHERIFFS of the several cities within the state are each appointed annually, by the freemen in legal city meeting, and have each within the limits of his respective city, the same powers and authorities, and are liable to the same suits and penalties for neglect of duty in any case whatsoever, to all intents and purposes, as sheriffs of counties by law have or are. And each respective city is liable to answer, in case of the inability of its sheriffs, or either of them, for their default in all cases relative to their office. And such sheriffs must severally give bond with sureties, in such manner as by the laws of their respective cities shall be directed, for a faithful discharge of the duties of that office before they can execute the same.(a) And the bailiffs of the several boroughs are also appointed annually, by the freemen in legal borough meeting assembled, and have within the limits of said boroughs, and on the waters of their harbours, whether within their respective limits or not, the same powers, authorities and privileges, and are liable to the same penalties and suits for neglect of duty in any case whatsoever, to all intents and purposes, as constables have and are in their respective towns, and must execute all lawful precepts to them directed, whether issued by virtue of the by-laws of such boroughs respectively, or of the laws of the state, within the limits of their respective authority.(b)*

Borough bailiffs.

* Sheriffs of cities are sworn in the same manner as sheriffs of counties, and bailiffs of boroughs, as constables of towns.

(a) St. C. 126, 127, 142, 143, 153, 154, 165, 166, 176.
(b) Ibid. 107, 115.

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X. OATHS.

For Sheriff.

OATHS.

Sheriff's oath.

YOU, S. C. being appointed sheriff for the county of H. do swear, that you will, with all faithfulness and diligence, serve all such writs and attachments as shall be directed to you, (and come to your hand,) by lawful authority, and return them to the court where they are returnable; and also that you will serve all executions granted by the secretary, treasurer, or other clerk authorized thereunto, delivered into their hands, and collect or levy the goods you are directed to, according to said executions, whether it be for the public treasury or particular persons; and that you will with convenient speed deliver such goods as you shall levy as aforesaid, into the hands of the treasurer or other particular person or persons to whom they belong; and that you will do and execute all such lawful commands, duties and warrants, as you shall receive from the governor, or any magistrate, magistrates or justice of the peace, court or courts, according to your office: and thus during the whole time you shall continue in office, you will demean yourself without respect of persons, or favour of any man: but in case you meet with any difficulty which you cannot resolve, you may suspend until you can have advice therein from authority. So help you God.(a)

For Deputy Sheriff.

Deputy sheriff's oath.

You, A. B. being appointed deputy sheriff within the county of H. do swear, that you will truly and faithfully discharge the duties of said office, during

(a) St. C. 536, 537.

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the time you shall continue therein; and that you will not write or fill up any writ or writs against any person or persons whatsoever, except you are a party in the action, nor cause the same to be wrote or filled up, or direct any person therein. So help you God.(*b*). OATHS.

For Constables.

You, A. B. swear by the everliving God, that for the year ensuing, and until new be chosen and sworn, you will faithfully execute the place and office of constable for and within the town of H. and the limits thereof, and that you will endeavour to preserve the public peace of the said place, and this state, and will do your best endeavour to see all watches and wards executed, and duly attended; and obey and execute all lawful commands and warrants that come from any magistrate or magistrates, justice of the peace or court; and execute all such orders of court as shall be committed to you, according to your best skill. So help you God.(c) Constable's oath.

For Appraisers of lands and tenements taken on execution.

You, A. B. C. D. and E. F. being appointed to appraise such lands as are now to be presented to you, do swear, that all partiality, prejudice, and other sinister respects laid aside, you will appraise the said lands according to the present true and just value thereof, to the creditor or creditors who are to receive the same; and that you will do therein according to your best judgment and conscience. So help you God.(*d*) Appraiser's oath.

(*b*) St. C. 538.
(*c*) Ibid. 538.
(*d*) Ibid. 540.

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XI. FEES.

Sheriff's and Constable's Fees.

FEES. FOR serving every summons, six cents.
If by copy, nine cents.
Levying each attachment, nine cents.
For a bail bond, seventeen cents.
Levying every execution, not exceeding three dollars and thirty-four cents, seventeen cents; and two cents per dollar for every dollar beyond that sum, in the same currency with the execution, or an equivalent in lawful money.
For attending a justice's court, on trial of each action when obliged to attend, twenty-five cents.
For each mile travel, computed from the place of the officer's abode, to the place of service, and thence to the place of return, five cents.
Each sheriff attending the general court, one dollar and fifty cents per day.
Each constable for the same, one dollar and thirty-four cents.
Each sheriff for attending the county court, per day one dollar and fifty cents.
The same, for attending the superior court, per day one dollar.
Each constable, for attending either a superior or county court, per day eighty-four cents.
Each sheriff for distributing the public laws and proclamations, and for their actual attendance on the general assembly at the election, seven dollars.
For summoning and attending upon a jury for reviewing, three dollars, in lieu of travel and other expenses.(*a*)

(*a*) St. C. 289, 291—294.

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Gaoler's Fees.

FEES.

For commitment and discharge of a prisoner, thirty-four cents.

For dieting each prisoner, per week, eighty-four cents.

The respective gaolers may demand and receive of any person confined in gaol on execution, for any civil matter, as fees and commissions for permitting such persons to have the liberties of the prisons, the following allowances only, *viz.*

For every bond, one dollar.

As commissions on any sum not exceeding $ 194, one dollar.

On any sum not exceeding	$ 368,	$ 2 25.
———	750,	3 75.
———	1335,	5 00.
———	2400,	7 00.
———	6000,	15 00.
———	13350,	25 00.

And on any greater sum than 13350 dollars, then six tenths of one per cent. But if any person be confined on two or more executions, and separate bonds are necessary, the several sums of the executions must be added together, and the computation of fees made on the total, upon the principle above set forth.(*b*)

(*b*) St. C. 290—292.

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CHAP. IV.

Statute regulations in the State of New-Hampshire.

I. APPOINTMENT AND GENERAL DUTY.

APPOINTMENT AND GENERAL DUTY.

Sheriffs and coroners, by whom and how appointed.

SHERIFFS and coroners are nominated and appointed by the governor and council, each having a negative on the other, both in the nomination and appointment; and every nomination and appointment must be signed by both.(*a*) They must be respectively sworn to bear faith and true allegiance to the state, and to support the constitution thereof; and to a faithful discharge of their respective offices;(*b*)* which oaths may be administered by any justice of the peace within his county.(*c*) No sheriff may hold his office after seventy years of age,(*d*) nor more than five years by virtue of one appointment.(*e*) No person holding the office of sheriff, may at the same time hold the office of governor, or have a seat in the senate or house of representatives, or council.(*f*) Sheriffs and coroners must respectively, each receive a commission, in the name of the state,

Must be sworn.

Tenure of office of sheriff.

Cannot hold the office of governor, &c.

Must be commissioned.

* Vide Book II.

(*a*) St. N. H. 14.
(*b*) Ibid. 19, 20, 130, 131.
(*c*) Ibid. 45.
(*d*) Ibid. 18.
(*e*) Ibid. 43.
(*f*) Ibid. 21.

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APPOINTMENT AND GENERAL DUTY.

signed by the governor, attested by the secretary or his deputy, with the great seal of the state affixed thereto.(*g*) And must each give sufficient security in a sum not exceeding three thousand pounds, nor less than one thousand pounds, to the acceptance of the justices of the court of common pleas in the same county, to the treasurer of the state for the time being, for the faithful performance of the duties of his office in all parts thereof.(*h*)

And give bonds.

Constables by whom, when, and how appointed.

Constables must be annually chosen, by the inhabitants of the towns, in town-meeting legally warned, and held in the month of March, in each year, (unless in case of a vacancy happening in such office, by reason of the death, non-acceptance, removal, or becoming *non compos mentis*, in the judgment of the town of any such officer, or when a vacancy shall happen in any other way, or there shall be a want of such officer, then such choice may be made in like manner at any other time, and must be sworn to a faithful discharge and performance of the duties of his office by the town clerk, a selceet man, or justice of the peace.(*i*)

Must be sworn.

How notified of appointment and to take the oath.

And when any person is chosen constable, he may be notified to take the oath of office in open town meeting by the moderator, any select man, or the town clerk; and if such person is present, he must immediately declare his acceptance or refusal. But if such notice be not so given, the town clerk, or some two of the select men must forthwith, by writing under his or their hand, direct some constable of such town to notify the person so chosen, and named in such writing, to appear within six days

(*g*) St. N. H. 23.
(*h*) Ibid. 117, 131.
(*i*) Ibid. 196, 197, 198.

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from the day of such notice before the town clerk, or one of the select men of the town, or a justice of the peace of the same county, and take the oath by law prescribed, which constable must within four days after the receipt of such writing or precept, notify the person or persons therein named, agreeably to the tenor of said precept, which notice must be personal or left at the usual place of abode of the person so chosen. And every person not by law exempted from serving in such office, who shall after such notice being so given in open town meeting, neglect for the space of one hour to take the oath of office, and every person who shall neglect for the space of six days after he shall have been so notified by a constable, or for the space of six days after he shall have returned to his dwelling house, if absent therefrom at the time of notice left, and if the same be taken before any officer other than the town clerk, to file a certificate of his having so taken it with the town clerk, shall forfeit and pay the sum of twenty shillings to any person who will sue for the same; and every constable must within ten days after the receipt of such writing or precept, return the same with his doings thereon, to the town clerk for the time being; and for neglecting his duty in any particular aforesaid, will forfeit the sum of thirty shillings to any inhabitant of the state who will sue for the same, one half of the forfeitures aforesaid to be for the use of the town, and the other half to the prosecutor. But no person in commission for any office, civil or military, church officer, nor member of the legislature for the time being, nor any one who has served in the office of constable in any town of the state, other than such as may have served for hire of any particular person, or of any town within seven years, shall be obliged to serve in the office of constable. *(j)*

APPOINTMENT AND GENERAL DUTY.

Who may administer the oath.

Notice, how served.

Penalty for not taking the oath.

Penalty on constables for not serving notice &c.

Persons exempt from serving as constables.

(j) St. N. H. 197, 198.

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APPOINTMENT AND GENERAL DUTY.

Sheriff may appoint deputies.

Who must be sworn.

The sheriff of each county may appoint a deputy or deputies, for whose conduct in office he must be accountable.(k) All such appointments must be in writing, under the hand and seal of the sheriff. Each deputy sheriff so appointed must be sworn before some justice of the peace for and within the county for which such deputy is appointed, faithfully to discharge the duties of his office, which oath must be certified by such justice upon said deputation,

Deputation and certificate of oath must be recorded.

and the same deputation, with the certificate thereon, must be recorded at full length by the clerk of the court of common pleas, in the same county, who upon request made, and payment or tender of twenty-five cents, must record the same as aforesaid in a book or books kept by him for that purpose. And no service or act of any deputy sheriff as such will be valid or of force until his deputation or appointment, with the certificate thereon, shall have been recorded as aforesaid. And when any sheriff shall see cause to discharge from office any deputy by him appointed, such sheriff must by writing under his hand and seal, directed to such deputy, notify him thereof, which notification or discharge must be

Discharge of a deputy must be in writing.

Must be served by another deputy, or, &c.

served by some other deputy sheriff, or creditable person within such county, by reading the same to said deputy therein named, or giving a true and attested copy thereof to such deputy discharged, which said discharge and service thereof must be recorded in like manner with said deputation, and for the same fee. And the sheriff in each county respectively, shall in all respects be responsible for the acts, malfeasance, misfeasance and non feasance of each of his deputies respectively, until such discharge and certificate of the service thereof shall have been recorded as aforesaid. But service and

And be recorded.

Sheriff liable until such record be made.

(k) St. N. H. 117r

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APPOINTMENT AND GENERAL DUTY.

Special deputy may serve process without &c.

return of any legal precept may be made by any person, by virtue of a special deputation, endorsed on the back of such precept, in manner and form practised in the state, any thing in the foregoing notwithstanding.(l)

Deputies continue in office after the death &c. of sheriff until another be appointed. &c.

In case of the death, resignation, or removal from office of the sheriff of any county, his deputy, or deputies, continue in office, and must execute the same, in the name of said sheriff, until another shall be appointed, and until they shall have completed all business which may have been entrusted to them previous to such decease, resignation, or removal. And the defaults and misfeasances of such deputy or deputies, in the mean time as well as before, must be adjudged a breach of the condition of the bond or bonds, to the sheriff who shall have deceased, or resigned, or have been removed from office; and the executor or administrator of the deceased sheriff, may have like remedy for the defaults or misfeasances in office of deputy or deputies, during such interval, as they would have been liable to if the sheriff had continued in life, and in the execution of his office.(m)

Sheriffs have the custody of goods.

The sheriff of each county has the custody, rule, keeping, and charge of the gaol or gaols in his county, and the prisoners therein, and must keep the same either by himself or his deputy, for whom he must be answerable;(n) and must appoint one or more gaol keepers, as occasion may require, with full power to act, and who must in case of the absence, death or other disability of any such sheriff, take all necessary care of the gaols, and prisoners confined therein, as fully and as amply, to all intents and

And must appoint gaolers, &c.

(l) St. N. H. 121, 122.
(m) Ibid. 120.
(n) Ibid. 117.

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APPOINTMENT AND GENERAL DUTY.

purposes, as any such sheriff might or ought to do; which gaol keepers shall, in case of the death or other disability of the sheriff or sheriffs so appointing him or them, hold his or their said appointment until another sheriff or sheriffs shall be appointed and sworn into office, and shall in all cases be responsible for their conduct therein, in the same way and manner as deputy sheriffs are made responsible.(o)

Duty of gaolers. Continue in office after death of sheriff.

Each sheriff must by himself or deputy, serve and execute all writs and precepts to him directed, issuing from lawful authority.(p) And each coroner must serve and execute all writs and processes directed to him, when the sheriff is a party.(q) And each constable must serve and return all lawful writs and precepts to him directed, issuing from a justice of the peace.(r)

Sheriff must serve all writs directed to him, and coroner must when sheriff is a party.

Constable must serve justice's writs directed to him.

If any sheriff, deputy sheriff, or constable, shall neglect to serve any precept issuing from lawful authority, directed to such sheriff, deputy sheriff, or constable, and delivered to him to serve and execute, having in all civil causes tendered unto him his legal fees for serving and executing the same, every such sheriff, deputy sheriff, or constable, shall forfeit and pay the sum of ten pounds, to any person who will sue for the same; or in case of neglect of any person to sue therefor within three months after such default or neglect of duty, the same may be recovered by indictment, at any time within one year then afterwards, in which case the whole fine or forfeiture shall be for the use of the county.(s)

Penalty on sheriff and constable for neglect.

(o) St. N. H. 120, 121.
(p) Ibid. 117.
(q) Ibid. 131.
(r) Ibid. 72.
(s) Ibid. 117.

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Appointment and general duty.

Sheriff, &c. may not appear as attorney, nor draw any writ, &c. except.

But no sheriff, or deputy sheriff, shall be suffered to appear in any court or before any justice of the peace, as attorney to any party in a suit; nor may any sheriff or his deputy be allowed to make any process, draw any writ or declaration, or make any plea for any other person. And all such acts done by either of them shall be void.(*t*)

Sheriff or other officer may command assistance.

Every sheriff, or other officer in the execution of his office for the preservation of the peace, or for apprehending or securing any person or persons for violating the same, or for any criminal matter or cause, may require suitable aid and assistance in the execution of his said office, and if any person when so required shall neglect or refuse to give such aid and assistance, such person on conviction thereof, before any justice of the peace, shall be fined to the use of the town wherein the offence is committed, a sum not exceeding forty shillings, and if unable to pay, shall be set in the stocks not exceeding four hours.(*u*)

Penalty for refusing to aid sheriff, &c.

If any person shall knowingly and wilfully obstruct or resist any sheriff, or other officer of the state, in serving or attempting to serve or execute any mesne process, or warrant, or any rule or order of any of the courts of the state, any legal order or command of any justice of the peace within the same, or any other legal or judicial writ or process whatsoever, or shall assault beat or wound any officer or other person duly authorized in serving or executing any writ, rule, order, process or warrant as aforesaid; or if any person shall by force set at liberty, or rescue any person arrested or committed by virtue

(*t*) St. N. H. 119.
(*u*) Ibid. 117, 118.

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APPOINTMENT AND GENERAL DUTY.

of any mesne process, order, warrant, writ of execution, or any other writ issuing from any court of record, or any justice of the peace within the state in any civil cause, or in any criminal cause not capital, every person so knowingly and wilfully offending shall, upon conviction, be imprisoned not exceeding twelve months, and fined in a sum not exceeding ninety pounds.(v)

Punishment for obstructing an officer in executing his duty.

Sheriff may suppress riots, &c.

If any persons, to the number of twelve or more, being armed with clubs or other weapons, or if any number of persons consisting of thirty or more shall be unlawfully, riotously, and tumultuously assembled, it will be the duty of any justice of the peace, sheriff, or deputy sheriff of the county, or constable of the town, among such rioters, or as near them as he can safely come, to command silence while proclamation is making, and then to make proclamation in these or the like words, viz. "By a law of this state, I am directed to charge and command, and do accordingly charge and command all persons here assembled to disperse immediately, and depart peaceably to their habitations or lawful employment." And if any person or or persons so unlawfully assembled shall refuse or neglect to disperse, and depart peaceably, and shall continue unlawfully, riotously, routously, or tumultuously assembled for the space of one hour after proclamation made as aforesaid, or if any person or persons shall wilfully and forcibly let or hinder any such officer, who shall be known, or who shall openly declare himself to be such from making the said proclamation, every person so offending shall on conviction be punished by imprisonment not exceeding one year, and by fine not exceeding three hundred pounds.(w)

Form of proclamation to be made.

Penalty for neglecting to obey proclamation.

(v) St. N. H. 276.
(w) Ibid.

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APPOINTMENT AND GENERAL DUTY.

When any sheriff is removed from office, he shall and may execute all precepts in his hands at the time of his removal, and shall have the custody of all prisoners, and the keeping of the gaol, until another sheriff be appointed and qualified as the law directs, and every sheriff so removed must deliver over to his successor all such prisoners.(x)

If any person, not being a sheriff, deputy sheriff, or other officer whose duty it is to keep the peace, or apprehend persons for violating the same, shall falsely pretend to be either of said officers, and shall presume to act as such, or to require any other person or persons to aid or assist him in any matter or thing belonging to the duty of a sheriff, deputy sheriff, or other such officer so assumed as aforesaid, he shall upon conviction for any such offence, forfeit and pay a fine not exceeding one hundred pounds, according to the nature and circumstances of his offence, at the discretion of the court before whom the conviction shall be, one moiety of which fine shall be to the use of the county in which the offence is commmitted, and the other moiety to him or them who will sue for the same in any court of common pleas.(y)

(y) St. N. H. 120.
(z) Ibid. 110.

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II. PROCESS.

Process.

Writs, style of.

ALL writs and processes issuing from the superior court of judicature, court of common pleas, and court of the general sessions of the peace, must be in the name of the state of New-Hampshire, must be under the seal of the court whence they issue,

How tested and signed.

bear test of the first judge of the court who is not a

And directed.

party, be signed by the clerk of such court, and may be directed to the sheriff or his deputy of any county in the state, and shall have force in any county, and must be obeyed and executed by any officer to

Original, must be summons or attachment.

whom the same is lawfully directed. And all original processes in any of the courts aforesaid, must be

Service of, and return.

summons or attachment, and in the form prescribed by law; and in civil cases be served and executed fifteen days before the sitting of the court to which such process is returnable, and must by the officer who executed the same be returned *to* the court whence it issued, agreeably to the command therein

Justice writs, &c.

given. And all writs issuing from any justice of the peace must be in the form by law prescribed, must be under seal, signed by the justice, and may be directed to the sheriff or his deputy of the county for which such justice is commissioned, or to any of the constables of any town in the same county, and writs for trial before any justice of the peace must be served and executed seven days before the trial, and be returned to the justice issuing the same. All which process must be in the English language.(*a*)

All original writs issuing out of the superior court of judicature, or the court of common pleas, must,

(*a*) St. N. H. 86, 87.

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before they are served, be endorsed on the back thereof, near the bottom, by and with the name of the plaintiff, if he be an inhabitant of the state, or in like manner by his agent or attorney, being an inhabitant of the state; and where the plaintiff is not an inhabitant of the state, the writ must be endorsed in the same manner by some responsible person, who is an inhabitant of the state.(*b*) PROCESS.

A warrant issued on complaint for forcible entry or detainer, must be signed by two justices, *quorum unus*, of the county where the lands and tenements lie, and be directed to the sheriff of the same county, or his deputy, commanding him to apprehend the person against whom such complaint is made, and to bring him before the same justices at a day in such warrant named, and at a place therein named. And if the sheriff or his deputy cannot find the party against whom the warrant issued, he may four days before the time appointed for returning the same, leave an attested copy of the warrant at the usual place of abode of such person, and if at the return of his warrant he shall not be able to find or apprehend the person against whom the warrant issued he must make return of such facts, and that he hath so left an attested copy, and when the same was done.(*c*) Warrant issued on complaint of forcible entry, how signed, &c.

In cases criminal, warrants may be issued by a justice of the peace, to run throughout his county, and by the courts of general sessions of the peace; and by any judge of the supreme judicial court to run throughout the state.(*d*) Which warrants ought to be directed to the proper officers of the county Warrants in criminal cases.

(*b*) St. N. H. 88.
(*c*) Ibid. 285, 286, 287.
(*d*) Ibid. 4, 272, 273.

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PROCESS.

where they are to be executed. Such warrants must also be accompanied by a special designation of the persons or objects of such seizure, and the foundation of them be previously supported by oath or affirmation, all which appearing on the face of such warrant, the same may be served according to the direction, either by arrest, seizure, or search.

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III. SERVICE.

SERVICE.

Writs of summons, scire facias and dower, how served.

ALL writs of summons, *scire facias*, and writs of dower, must be served by reading the same to the defendant, or by leaving an attested copy thereof, with a copy of the service endorsed thereon, at the last usual place of such defendant's abode, and a copy of the writ of dower must also be left with the tenant or occupant of the land whereof dower is demanded. And when the goods or estate of any person shall be attached at the suit of another, in any civil action, a summons in form by law prescribed must be delivered to the party whose goods or estate are attached, or left at his or her dwellinghouse or last usual place of abode, fifteen days before the sitting of the court to which such writ of attachment is returnable. And such summons must set forth the sum in the note or bond declared, on the amount of the account annexed to the writ or declaration, the quantity of land in ejectment, in covenant, what sum in damages is demanded, and for what; and in all cases must give briefly the same information to the defendant, which the declaration gives more at large, and must contain the substance of it; and the officer serving or leaving such summons must also endorse his name before he leaves it, on the back thereof, otherwise it will abate. And if the defendant at the time of the service of any writ be not an inhabitant, or resident in the state, and the writ be not served on him in person, but his goods or estate within the state are attached, an attested copy of the writ, and a particular description of the lands or goods so attached thereby, must be given to the defendant, or left at his last and usual place of abode, and the giving or leaving such copy must be certified by the

Attachment, how served on goods or estate.

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service. officer who made the attachment, or by some officer proper to execute the same within the state where the defendant lives, or by some other person, and affidavit thereof made, or such copy may be left with the defendant's agent, lawfully authorized to appear for him, or with the defendant's tenant living on or near the land attached. And all goods or estate attached to respond the judgment that may be given in any suit, must be held until the expiration of thirty days next after the rendering of such judgment, on which the plaintiff may have execution, or until judgment be rendered thereon for the defendant, upon which he may have execution against the plaintiff, that the plaintiff may levy his execution on the same goods or estate, unless such judgment be sooner otherwise satisfied.(a)

Goods or estate attached, to respond any judgment, must be held 30 days after such judgment.

Writs of review, how served.

When any party shall be desirous of reviewing any action, and the other party is not an inhabitant of the state, the writ may be served upon the agents or attorney who endorsed the original writ, if such absent party was originally plaintiff, or if such party was originally defendant, on the attorney who appeared for such defendant at the trial where the judgment recovered was rendered, or may cause a copy of the review to be served on the adverse party, though out of the state, and affidavit thereof made. And such writ of review must be served by reading the same to the party, or the agent, or attorney as aforesaid, or by leaving an attested copy as in other cases, whether there be one or more plaintiffs or defendants.(b)

(a) St. N. H. 88, 89.
(b) Ibid. 90, 91.

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SERVICE.

Prisoners imprisoned on mesne process may be held thirty days after judgment.

No person imprisoned on mesne process, may be held in prison upon or by virtue of such process after judgment rendered thereon, on which such prisoner may have execution against the plaintiffs, nor more than thirty days next after judgment upon which the creditor may have execution, nor may the prison keeper discharge a person committed on mesne process, where judgment shall be given on such mesne process for the plaintiff, on which execution may be taken out, until the expiration of thirty days from the rendering such judgment as aforesaid.(c)

Writs against corporations, how served.

When any town, body politic or corporate, or the proprietors of any common and undivided lands, trustees for schools, academies or colleges are sued, an attested copy of the writ must be delivered to the clerk of such town, body politic or corporate, or proprietors of common and undivided lands, or trustees, or to one of the principal inhabitants or members, thirty days before the sitting of the court to which the same is returnable, or left by the like number of days before the sitting of such court, at his last and usual place of abode.(d)

Foreign attachment, how served.

When an action is brought against an absconding debtor, to recover a debt out of his goods or effects in the hands of his trustee, the summons must be served on such trustee in the same way and manner as original summons in other cases are, and also upon the principal debtor in the same way and manner, if he be a resident or inhabitant within the state.(e)

(c) St. N. H. 89.
(d) Ibid. 203.
(e) Ibid. 142, 143.

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IV. BAIL.

BAIL.

Excessive bail may not be required.

EXCESSIVE bail may not in any case be required,(a) nor may any person against whom any action of ejectment, or trespass and ejectment shall be brought, in this state, be held to special bail, but his or her own bail shall be deemed sufficient.(b)

Scire facias against bail must be served within one year after final judgment.

No writ of scire facias may be served upon bail given upon mesne process, unless it be done within one year next after entering up final judgment against the principal;(c) and if the surety or sureties shall at any time after entering up final judgment against the principal, (in any action before a justice of the peace) deliver up such principal to the officer having the execution, so that his body may be taken thereby, such surety or sureties shall be discharged.(d)

When bail surrenders his principal, gaoler must receive and hold him 30 days after final judgment, and no longer.

When any surety or sureties shall bring the principal into court, and the court shall order such principal to be committed that he may be taken in execution, the prison keeper must receive him into custody, and him so hold thirty days, unless sooner discharged by the creditor. And if the creditor shall not within the said space of thirty days take such principal in execution the prison keeper must discharge him upon his paying prison charges.(e)

(a) St. N. H. 5, 34.
(b) Ibid. 92.
(c) Ibid. 102.
(d) Ibid. 104.
(e) Ibid. 102.

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BAIL.

Executor or administrator may not be held to bail.

No executor nor administrator may be held to special bail on mesne process, nor may his own proper goods or estate be seized, nor his person arrested or taken in execution for the debts or legacies of testator, in case of an executor, or for the debts of the intestate in case of an administrator.(*f*)

(*f*) St. N. H. 165, 167.

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V. EXECUTION.

EXECUTION.

Execut on against body, goods, and lands.

EXECUTIONS issued in this state, run against the goods, chattels, lands and body of the debtor,(a) or against his money, goods, chattels and body,(b) or against his goods, chattels and lands only.(c) And when the possession of real estate is recovered by a lawful judgment, the execution contains a command to deliver the possession of the premises recovered.(d)

Body of the debtor may not be taken but for want of goods and lands.

Though an execution issue against the body of a debtor, he may not be taken thereon, but for want of goods, chattels or lands of such debtor, to be found within the precincts of the officer who has such execution to levy, or for want of such money, goods or chattels, as the case may be, sufficient to satisfy such execution, or to the acceptance of the creditor.(e)

Lands not liable if there be goods and chattels sufficient.

Nor may lands or tenements of the debtor be taken in execution to satisfy the same, if he or his attorney expose to view, and tender to the creditor or officer personal estate sufficient to answer the sum mentioned in the execution with the charges.(f)

Executions from superior court, court of common pleas, and court of general sessions of the peace, how tested, &c.

Executions issued either by the superior court, court of common-pleas or court of general sessions of the peace, must run in the name of the state of New-Hampshire, be under the seal of the court whence they issue, bear test of the first justice, who is not a party, be signed by the clerk of such court directed to the sheriff of any county in the state, or his deputy, and returnable

(a) St. N. H. 81.
(b) Ibid. 85.
(c) Ibid. 119, 165.
(d) Ibid. 82.
(e) Ibid. 21, 82, 85.
(f) Ibid. 149, 150.

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to the next term of the same court.(g) And executions issuing from a justice of the peace must be signed by such justice, be under his seal, and may be directed to the sheriff, his deputy for the county for which such justice is commissioned, or to any of the constables of any town in the same county, as the case may require, and be returnable within sixty days next coming.(h) No execution may be issued, until the expiration of twenty four hours next after the rendering judgment, nor until the right of appeal (if any such right exist) hath expired.(i)

EXECUTION.

From justices of the peace, how tested, &c.

When returnable.

When returnable no execution may be issued until twenty-four hours after judgment.

All lands and tenements, belonging to any person in his own proper right in fee, and all his personal estate, (except his tools and implements necessary for his trade and occupation, his arms, and utensils of household furniture necessary for upholding of life, and his bedding and apparel necessary for him and his family) are liable to be taken in execution for satisfying of the same.(j)

Lands, &c. liable to be taken in the execution.

Articles excepted.

When any goods or chattels are taken to satisfy an execution issuing upon a judgment obtained, such goods or chattels must be safely kept by the officer, at the expense of the debtor, for the space of four days next after they are taken, and if within that time the owner shall not redeem the same, by otherwise satisfying the execution, such goods and chattels must be sold at public vendue to the highest bidder, having first been advertised by the posting up of notifications of the time and place of the sale, forty-eight hours before the expiration of the said four days, at two of the most public places in the town or place

Mode of levying on personal estate.

(g) St. N. H. 81, 82, 86.
(h) Ibid. 85, 86.
(i) Ibid. 90.
(j) Ibid. 149, 226.

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EXECUTION.

where the sale is to be, and the money arising from such sale must be applied to the paying of the charges, and to the satisfying of the execution, and the officer must return the overplus (if any there be) to the debtor, and the officer who is possessed of the execution must make return of the same, with his doings thereon, particularly describing the goods taken and sold, and the sum for which each article was struck off; and if any officer shall be guilty of any fraud in the sale or the return as above mentioned, he will be liable to the debtor to pay him five times the sum defrauded, to be recovered by action on the case.(*k*)

Mode of levying on real estate.

When any creditor will levy his execution on real estate, he must deliver such execution to the sheriff of the county, or his deputy, where the debtor's lands and tenements lie, who must cause three appraisers to be chosen, one by the creditor or creditors, another by the debtor or debtors, if he or they so please, and the third by the sheriff, which appraisers must be respectable freeholders and resident in such county. And in all cases where the debtor shall on due notice refuse or neglect to choose an appraiser, the officer must appoint one for such debtor or debtors, and the said appraisers having taken their oath before any justice of the peace, faithfully and impartially to appraise such lands and tenements as shall be shown them, as the estate of such debtor or debtors, must appraise the same to satisfy the execution with the officer's fees, and set off such lands and tenements by metes and bounds, and the sheriff must thereupon deliver possession and seizin thereof to such creditor or creditors, or to his or their attorney, which being returned to and

(*k*) St. N. H. 151.

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recorded in the office of the clerk of the court out of which such execution issued, shall be a good title to such creditor or creditors, saving the equity of redemption by law provided.(*l*) EXECUTION.

When it happens that the lands and tenements cannot be divided and set out by metes and bounds, then such officer must extend such execution upon the rent of such lands and tenements, and give seizin thereof to such creditor or creditors, or his or their attornies, and must cause the tenant or tenants thereof to attorn, and become tenants of such creditor or creditors, and to pay their rents to him or them accordingly, and upon refusal thereof, to turn such tenant or tenants out of possession thereof, and give livery, seizin and possession of the same to such creditor or creditors, to hold and enjoy such lands and tenements, till such judgment, interest and fees be fully satisfied and paid, reserving thereout the the widow's dower if any there be.(*m*) On rents and profits.

An execution issued by a justice of the peace, on a judgment rendered on the confession of a debtor, for a sum not exceeding *ten pounds*, may be served within the county where such judgment was lawfully rendered, and such debtor and justice lived at the time of rendering such judgment, in the same manner as executions issued from the inferior court may be served.(*n*) Execution issued on confession before a justice not exceeding 10*l.* may be levied as execution from the inferior court.

When judgment is rendered against any person holding the office of sheriff, either in his official or private capacity, for any sum of money, the execution thereon must be against his goods, chattels Execution against sheriff how proceeded with.

(*l*) St. N. H. 150, 151.
(*m*) Ibid. 151.
(*n*) Ibid. 74.

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EXECUTION.

and lands, but not against his body; and if such execution be returned unsatisfied, the creditor may file the same, with the return thereon, with the secretary of the state, who must thereupon issue a notification to such sheriff informing him thereof, and of the day when the same was filed. And if such execution remain six months unsatisfied after such notification is served on such sheriff, the president and council must forthwith remove such sheriff from office, and when removed execution may issue against his goods, lands and body, as in other cases.(o)

Mutual executions may be set off against each other.

In all cases where any persons have mutual executions against each other, in their own rights, or where any person as executor or administrator hath or may have an execution against another, who hath or may have an execution in his own right against such executor or administrator, for a debt due from his testator, or intestate, or where executors or administrators have executions against each other, for mutual demands between their testators or intestates, the sheriff, at the request of the creditor in either execution, must set off one execution against the other, which set off, if the sums be equal in such mutual executions, shall satisfy them both, and return thereof must be so made by the sheriff; and when the sum contained in one of the said mutual executions is greater than the other, the sheriff upon such request must set off and deduct the less from the greater, and must return the execution for the less sum satisfied, and must proceed to levy the ballance in the other execution, as directed in the writ. And in all cases where mutual executions are

(o) St. N. H. 119.

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set off against each other, that must be returned specially.(p) EXECUTION.

When judgment shall be rendered against any town corporation, in any civil suit, or criminal prosecution, the goods and estate belonging to such corporation shall be answerable, and stand chargeable to satisfy such judgment, whether it be for debt, damages, fines, or amercements; and an execution or warrant of distress, as the case may be, may be sued out, levied and collected as in other cases. And when the officer, having such execution or warrant of distress, cannot find any goods or estate belonging to such corporation, he must apply to the select men of such town, or any one of them, whose duty it is to pay and satisfy the same in money, if they have any in their hands, or in the town treasury, and if such select men have not in their hands, or in the town treasury sufficient to discharge such execution or warrant of distress, such officer must leave an attested copy of the same with such select men. And when such select men shall have been served with such copy of such execution or warrant of distress, and the same shall not be satisfied within sixty days from the time of such copy being left with them, such select men, their proper goods, estate or persons, shall be liable and subject to be taken upon such execution or warrant of distress, so sued out or issued, and which may respectively be so satisfied with costs.(q) Execution against town corporation, proceedings in.

When judgment is rendered in any action, against an absent or absconding debtor, brought to recover a debt out of his goods or effects in the hands of Executions against absconding debtors, how levied.

(p) St. N. H. 142.
(q) Ibid. 208, 209.

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EXECUTION.

his trustee, the creditor must be the agent of the absent or absconding debtor, for the purpose of receiving from such trustee such specific articles, as according to the contract between such trustee and such absent or absconding debtor were to be delivered in payment; and such creditor must cause his execution to be levied on such specific articles so received, to the amount of his debt and costs, and no more, except in a case where no division can be made, and in such case he must return the overplus to such principal debtor, when requested.(r)

If any sheriff or deputy sheriff shall on demand made, refuse to pay the creditor in any execution all such sums of money as such sheriff or deputy shall have received on such execution, he shall forfeit and pay to the person to whose use he received such money, five times the lawful interest thereof, so long as he shall detain the same after demand.(s)

(r) St. N. H. 146.
(s) Ibid. 119.

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VI. WARRANTS OF DISTRESS, AND EXECUTIONS AGAINST DEFICIENT COLLECTORS, &c.

WARRANTS OF DISTRESS.

Warrants of distress, by whom and how issued.

If any collectors of taxes shall not pay to the state treasurer, county treasurer, town treasurer or select men, or any other person or persons, all such sums of money as shall be committed to him or them to collect, by the time prefixed in the warrant or warrants to such collector given, which must never be sooner than three months from the time of the delivery of such warrant, with a list of taxes, the state treasurer, county treasurer, town treasurer, or other person or persons to whom any such sum is ordered to be paid, his or their successor or successors in office, may by warrant or execution under his or their hands and seals, directed to the sheriff or his deputy, of the county where the same is to be executed, returnable by a certain day therein to be mentioned, which may in no case be less than sixty days, to cause all such sums of money to be levied by distress and sale of the real or personal estate of such deficient collector, returning the overplus, if any there be, and for want of such estate to imprison such deficient collector, until the same be paid. And when any such execution or warrant of distress shall be levied on the lands, tenements or hereditaments of any deficient collector, the officer levying the same must proceed and sell so much thereof, at public auction to the highest bidder, as shall be sufficient to satisfy such execution or warrant with all legal costs, giving thirty days notice of the time and place of sale, by posting up advertisements thereof at some public place in the town or place where such estate lies, and in two of the adjoining towns; and in such advertisement the sheriff must specify

Lands taken by distress, to be sold at public auction.

Thirty days notice of time and place of sale to be given.

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WARRANTS OF DISTRESS.

the amount of the sum to be satisfied by such sale, and the species, whether money, certificates, state notes, or other things, in which the same may be paid; and in all cases the sheriff must receive in payment of the sum mentioned in such execution or warrant of distress, the same as the treasurer will receive of him, as described in such execution or warrant of distress.(a)

And if such warrant or execution be issued either by the state or county treasurer, and the sheriff can find no estate real or personal, or not sufficient whereon to levy and satisfy the same, nor the body of such deficient collector within his precincts; or in case the body be committed and the money be not paid within three months from the time of commitment, the treasurer issuing such warrant or execution, on being satisfied by the sheriff that no sufficient estate can be found whereon to levy, and that the body cannot be found, or hath been imprisoned three months, and the money not paid, must notify the select men of the town or place on which the said tax was assessed thereof, and in case the sum for which such warrant or execution was issued, be not paid within six months from the time of such notice given, such treasurer must issue his warrant or execution, in the same manner against the inhabitants of such town or place, for all such sums as are due and unpaid upon the former warrant or execution, and may add thereto the legal fees for the former warrant or execution, and the service, travel, and the poundage thereon.(b

Select men may issue warrants of

In all cases when the time shall be elapsed, at which any collector has been ordered to pay his tax

(a) St. N. H. 230, 231.
(b) Ibid. 230, 231.

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to the state or county treasurer, and the select men shall be of opinion that such collector hath collected the several sums mentioned in the list of the persons in such lists named, and that there is danger of such collector's absconding, or being unable to pay when called upon by the treasurer to whom the same is payable, such select men may issue their execution or warrant of distress against such collector, for all such sums as he may be in arrear to the state or county treasurer, or both, in the same manner as they may for any town tax, and the proceedings must be the same in all respects. And the state or county treasurer, upon being notified by such select men of their having issued such execution, may not issue any execution against such deficient collector, but must in case of non-payment for three months after such notice, issue his execution or warrant of distress against the inhabitants, in the same manner as he may do in the case of collector's being unable to pay.(c) And also, in case return be made by any sheriff on any execution issued by any state or county treasurer, that no select men were chosen in such town or place that year, executions shall issue against the inhabitants of such town or place.(d)

WARRANTS OF DISTRESS.

distress, in case of danger of collectors absconding.

State and county treasurers may issue warrants against inhabitants of towns, in case, &c.

Executions may also be issued against the select men of any town, who having received the state treasurer's warrant, them requiring to assess any sum or sums of money upon the polls and rateable estate within their respective towns, shall neglect to assess the same within the time, in the manner, and according to the direction given in such warrant, the same being agreeable to law; or in case the select men shall neglect to return the name or names of the collector or collectors to whom they have committed

Execution may also be issued against the select men of any town, &c.

(c) St. N. H. 231.
(d) Ibid. 232.

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WARRANTS OF DISTRESS.

any list of state, county or town taxes, to the treasurer of the state, county, or town, agreeably to the directions given them by such treasurers respectively, which executions must be issued, served, and executed, in all respects as the law prescribes in the case of neglect of collectors in paying the sums contained in their lists. And in all cases where an execution is issued against select men, for neglect of assessing taxes, or neglect of returning the name of the collector, the same must be issued against the select men whose duty it was to assess such tax, and to return the name of such collector; and in case no estate of such select men can be found whereon to levy the same, nor their bodies to be imprisoned, the same must be so returned by the sheriff to whom such execution was directed, and an execution for the same sums may be issued against the inhabitants of such town, in the same manner as in the case where such inhabitants had neglected to choose such select men or assessors.(*e*)

Execution of sentence for stealing horses &c.

Whensoever any person is convicted of stealing any horse or horses, mule or mules, neat cattle or sheep, he shall be marked with a line of India-ink, well and deeply inserted above his eye-brows, from the hair of the temple on one side, to the hair of the temple on the other side of the forehead, and by a line in the same manner inserted from the line aforesaid, to the end of the nose, on the most prominent part thereof, on the first conviction, unless remitted by the court; and for stealing any other personal property shall be marked in like manner on the second conviction, and must remain in custody not exceeding thirty days till the marks are well and effectually fixed; and in case they shall be rubbed out or effaced,

(*e*) St. N. H. 215, 216.

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may be marked again. And the sheriff must execute such punishment, or cause it to be executed, as soon as conveniently may be after conviction, and shall receive therefor out of the county treasury where the execution is, six shillings for marking each convict.(*f*) Whenever the punishment of death shall be inflicted, it must be executed by hanging the person convicted by the neck until dead.(*g*)

(*f*) St. N. H. 277.
(*g*) Ibid. 271.

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VII. PRISONS AND PRISONERS.

PRISONS AND PRISONERS.

Sheriff to keep gaols.

THE Sheriff of each county has the custody, rule, keeping and charge of the gaol or gaols in his county, and prisoners therein, and must keep the same either by himself or by a gaoler or prison keeper by him appointed, and for whom he must be answerable.(*a*)

Gaolers to return lists of prisoners.

And evey gaoler or prison keeper must, at the opening of the superior court of judicature and court of general sessions of the peace, respectively return a list, and certify to such courts respectively the names of all prisoners then in his custody, with the cause of their commitment, and also the names of all such prisoners as shall be committed during the sitting of such court; and every gaoler who shall neglect his duty therein, will forfeit such sum as shall be set upon him by the court, not exceeding ten pounds.(*b*)

Penalty for voluntary escape.

Every gaoler or prison keeper, who shall voluntarily suffer any prisoner committed to him to escape, shall suffer the like pains and penalties as the prisoner so escaping should by law for the crime or crimes whereof he was convicted, or of which he stood charged, if he had been convicted thereof. And if such prisoner were committed for debt, such gaoler or prison keeper shall be liable to pay the debt to the creditor, and may at the discretion of the court be fined in a sum not exceeding one hundred pounds.

For negligent escapes.

And if any gaoler or prison keeper shall through negligence, suffer any prisoner to escape, such gaoler or prison keeper shall, if such prisoner were committed for any crime, pay such fine as the justices

(*a*) St. N. H. 117.
(*b*) Ibid. 122.

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of the court shall inflict, according to the nature of the offence for which the escaped prisoner stood convicted, not exceeding one hundred pounds. And if such prisoner were committed for debt, such gaoler or prison keeper shall be liable to pay to the creditor the full amount of his debt, and be liable to be fined at the discretion of the court, not exceeding fifty pounds.(c)

Penalty for assisting prisoners to escape.

And if any person shall directly or indirectly, by any ways or means convey any tool, instrument or other thing, to any prisoner, or into any prison, or work him or herself unlawfully out of the same, every person so offending shall forfeit and pay such fine as by the discretion of the court shall be imposed, not exceeding twenty pounds, or suffer corporael punishment by whipping, not exceeding twenty stripes. And if any prisoner shall make his or her escape, by means of any such tool, instrument, or other thing, so conveyed by any person, or if any person shall in any other way assist any prisoner to escape, who by means thereof does escape, the person so conveying tools, instruments, or other things, or the person so assisting, if such prisoner so escaping were committed for debt, shall be liable to pay the full debt to the creditor or creditors at whose suit such prisoner stood committed; and if such prisoner were committed for any crime, the person so assisting shall suffer the same punishment which the prisoner was sentenced to suffer, or in case the escape happened before conviction, the same punishment which the prisoner would have suffered if convicted of the crime for which he stood committed, and in either case, the person so furnishing tools, instruments, or other things, or otherwise assisting, shall at the

(c) St. N. H. 123.

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PRISONS AND PRISONERS.

discretion of the court be fined, not exceeding five hundred pounds, or corporally punished by whipping, not exceeding thirty-nine stripes, and find sureties for good behaviour for the space of one year, at the discretion of the court, upon considering all the circumstances attending such escape. And in case such prisoner were or would have been liable to capital punishment, the person so furnishing tools, or otherwise assisting, shall be fined, imprisoned, or set in the pillory, or one or more of the said punishments, as the court shall think proper to inflict(*d*)

Prisoners escaped and retaken may be recommitted.

If any gaoler or prison keeper, who shall voluntarily or negligently suffer any such prisoner to escape, or if any person who has furnished tools or other things to any prisoner, or who has otherwise assisted any prisoner charged or convicted of any offence, to escape, shall within six months next after such escape recover such prisoner, and return him back to prison, such gaoler or prison keeper, who so voluntarily or negligently permitted such escape, and such person who so assisted, shall be liable only to such fine as the court may inflict. And in all cases where the sheriff, gaoler, prison keeper, or other person, has been compelled to pay any sum or sums of money, on account of any prisoner's escape, he or they shall be entitled to his or their remedy against such prisoner.(*e*)

Prisoners escaping liable to sheriffs &c.

County liable for escape through insufficiency of gaol, though in first instance sheriff stands chargeable.

In case of the escape of any prisoner committed for debt, through the insufficiency of the gaol or prison in any county, the sheriff stands chargeable to the creditor or person to whose use any forfeit were adjudged, or any damages or costs awarded against such prisoner, for the full amount of such damages

(*d*) St. N. H. 122. 123.
(*e*) Ibid. 123, 124.

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and costs, and has his remedy against the county, on application to the court of general sessions of the peace in the same county, and if such court do not cause payment to be made to the sheriff within six months after application made, such sheriff is then, and not before at liberty to bring his action against the inhabitants of the same county, to be heard and tried in that or an adjoining county at his election; an attested copy of the writ being left thirty days before the time of trial, by any coroner of the county against which the action is brought, is sufficient notice of the suit, and the justices of the court of general sessions of the peace may appoint an agent or agents to appear and defend such action, and when no court of general sessions of the peace shall have been held in the county against which the action is brought, after the service of the writ, the court must order the action to be continued to the next term, and until a court of general sessions of the peace shall have been held in such county, and all advantages will be saved to the defendants as fully as if they had appeared at the first term; and if judgment be given against such county, the jury may give such sum in damages in addition to the sums actually paid by such sheriff to the creditor or creditors, as such jury may think reasonable as a compensation for the trouble of such sheriff in such suit; besides costs and execution may be levied on the estate of any of the inhabitants of such county. (f)

PRISONS AND PRISONERS.

And he must have his remedy over.

The prison keeper must furnish and provide each prisoner committed for debt, or for crime, diet and subsistence, such as the justices of the sessions may order, for which the prisoner, if he be committed for debt, before he be discharged must pay at the

Keeper to supply prisoners.

(f) St. N. H. 124, 125.

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PRISONS AND PRISONERS.

rate of five shillings per week, or such sum as the court of general sessions of the peace shall order; and if the prisoner be committed for any crime, three shillings per week, or such sum as such court shall order, and the prison keeper must furnish them with diet in that proportion as to quality. And if any prison keeper shall defraud the prisoners of their allowance, or shall not afford them sustenance and accommodations equal to what such prison keeper is paid for, any court on complaint of the prisoner, and proof sufficient, must amerce such prison keeper in such sum as they shall think just and reasonable, considering the nature and aggravation of the offence, not exceeding for one offence five pounds.(*g*)

Penalty for defrauding prisoners.

Thief not to be detained after 30 days for damages.

No person convicted and sentenced for theft, shall be held in prison on account of restitution or damage awarded to the party injured, for more than thirty days after such judgment or sentence given, unless the person to whom such damage or restitution is awarded will pay or satisfy the prison keeper, his charge for keeping such prisoner, both for the time past and future, and if the person to whom such damage or restitution is awarded shall neglect or refuse so to do, the prison keeper shall discharge the prisoner, and in every such case the prisoner shall pay his own fees and charges; and if he be unable, two justices of the peace, *quorum unus*, may order and enjoin the prisoner to make satisfaction for the same by service, for such reasonable time as they shall assign, and the prison keeper may dispose of him in service to any subject of the United States for such time.(*h*)

(*g*) St. N. H. 125.
(*h*) Ibid. 125.

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PRISONS AND PRISONERS.

Plaintiff or endorser, liable for prison charges.

But the plaintiff in every civil action, in case he be an inhabitant of this state and of sufficient ability, otherwise the endorser of the original writ, must pay to the prison keeper his legal demand for prison charges of any prisoner committed on mesne process, in case the prisoner be unable to pay the same, for so long time as such prisoner shall have been held in prison upon such process, no further prosecution being had thereon to judgment in law.(*i*)

If prison keeper be sued he may plead general issue, and give the act in evidence.

If any suit be commenced or prosecuted against any keeper of any prison, for any thing done by him pursuant to the statute, entitled "*An Act for regulating prisons,*" he may plead the general issue, and may give said act and the special matter in evidence, and such keeper in case the prosecutor become non suit, or a verdict pass against him, shall recover double cost.(*j*)

Justices of the inferior court of common pleas, to limit gaolyards.

The justices of the inferior court of common pleas must fix and determine the boundaries of the gaol-yards, pertaining to the several gaols in their respective counties, and extend the bounds and limits of the several gaolyards as far as the local situation of the gaols, and the convenience and accommodation of the prisoners require, not exceeding two hundred rods each way from such gaol, but the determination of the inferior court shall at all times be subject to the control of the justices of the superior court of judicature.(*k*)

Prisoners for debt, to have liberty of the gaol.

Any person imprisoned on mesne process in any civil action, or upon execution founded on a proper action of debt, covenant, contract, or promise, must

(*i*) St. N. H. 126.
(*j*) Ibid. 125, 126.
(*k*) Ibid. 126.

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PRISONS AND PRISONERS.

be permitted and allowed to have a chamber and lodging in any of the houses or apartments belonging to such prison, and liberty of the yard thereto belonging, but not to pass without the limits of the prison yard, upon reasonable payment to be made for the chamber room to the prison keeper, not exceeding one shilling per week, such prisoner giving bond to the creditor, with two sufficient sureties, being freeholders in this state, to be bound jointly and severally in double the sum for which such prisoner is imprisoned, with condition in the same bond underwritten in the form following, namely: "The condition of the above obligation is such, that if the above bounden ——, now a prisoner in the gaol in ——, at the suit of ——, do and shall from henceforth continue a true prisoner in the custody, guard, and safe keeping of ——, keeper of the said prison, or in the custody, guard and safe keeping of his deputy, officer, steward, or some one of them, within the limits of said prison, as by law established, until he shall be lawfully discharged, without committing any escape, until such discharge, then this obligation to be void, or else to abide in full force and virtue." And the blanks in said condition must be filled up as the respective cases may require. And if the sureties be not approved by the creditor, or his agent or attorney, who prosecutes, or who prosecuted the said action, any two justices of the superior court, court of common pleas, or a justice of the superior with a justice of the court of common pleas, or either of the said justices, with a justice of the peace, who are disinterested, approving thereof and certifying such their approbation on the back of said bond, shall be deemed sufficient, and shall remain with such sheriff or gaol keeper till the creditor demand the same, when if such creditor or his agent or attorney so demanding, do lodge with

Giving bond with two sureties.

Condition to such bond.

Sureties must be approved.

If creditor demand such bond, and will

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such sheriff or gaol keeper a receipt or memorandum in writing, purporting that he has received such bond, such sheriff or gaol keeper must give up such bond to such creditor, agent or attorney, but no sheriff or prison keeper shall be compelled to give up any prison bond to any creditor, his agent or attorney, unless he or they will give such receipt or memorandum. And the sheriff or gaol keeper shall not be liable to any action for any escape of any such prisoner, after the executing of such bond. And on condition broken, the said creditor may put such bond in suit, and recover his just debt, damages and costs, for which such prisoner was committed, together with prison charges, and shall be allowed ten per cent. interest from the time of commitment, and the court must cancel the bond accordingly. But when any person shall be committed on mesne process or execution, founded on any such prison bond, he shall remain in close gaol or prison. And that on all executions issuing on any prison bond, a minute that such execution issues on a prison bond must be made on the back thereof, for the direction of the gaol keeper.(*l*)

PRISONS AND PRISONERS.

give receipt for the same, it must be given to him.

On condition broken, creditor may put the bond in suit and recover his debt, &c. with 10 per cent. damages, &c.

If the defendant be committed in execution issued on judgment on such bond, he cannot have liberty of the yard.

When any person committed on execution recovered on proper action of debt, covenant, contract, or promise, shall not have at the time of his commitment, or at any time afterwards, estate to the value of ten pounds, such persons may at the expiration of thirty days from the time of commitment, apply to any two justices of the superior court of judicature, or any two justices of the court of common pleas in the county where any such prisoner is committed, or one of the justices of said superior court and one of the justices of said court of common pleas, or to

Prisoners for debt may be admitted to their oath.

(*l*) St. N. H. 126, 127, 130.

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PRISONS AND PRISONERS.

either of said courts while sitting in the town where such prisoner is committed, and pray to be admitted to take the oath by law prescribed and set out below. And such court or justices applied to, must notify in writing the creditor, if within this state, or the attorney who appeared in the cause, in case the creditor live more than forty miles from the prison, or out of the state, or in case of the creditor's living out of the state, his agent or factor, of the application so made to them, and of the time when and place where they will attend to administer the oath prescribed to such debtor, giving reasonable time for the attendance of the party notified, and such notice being given or left in writing at the place of abode of the party so to be notified, a reasonable time before the time ordered for such caption, if the creditor can make it appear to the satisfaction of such justices that the prisoner hath practised fraud, deceit or falsehood, in the management of his estate, real or personal, to take advantage of the act, entitled, "An Act for the ease and relief of persons imprisoned for debt," he shall not be permitted to swear, but if no sufficient objection is made by the creditor, or some other person, the justices must administer to the prisoner the oath following, namely:

Form of oath. "I solemnly swear, that I am not the owner of any real or personal estate, either in possession, remainder or reversion, or in possession of any person or persons for me, of the value of ten pounds lawful money, exclusive of one necessary suit of apparel, at any just and reasonable valuation, nor have I since the commencement of the action whereon the execution by virtue of which I am imprisoned issued, any way embezzled, destroyed, concealed, or transferred any such estate, with a view of defrauding any of my creditors, or changed possession of the

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same for that purpose, or for any advantage to myself, or any depending on me for support, nor any way done any thing like it, either directly or indirectly. And I also add, that I have not at any time, with a view and design of injuring, defrauding, or delaying payment of my debts, done any of the matters or things herein before mentioned, by any way or means whatever. So help me God."

PRISONS AND PRISONERS.

Which oath must be repeated by the prisoner who takes it. And the justices administering said oath must certify their proceedings to the keeper of the gaol, in the following manner, namely:

"—— ss. To ——, keeper of the gaol of ——, on the —— day of —— at ——. A. B. a prisoner in your custody, for debt, at the suit of C. D. of, &c. took the oath prescribed, in an act for the ease and relief of persons imprisoned for debt; the said C. D. having been notified, *(did, or did not appear,)* and in our opinion the said A. B. ought to be discharged.

E. F.
H. I."

Certificate.

And thereupon the said debtor, satisfying the prison keeper, for past charges, shall be discharged, unless the creditor or some person for him pay to the prison keeper weekly *one dollar and twelve cents* per week, for the support and maintenance of such debtor, and on default or neglect of paying for one week, or satisfying the prison keeper therefor, the prison keeper shall discharge such prisoner.(*m*)

Prisoner having taken such oath to be discharged. December, 13th, 1796.

And when any person is committed to prison, upon any writ of execution issued upon a judgment, ren

And such oath may be administered in

(*m*) St. N. H. 127, 128, 129, 130.

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PRISONS AND PRISONERS.

certain cases, when commitment is on execution issued on action of trespass, &c.

dered upon any plea of the case, trespass, ejectment, trover, or trespass on the case, shall have remained a prisoner for and during the term of thirty days, the justices of the superior court of judicature, or courts of common pleas in each county respectively, upon petition of the prisoner, and notice given to the creditor as in other cases is required, may, if in their opinion the public good will admit of it, administer the same oath, and extend the same benefits and privileges to such prisoners as are extended to prisoners for debt.(*n*) And all and every judgment obtained against any such prisoner, in any case aforementioned, shall notwithstanding any such discharge be and remain good and effectual in law, to all intents and purposes, against any estate whatsoever, which may then, or at any time afterwards, belong to any such prisoner, and a new execution may issue against the goods, chattels, lands and tenements of such prisoner, in the same manner as might have been done if the prisoner had never been in execution, and the prisoner's estate is liable to pay prison charges during all the time of his imprisonment.(*o*)

Though defendant take such oath, and be discharged from prison, the judgment remains good against his estate.

County liable to pay prison charges in certain cases. June 13, 1796.

And when the opinion of either of the courts aforesaid, upon examination had in the county where any prisoner is committed by virtue of a writ of execution, issued on a judgment rendered upon any plea of the case, trespass, ejectment, trover, or trespass on the case, the public good will not admit of the liberating or enlargement of such prisoner, and such prisoner is unable to pay his prison charges, the county wherein such prisoner is committed must pay the same, and the courts of common pleas in each county respectively may examine all such accounts

(*n*) St. N. H. 123.
(*o*) Ibid.

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for prison charges, and allow so much as to them may appear just, not exceeding one dollar per week, and may raise the same as other county taxes are raised.(p) PRISONS AND PRISONERS.

The sheriffs of the several counties must receive, and safe keep in the public gaols in their counties respectively, all prisoners committed under the authority of the United States, until they shall be discharged by due course of the laws thereof. And said sheriffs are subjected to the like pains and penalties, for neglect of duty therein, as in the case of prisoners committed under the authority of the state, provided the United States pay to such sheriff for the use and keeping of such gaol, at the rate of three shillings per month for each prisoner who shall under their authority be committed thereto, during the time such prisoner shall be therein confined, and also support such prisoners as may be committed for offences. And also pay to the keeper of such gaol the customary fees for committing and discharging prisoners.(q) Sheriffs must receive and keep all prisoners committed under authority of the United States. United States to pay for each prisoner.

The respective sheriffs must, at the end of every six months, beginning the first term thereof on the fourteenth day of January, A. D. 1790, render an account, and pay to the treasurer of the county of which such sheriff may be keeper of the goal, all monies he shall have received from the United States for the use and keeping of such gaols, excepting the customary fees for committing and discharging prisoners.(r) Sheriff to render an account.

(p) St. N. H. 130.
(q) Ibid 39, 40.
(r) Ibid. 40.

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VIII. FINES, &c.

FINES.

Sheriffs accountable for fines.

SHERIFFS are accountable to the state treasurer, and the treasurers of the respective counties, for all fines and forfeitures set and imposed by the court of general sessions of the peace, and the superior court of judicature, accruing to the state and the several counties, and the sheriff must immediatley on receipt of any such fines and forfeitures, or immediately upon his voluntarily or negligently permitting any prisoner on whom the same has been set or imposed to escape, pay the same, when for the use of the state to the treasurer therof; and when for the use of the county to the treasurer thereof; and upon his neglect or refusal so to do, he shall forfeit and pay treble the amount of such fine or forfeiture, on action brought by the treasurer, to whom the same is payable with double costs of suit; and such neglect of payment, notwithstanding such recovery by action, shall be considered a good ground of removal of such sheriff from office. And the clerks of the respective courts must, immediately upon the rising of the said courts, make out a list and attest the same, of all such fines and forfeitures, and deliver the same to the sheriff, and a like attested list to each of said treasurers, of all such fines and forfeitures, to them respectively payable; and when it shall appear to the court of general sessions of the peace in any county, that the fine, forfeiture, or costs, for which any person shall be committed to the custody of any sheriff, hath not, and cannot be recovered of such person, they must certify the respective treasurers thereof, and such certificate shall bar any prosecution therefor by either of said treasurers.(a)

(a) St. N. H. 118, 119.

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FINES.

The sheriff of each county, must annually lay before the justices of the court of general sessions of the peace, his account for all services done by himself or deputies, for dispersing venires and proclamations, and for all other services by law to be paid out of the county treasury, and such allowance shall be made as justice may require, and no account for any services shall be considered as good against the county, unless the account of such service be presented within one year from the time of performing such services, provided the court of general sessions of the peace shall have been open to receive the same.(*b*)

Sheriff must settle his account annually.

(*b*) St. N. H. 119.

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IX. JURORS.

Jurors.

Clerks of courts must issue venires for grand jurors.

THE clerks of the superior court, and court of general sessions of the peace, must cause precepts for the appointment of grand jurors to be delivered to the town clerks, to whom they are directed, at least twenty-five days before the setting of the court to which they are returnable, or to be delivered to the sheriff of the county in which such grand jurors are to assemble, at least forty days before the setting of the court to which such precept is returnable. And the sheriff must cause all such precepts as are delivered to him seasonably to be delivered to the town clerks to whom they are directed, at least twenty-five days before the setting of the court to which they are returnable. And if either of the said clerks or sheriffs shall make default therein, they shall severally be amerced by the respective courts where such default shall be made, for each and every offence or neglect, a sum not exceeding three pounds. And if a sufficient number of grand jurors do not appear, the respective courts may order the sheriff to return grand jurors of such persons present as occasion shall require, and such court shall judge necessary, provided the number does not exceed five; and the sheriff must do the same accordingly.(a)

Sheriff must distribute venires.

Penalty for neglect.

Must fill up vacancy with talesmen.

Sheriff must supply deficiency of petit jurors by talesmen.

And whenever in any session of the supreme court of judicature, inferior court of common pleas, or court of general sessions of the peace, any juror or jurors shall be set aside from the trial of a cause, because such juror or jurors do not stand indifferent between the parties, the sheriff

(a) St. N. H. 106.

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or coroners respectively, as the case may be, must fill up a jury by returning talesmen, as the case may require.(*b*) JURORS.

On action for forcible entry or detainer, sheriff must return jury, and how.

When a trial is to be had on a complaint for forcible entry or detainer, the two justices, *quorum unus*, must issue their precept to the sheriff of the same county, or his deputy, him commanding to cause to come before them twelve men, having the qualifications by law required of petit jurors, serving at the superior court at a certain time and place mentioned in such precept, and at such time and place appointed for the trial of such complaint, if a sufficient number of jurors summoned by the sheriff do not attend, the said justices may order the sheriff to complete the number, by returning others forthwith.(*c*)

(*b*) St. N. H. 109.
(*c*) Ibid 285, 286.

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X. TAXES.

TAXES.

Sheriff must collect taxes on unincorporated towns and has the same power as collectors in incorporated towns.

WHEN any taxes are, or shall be proportioned to any town or place not incorporated, the treasurer of the state must assess the proportion of such town or place, and commit the same to the sheriff of the county where the lands lie, with a warrant under his hand and seal empowering such sheriff to collect the same, and every such sheriff has the same power and authority respecting the taxes committed to him to collect, as the collectors of towns have with respect to the taxes of non residents, and must observe the same directions which are by law pointed out; and he must in all cases advertise also in the shire, or in one of the nearest half shire towns in the county where such land lies, and must also hold his sales in such shire or half shire town, and may give deeds in the same form; (mutatis mutandis) and the treasurer shall have like remedy by extent against such sheriff as he by law has against collectors. And the sheriff, to whom any such warrants issued by county treasurers for the collection of county taxes are delivered, has the same authority, and must proceed in the same manner as in collecting state taxes, and deeds by them given in similar form are equally valid. And sheriffs shall have for the services before mentioned, double the poundage given by law on executions, the printers bill for advertisements, and legal postage for letters for procuring such advertisements to be published, and for posting the notice required by the laws of the state, which shall be considered as full compensation for such services. But no collector or sheriff may execute a deed of any real estate by him sold for taxes, until the time for redeeming the same is expired, if such

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TAXES.

time of redemption do not exceed twelve months from the time of sale. And if any sheriff or collector of taxes shall die, remove, or in any way be rendered incapable of completing the duty of such office, their successors respectively must complete the same. And if any person whatsoever, shall pay or tender the amount of any one tax and the interest thereof, to such sheriff or collector, or their successor, at any time before a deed or deeds of such lands shall be actually executed, no further proceedings shall be had thereupon.(*a*)

Must receive from any person his proportion of a tax in his hands for collection.

In all cases where the tax of any township or location is assessed in one sum by the treasurer, either for state or county taxes, and such township is not sold, the sheriff or sheriffs must receive from any owner, proprietor or claimant, (when tendered) his proportion of the assessment, and cost (if any) according to his interest therein, the proportion to be made according to the number of acres. And after any such sale shall have been, any proprietor, owner, or claimant, may redeem his share of the same, according to his interest therein, paying in proportion as aforesaid, and the sheriff must make the exception in his deed to the purchaser or purchasers accordingly.(*b*.)

(*a*) St. N. H. 285, 286.
(*b*) Ibid. 453.

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XI. ELECTION.

ELECTION.

Clerks of towns, &c. to transmit to sheriffs copies of votes at election of governor, &c.

THE clerks of the respective towns and parishes, must make a fair record of the number of votes taken at the meetings held in their towns, for the choice of governor, council, and senators, and must make out a fair attested copy of such record, and seal up and direct such copy to the secretary of the state, with a superscription expressing the purport thereof, and cause such copy to be delivered to the sheriff of the county in which such town or parish lies, thirty days at the least before the first Wednesday of June in each year. And the sheriff of each county, or his deputy, must deliver all such certificates by him received into the secretary's office, at least twenty days before the first Wednesday in June in the same year.(a) And if any sheriff shall neglect to make such return, within the proper time aforesaid, of the votes of each and every town within his county, for all or any of said officers that may seasonably come to his hands or custody, he shall forfeit and pay a fine of one hundred dollars for each town so neglected, to be recovered, one moiety to the use of the prosecutor, and the other to the county, to be recovered by indictment. And whenever any town clerk shall deliver or cause to be delivered in due season, to the sheriff of the county to which he belongs, a letter sealed and directed to the secretary, and by the superscription thereon purporting to be the votes for any of the officers aforesaid, the sheriff must give a receipt to such town clerk, that

Sheriff must deliver such certificates to secretary's office 20 days before first Wednesday in June in each year.

Penalty for neglect.

Sheriff must give receipt to such clerk.

(a) St. N. H. 11.

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he has received a paper purporting to be a certificate of votes for the officers aforesaid from such town.(b) ELECTION.

The several town clerks must also respectively transmit a certificate of all votes taken for representatives to the congress of the United States, at the meetings held therefor, sealed up and delivered in manner aforesaid to the sheriff of the county to which he belongs, within ten days after holding their respective meetings, and the several sheriffs must within twenty-five days after the time of holding such meetings, transmit to the secretary all votes that shall in manner aforesaid be respectively delivered to them, and shall be liable to the same penalties for neglect of the duties enjoined, as they are liable to for omissions in transmitting the votes for the choice of the president and senators, (otherwise governor, council, and senators)of the state.(c)

Sheriff must transmit certificates of votesfor members of congress to the secretary's officewithin 25 days after the holding the meetings at whichthevotes are taken.

(b) St. N. H. 42, 43.
(c) Ibid. 39.

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XII. FOREIGN PROCESS.

FOREIGN PROCESS.

Process having issued out of the state, how to proceed.

WHEN process shall have issued in any other of the United States, against any person for a crime alleged to have been committed in such state, and the person against whom the process issued shall escape into this state, and any justice of the peace in this state shall issue his warrant directed to all proper officers in the county for which such justice is commissioned, requiring the person or persons to whom the same is directed to apprehend such offender, and if on examination before the justice to whom such warrant is returnable, he shall think it proper to send by warrant such offender to the line of this state, next to the state in which the original process issued, that he may be delivered to some proper officer there ready to receive him, and convey him to the place where the offence was committed, the sheriffs of the respective counties in this state, and all other persons to whom the same precept may be directed, must obey and execute the same. And

Offenders may be carried through this state.

in like manner, where any offender is apprehended in a neighbouring state, and it is necessary to carry him through this state, that he may be conveyed to the place where the offence was committed, and any justice of the peace in this state shall on application, &c. issue warrant under his hand and seal, directed to the sheriffs of those counties through which it may be necessary to carry such offender, or to other proper officers in such counties, to cause such offender to be conveyed to the line of this state next to the state where the offence was committed, there to be delivered to some proper officer ready to receive such offender, all such sheriffs and other officers to whom

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such precept may be lawfully directed, must obey and execute the same. And the sheriffs, deputy sheriffs, and constables, or other officers of justice of any neighbouring government, with their assistants, in the execution of any lawful process issuing from or returnable to courts in their respective states, have full liberty, power and authority, to pass and repass, and also to convey such prisoner or things as they may have in their custody by virtue of any such lawful process, in or by any of the roads or ways lying in this state, in as full, free, and ample manner as the officers of justice in this state do use and exercise in the discharge of their duty and office. And any person insulting or obstructing such officer, so passing through any part of this state in such execution of his office, shall be liable to the same punishment as by law is inflicted on persons insulting similar officers of this state, in the executions of their offices in similar cases.(a)

FOREIGN PROCESS.

Officers of other governments may pass and repass.

Persons insulting them, how punished

(a) St. N. H. 271, 272.

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XII. CORONER'S INQUEST.

CORONER.

Coroners to take inquest of violent or casual deaths.

Must summon jury.

Number of jurors to be summoned.

Warrants to be directed to a constable.

Number of jurors to make inquest, to be sworn.

EACH coroner must take inquests of the violent deaths committed, or casual deaths happening within the county for which he is commissioned. And when certified of the dead body of any person, supposed to have come to his death violently or by casualty, found or lying within his county, he must cause a jury of inquest, to be summoned to appear before him, at a certain time and place, to enquire how and in what manner the person so found came to his death. The number of jurors summoned must be eighteen, and have the qualifications of petit jurors in courts of common law, and inhabitants of the town or place in which such dead body is found, or of that and the adjacent towns, as the coroner shall order. And the warrant or warrants for summoning the jury, must be directed to a constable of the town or place from whence such jurors are to be summoned, and on such warrant must be specified the number of jurors to be summoned in such town or place, and the constable to whom any such warrant is directed and delivered, must forthwith execute the same, and repair to the place where the body is at the time dead mentioned, and make return of the warrant with his doings thereon to the coroner who issued the same, under the penalty of forty shillings for any unnecessary neglect or failure in making service and return of such warrant. And twelve or more of the jurors returned, must be sworn in view of the body, and be charged by the coroner to declare on their oaths of the death of the person, whether he died of felony, or mischance, or accident: and if of felony, whether of his own or of another; and if of

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felony of another who were principals, and who were accessaries, with what instrument he was struck or wounded, and so of all prevailing circumstances that may come by presumption, and if he died of his own felony, then to inquire of the manner, means or instrument, and of all circumstances concerning it; and if he died by mischance or accident, whether by the act of man, and whether by hurt, fall, stroke, drowning, or otherwise; to enquire of the persons who were present, the finders of the body, his relations and neighbours, whether he were killed in the same place where he was found, and if elsewhere, by whom, and how he was brought thence, and of all circumstances relating to said death.

Coroner must make proclamation.

And the jury being charged must stand together, and the coroner must cause proclamation to be made for all persons who can give evidence how and in what manner the person then and there lying dead came to his death, to draw near and they shall be heard.

May summon and compel witnesses.

And every coroner may summon, and if necessary grant compulsory process for the appearance of witnesses, and may administer an oath to such witness; and the testimony of such witness must be drawn up in writing, and subscribed by them,

Take testimony in writing.

and if the testimony of any witness or witnesses charge any person with killing, or being any way instrumental to the death of such person found dead, the coroner must bind such witnesses by recognizance,

Must bind witnesses to appear at next superior court.

in a reasonable sum, to appear at the next superior court of judicature to be holden in and for the same county, there to give evidence accordingly; and if any such witness shall refuse so to recognize, the coroner must commit such witness to the common gaol of the county.

Witness refusing to recognize, may be committed.

And the jury having heard the evidence, examined the body, and made all the in-

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CORONER.

Verdict must be in writing.

And Coroner must return the verdict, written testimony and recognizance, to next superior court.

quiry in their power, must draw up and deliver to the coroner their verdict upon the death under consideration, in writing under their hands, and the coroner must set his hand and seal thereto. And must return the inquisition, written evidence, and recognisance, (if any) by him so taken to the next superior court of judicature holden in the same county. And upon an inquisition found, of the death of any person by the felony or misfortune of another, the coroner must speedily inform one or more of the justices of the same county thereof.(*a*)

The form of a warrant for summoning the jury of inquest must be as follows, *viz.*

Form of warrant for summoning jury.

[L. S.] R——, ss. { To either of the constables of L. in the county of R. *Greeting:*

"In the name of the state of New-Hampshire, you are hereby required to summon —— good and lawful men of said——to appear before me one of the coroners of R——, at the dwelling-house of ——, (or at a place called ——,) within the said town of L. on ——, at —— of the clock in noon, then and there to inquire upon a view of the body of then lying dead, how and in what manner he came to his death. Fail not herein at your peril. Given under my hand and seal, at L. —— in said county this —— day of ——, A. D. ——.

"A. B."

Form of the Oath to be administered to Jurors.

Form of jurors oath.

"You solemnly swear, that you will diligently inquire, and due presentment make in behalf of this state, how in what manner —— who lies here dead, came

(*a*) St. N. H. 130, 131, 132.

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to his death; and that you will deliver up to me —— one of the coroners of this county a true inquest thereof, according to such evidence as shall be laid before you, and according to your knowledge. So help you God." CORONER.

Form of the Oath to be administered to the Witnesses.

You solemnly swear, that the testimony which you shall give to this inquest concerning the death of —— here lying dead, shall be the whole truth, and nothing but the truth. So help you God." Form of oath of witnesses.

Form of the Inquisition.

"State of New-Hampshire, R. ss.

"An inquisition taken at L. within the county of R. —— the —— day of —— in the year of our lord —— before me A. R. gentleman, one of the coroners of the said county of R. —— upon the view of the body of then lying dead, by oaths of —— good and lawful men, who being sworn, and charged to inquire for the said state when, how, and by what means the said —— came to his death, upon their oaths do say, (*here insert how, where, when, and by what instrument he was killed; and if it appears that he was murdered by a person known, then the inquisition must conclude thus*) "and so the jurors aforesaid do say, that the said —— in manner and form aforesaid, the aforesaid —— then and there of his malice aforethought did kill and murder, against the peace and dignity of this state and the laws of of the same." (*If it appears to be self murder, the inquisition must conclude thus.*) "And so the jurors aforesaid, upon their oaths aforesaid do say, that the said —— in manner and form aforesaid then and there voluntarily and feloniously as a felon of him- Form of inquisition.

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CORONER.

self did kill and murder himself against the peace and dignity of the state." (*If it appears that the death was by misfortune, then the inquisition must conclude thus.*" "And so the jurors aforesaid, upon their oaths aforesaid do say, that the said —— in manner aforesaid came to his death by misfortune." *If the death was occasioned innocently, by the hands of any other person, the inquisition must conclude thus;*) "the jurors aforesaid, upon their oaths aforesaid say, that the aforesaid D. H. the aforesaid —— by misfortune, and contrary to the will of the said D. H. in manner and form aforesaid did kill and slay. In witness whereof the said jurors have hereunto set their hands the day and year abovesaid.

L. M.
N. O. &c.

In witness of all before written, the said coroner hath hereunto set his hand and seal the same day and year.(*b*)

A. B. [L. S.]

(*b*) St. N. H. 133, 154.

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XIV. CONSTABLES.

CONSTABLE.

Constables must warn townmeetings by warrant from select men.

WHENEVER the select men of any town shall issue their warrant, directed and delivered to any constable of such town in due time, him requiring to warn the inhabitants of such town, qualified by law to vote in town-meeting, to meet in such meeting, and in which warrant is inserted the time and place of holding such meeting, and the intent and design thereof, and the subject matter of the business, matters and things to be considered and acted upon thereat, it is the duty of such constable to post up an attested copy of such warrant at the meeting house, or some public place, fifteen days before the day of holding such meeting, or to give personal notice the like number of days before such meeting, (unless in cases where other and different notice is by law prescribed and directed) or otherwise notify and summon the inhabitants in such way and manner as they at a legal meeting have agreed upon. And such constable must return such warrant at the place and at the hour for holding such meeting, with his doings thereon to the town clerk, or in his absence to any of the select men to be acted upon.(*a*)

Manner of making such warning.

And if ten or more freeholders in any town, signify their desire in writing to the select men to have a matter or thing inserted in a warrant for calling a town meeting, it is their duty to insert the same in the next warrant they shall issue for a meeting, or call a meeting for the express purpose of considering thereof, if the same should be required; and in case the select men unseasonably neglect to call a

(*a*) St. N. H. 200.

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CONSTABLE.

meeting, or to insert such article, the sixth part of the legal votes in any such town may apply to a justice of the peace within the same county, who may issue his warrant under his hand and seal, directed to any constable of the town, directing and requiring him to warn the inhabitants of such town, qualified to vote on town affairs, to assemble at such time and place in such town as such justice shall order, and for the purposes in such warrant expressed, and the same notice must be given and return thereof made as in other cases.(*b*)

Must warn town meeting by warrant from a justice of the peace.

Penalty for neglect.

And if any constable shall in any of the particulars aforesaid neglect his duty, he shall for each offence forfeit and pay the sum of ten pounds to any inhabitant of the town who will sue for the same in the court of common pleas in the same county, the one half to the use of the town, the other half to the use of the prosecutor.(*c*)

Must also warn a meeting for drawing jurors by order from town or parish clerk.

When upon any emergency a venire shall be issued to any town or parish clerk, for jurors to be drawn immediately, such town or parish clerk must order the constable or constables of such town or parish to warn a meeting of the inhabitants of such town or parish forthwith, for appointing jurors.(*d*)

Must serve coroner's warrants for jury.

Constables must also serve warrants issued by coroner for summoning jury of inquest, and for neglect therein will forfeit the sum of forty shillings.(*e*)

(*b*) St. N. H. 200.
(*c*) Ibid
(*d*) Ibid. 109.
(*e*) Ibid. 132.

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XV. OATHS.

Oaths to be taken by Sheriffs, Coroners, and their Deputies.

OATHS.

Oath of allegiance.

"I, A. B. do solemnly swear, that I will bear faith and true allegiance to the state of New-Hampshire, and will support the constitution thereof. *So help me God.*"

Oath of office for sheriffs, coroners and their deputies.

"I, A. B. do solemnly swear and affirm, that I will faithfully and impartially discharge and perform all the duties incumbent on me, as ——, according to the best of my abilities, agreeably to the rules and regulations of this constitution, and the laws of the state of New-Hampshire. *So help me God.*"(*a*)

Oath of Constable.

For constables.

"You do solemnly swear, that you will faithfully and impartially discharge and perform all the duties incumbent on you as ——, according to the best of your abilities, agreeable to the rules and regulations of the constitution and laws of the state of New-Hampshire. *So help you God.*"(*b*)

(*a*) St. N. H. 20.
(*b*) Ibid. 99.

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XVI. FEES.

FEES. SHERIFFS may demand and take the following fees, viz.

For service of a writ or summons, or scire facias, either by reading it to the defendant, or leaving a copy for each defendant, twenty-three cents.

For serving of a writ of attachment, with or without a summons, for each defendant, twenty-three cents.

For a bail bond, to be paid by the person bailed, seventeen cents.

For the service of a writ of possession, the same as the service of the original writ on which it was obtained, with poundage for the cost as in personal actions.

For levying executions in personal actions and extents, for the first fifty dollars, two and a half cents on the dollar.

For the second fifty dollars, two cents on the dollar.

For all sums from one hundred dollars, to three hundred dollars, one cent on the dollar.

For sums above three hundred dollars, a half cent on the dollar.

The poundage on extents to be taken in the same paper bills, notes, orders, or certificates, as the same extents issued for.

For travel for the service of each writ, execution, or extent, three cents per mile, the travel to be computed from the place of service to the office, place or court to which the writ is returnable, by the way most commonly used; and when there are several persons in the same writ, execution or

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extent, upon whom it is served, the travel shall be computed from the remotest of them, and no more be allowed for travel than if it had been served on the remotest person alone.

Provided, that no more than fifty miles travel shall be allowed the sheriff or other officer serving any writ, execution or extent in any case, the travelling fees and fees of service to be endorsed on the writ in mesne process; and no more shall be allowed in any case than is so endorsed, and also the fees for service, poundage and travel, on executions and extents, shall be particularly set down and expressed thereon.

For summoning witnesses, each, seventeen cents.

For serving a writ of execution for partition of real estate on a judgment of court, eighty-three cents per day.

For travel and expenses four and an half cents per mile.

For every trial, eleven cents, to be paid with jurors fees.

For every default, six cents.

For attending the grand jury, thirty-four cents per day.

For attending petit jury, twelve and a half cents each case, to be paid with jurors fees.

For dispersing venires, four cents each, to be paid out of the county treasury.

For dispersing proclamations, four cents each, to be paid out of the county treasury.

Constable's fees for service of writs, warrants and executions, and for travel, the same as to sheriff.

Gaolers, for receiving any prisoner into custody, twenty five cents.

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FEES. For discharging each prisoner, the like fee twenty-five cents.

For each prisoner's diet, one dollar and twelve cents per week.

Coroners for serving writs, the same for travel and service as to the sheriff.

For every trial where the sheriff is concerned, eleven cents, to be paid with the juror's fees.

For taking an inquisition, one dollar and fifty cents.

To the foreman of the jury, fifty cents.

To other jurors, forty two cents per day.

And for every ten miles travel, twenty cents.

To the constable his expenses in summoning the jury of inquest and attendance, sixty-seven cents per day.

All fees attending the inquisition on the death of any person, to be paid out of the estate of the deceased, and in want thereof by the county treasurer, the same being adjusted and allowed by the court of common pleas.

If any person or persons shall demand and take any greater fees, for any of the services above mentioned than what is above allowed to be taken, he or they will forfeit and become liable to pay to the person or persons who shall sue for the same, the sum of thirty dollars for every such offence, to be recovered by action of debt in the court of common pleas, besides being liable to an action for damages, by and for the party injured, to recover back the sum or sums so unlawfully taken.(a)

(a) St. N. H. 112, 116.

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CHAP. V.

Statute regulations in the State of Vermont.

I. APPOINTMENT AND GENERAL DUTY.

APPOINTMENT AND GENERAL DUTY.

Sheriffs.

THE governor, and in his absence the lieutenant governor, with the council, (a major part of whom, including the governor or lieutenant governor, are a quorum,) may appoint and commission all officers, except where provision is otherwise made by the constitution or some statute.(a) A sheriff must be annually appointed in each county, at every stated session of the legislature, and must receive a commission from the governor certifying him to be duly elected or appointed according to the constitution, and authorizing him to execute the office; but before he enter upon the execution thereof, he must become bound by recognizance to the treasurer of the county of which he is sheriff, before the chief judge of the county court, and in case of the death or absence of the chief judge, before one of the assistant judges, with two or more sufficient sureties, freeholders within the state, in the sum of ten thousand dollars, for the faithful discharge and performance of the duties of his office, and every part thereof, and must also take the oath of office before the judge taking

How appointed and commissioned.

To become bound.

Must take oath of office.

(a) St. V. I. 37, 68.

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APPOINTMENT AND GENERAL DUTY.

such recognizance, which must be certified on his commission; and all acts of any sheriff before he shall have been so qualified are null and void.(*b*)

Tenure of his office.

When so appointed and qualified, the sheriff holds his office until another is appointed and qualified according to law.(*c*)

Cannot hold the office of Governor, &c.

No person can, while he holds the office of sheriff, hold either the office of governor, lieutenant governor, judge of the supreme court, treasurer of the state, member of the council, member of the general assembly, or surveyor general. Nor is any person holding any office of profit or trust under the authority of congress eligible to the office of sheriff.(*d*)

Must take oath of allegiance to the state.

He must also before he enter upon the execution of his office, take and subscribe the oath or affirmation of allegiance to the state, unless he shall produce evidence that he has before taken it.(*e*)

His powers generally.

Each sheriff thus appointed, commissioned and qualified, has within his county full power to serve and execute all lawful writs, processes, and precepts to him directed, issuing from lawful authority, and to do all things pertaining to the office of sheriff, and

May appoint deputies.

may appoint such number of deputies in his county as the judges of the county court in such county shall from time to time limit and direct, which de-

Their powers.

puties may serve all processes, and do all acts generally which the sheriff is empowered or required by

Their acts, &c. his acts, &c.

law to do and perform. And all the acts, doings and returns of such deputies, must be signed by them respectively as deputy sheriff, and shall be taken and deemed as the act of the sheriff appointing them.

(*b*) St. V. I. 507.
(*c*) Ibid. II. 52.
(*d*) St. V. I. 42.
(*e*) Ibid. 42, 43.

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APPOINTMENT AND GENERAL DUTY.

The sheriff is in all things amenable and responsible for the conduct of his deputies in office, and may take bonds or other sufficient security to indemnify him against the acts or defaults of each. Every deputy sheriff must before he proceed in the execution of his office, cause his deputation and oath of office certified thereon, to be recorded in the county clerk's office of the same county, and if the sheriff shall before such deputation expires dismiss such deputy, or revoke any such deputation, such revocation must be recorded in such county clerk's office, and all the acts and doings of such deputy sheriff, acted and done before his deputation and oath of office shall have been so recorded, are null and void in law. And no sheriff is amenable criminally for the conduct of his deputy, other than for fines and amerecements for neglect of duty.(f)

Sheriff responsible for his deputies, and may take bond.

Deputy sheriff to be sworn, and his deputation and oath of office recorded.

Sheriff not amenable criminally for acts of deputies.

Sheriffs may also in their respective counties, on special occasions, at the risk of the plaintiff, depute any meet person to serve any particular writ or process, which deputation must be entered on the back of such writ or process, and may also depute some meet person or persons to serve warrants in criminal cases, when either the interest of the community or the exigences of the case may require it. And when any person is deputed to serve a writ or process on any special occasion, and he makes oath before some justice of the peace, or in open court, that he truly and faithfully served the same according to his endorsement thereon, and that he did not fill up, make, or alter such writ or process, and such oath is certified thereon by the authority which administered the same, such service is good and valid in law.(g)

Sheriffs may appoint special deputies.

Doings of such deputies under oath valid.

(f) St. V. I. 307, 308.
(g) Ibid. 308, 309.

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APPOINTMENT AND GENERAL DUTY.

Sheriffs to be conservators of the peace, to suppress riots and apprehend without warrant persons unlawfully assembled.

Each sheriff has power within his county, by himself or deputy, to preserve the peace, and to suppress with force and strong hand, when the necessity of the case requires it, all tumults, riots, routs, and other unlawful assemblies, and may apprehend without warrant all such persons as he may find so assembled in disturbance of the peace, and cause them to appear before some justice of the peace, to be dealt with as the law directs.(*h*)

Sheriff and other officers may require aid, &c.

Every sheriff and other officer, in the execution of his office for the preservation of the peace, or for apprehending or securing any person or persons for violating the same, or for any other criminal matter or cause, may require suitable aid and assistance,

Penalty on those who neglect.

and if any person being of age and ability, when so required neglects or refuses to give such aid and assistance, such person or persons, on conviction thereof, before any court proper to try the same, shall pay a fine not exceeding thirty dollars and costs of prosecution, to and for the use of the county

In case of great opposition sheriff, &c. may raise militia.

in which the offence is committed. And if great opposition be made against the sheriff, or deputy sheriff, in executing any lawful writ or process, such sheriff or deputy sheriff may with the advice of two justices of the peace, one of whom must be a counsellor, judge of the supreme court of judicature, or judge of the county court in the same county, and such other justice as may be present, raise the militia of the county, or such part thereof as they may judge expedient, who must aid and assist such sheriff

Indemnified if any be killed.

in the execution of such precept; and if any person or persons who shall be so in opposition shall be wounded or killed, the sheriff or deputy sheriff, and the militia, and every of them, shall be indemnified

(*h*) St. V. I. 309.

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and held guiltless. And all military officers and soldiers must obey the commands of such sheriff, or deputy sheriff, under penalty of a fine upon each officer not exceeding fifty dollars, and on each soldier not exceeding twenty dollars, with costs of prosecution.(*i*)

APPOINTMENT AND GENERAL DUTY.

Militia officers and soldiers to obey sheriffs, &c. Penalty for disobedience.

Every sheriff in the day time may enter and search houses, buildings, or other places in his county, in which there is any person or persons for the apprehension of whom in matters of delinquency, or of a criminal nature he has a warrant or precept from any proper authority. And to search for any goods or chattels stolen or purloined, in any houses, buildings, or other places where such goods or chattels are or may be supposed to be lodged or secreted, by virtue of any legal precept or warrant issued for that purpose by proper authority; and every person who shall refuse such sheriff, or deputy sheriff, entrance into his house, building, or other place, or threaten him if he do enter, or shall abuse him or his assistants after they shall have entered, although by force, or shall prevent his making search in either of the cases aforesaid, every such person being duly convicted thereof, shall forfeit and pay a fine not exceeding sixty dollars, to and for the use of the county in which the offence shall be committed. And the sheriff or his deputy, may not return that he cannot execute his precept or warrant.(*j*)

Sheriffs in the day time may search houses, &c.

Penalty for refusing him admittance into houses, &c.

If at the day appointed for the holding any county court, neither of the judges of such court be present, the sheriff of the same county may adjourn said court from day to day until one of the judges be

Sheriff's power to adjourn county court.

(*i*) St. V. I. 309, 310, 334.
(*j*) Ibid. 311.

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APPOINTMENT AND GENERAL DUTY.

present.(k) And if at the day appointed for the holding of a session of the supreme court of judicature, neither of the judges thereof be present, the sheriff may adjourn said court from day to day, until one of the judges shall be present. And if neither of the judges shall be able to attend at the commencement of a session, the sheriff of the county, by virtue of a written order to him directed, may adjourn such court to the next stated session, or to such day antecedent thereto, as in such order shall be appointed.(l)

Also supreme court from day to day.

Sheriff has the custody of gaols and prisons.

The sheriff of each county has the custody, rule and keeping, and charge of the gaol or gaols in his county and of the prisoners therein, and must keep the same either by himself, or a deputy gaoler, for whose acts and doings he shall be responsible.(m)

Constables when and how chosen.

Constables are chosen by the freeholders and inhabitants of the several organized towns, in their annual town meeting in the month of March, or at an adjournment of such meeting, in the month of April, next succeeding, or in case of a vacancy of that office, or want of such an officer, in any particular town at a lawful town meeting called for the purpose of filling such vacancy, or adding the constable wanted, in any other month. And such constable when chosen must, before he enters on the duties of his office, be sworn to a faithful discharge of the same, which oath may be administered by a justice of the peace, the town clerk, or one of the select men. And the person chosen first constable, (and the others, if the town so direct,) must also, before he enters on the duties of his office, execute

Must be sworn.

First constable must give bond, &c.

(k) St. V. I. 52.
(l) Ibid. 56.
(m) Ibid. 309.

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a bond with sufficient sureties to the select men of the town for the time being, and their successors in office, conditioned that the person so chosen shall and will faithfully execute the offices of constable and collector for such town, for the year ensuing, and that he shall at all times save harmless such town from all damages, costs, and charges which may in any manner accrue to said town, from the default, laches or neglect of such constable and collector. APPOINTMENT AND GENERAL DUTY.

The town clerk, a select man, or justice of the peace, may administer the oath of office to constables when chosen, and when so sworn, they continue in office until the next annual meeting for the choice of town officers, or until others be chosen and sworn in their room, except in cases wherein the law otherwise directs. When a constable is chosen he may, if present, be notified thereof by either of the select men, the town clerk or the moderator, and must in open meeting declare his acceptance or refusal; but if absent, such notice must be in writing, under the hand of at least two of the select men, to appear within six days before the town clerk, or one of the select men for the time being, and take the oath of office. Which notice must be served by a constable of the town, by reading the same in his hearing, or a copy thereof left at his usual place of abode. And every person not by law exempted from serving in such office, able in person to execute the same, who shall after such notice given in open town meeting refuse or neglect for the space of one hour to serve therein, or take the oath of office, and every person who refuses or neglects for the space of six days after the service of such written notification, or for the space of six days after he shall have returned to his dwelling house, in case of absence out of town, at the time of such service, to appear and accept such office,

Town clerk, &c. to administer oath of office.

When chosen, to be officially notified of such choice, either verbally or in writing.

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APPOINTMENT AND GENERAL DUTY.

and take such oath; and in case the same is taken before any other person than the town clerk, to file a certificate of his having so taken it with the town clerk, forfeits a fine not exceeding thirteen dollars, to the treasury of the town, unless it be made to appear to the justice before whom the case is tried, that the person so chosen is thereby unreasonably oppressed, or that others are unjustly exempted.

Penalty for not taking the oath.

Constables must return notifications to town clerk in ten days, under penalty of 5 dollars.

And every constable, within ten days after the receipt of such written notification to serve on any person elected to any town office, must return the same with his doings thereon to the town clerk of such town for the time being, and for neglecting his duty therein is subjected to a fine not exceeding ten dollars, to the treasury of such town.(*n*)

Constables in towns have the same powers and are liable as sheriffs.

All constables in their respective towns, have the same powers as are by statute given to sheriffs, and are subject to the same penalties and under the same liabilites as sheriffs in their respective counties. And every person opposing constables in the execution of their office, is liable to the same pains and penalties as for so opposing sheriffs.(*o*) But

Not to arrest without writ or warrant

no constable may apprehend or arrest the body of any person by the command of a justice of the peace, without a warrant in writing therefor.(*p*)

Sheriff must suppress riots and to that end make proclamation.

When three or more persons meet or assemble themselves together with intent to do an unlawful act with force and violence against the person of another, or against his goods or possessions, or to do any unlawful act against the peace, or to the manifest terror of the people, every sheriff, deputy sheriff, and constable, must on notice or knowledge of any such

(*n*) St. V. I. 411, 412, 413.
(*o*) Ibid. 311, 312.
(*p*) Ibid. 312.

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unlawful and riotous assembly, repair to the place where such assembly is, and after commanding silence with a loud voice, make proclamation nearly as follows, namely:

APPOINTMENT AND GENERAL DUTY.

"In the name of the state of Vermont, I command all persons being assembled, immediately to disperse themselves, and depart to their habitations, or to their lawful business, under the pains and penalties of the law." And if the persons so assembled, or any three or more of them, shall after proclamation made continue together, and not disperse themselves, every sheriff, deputy sheriff, or constable present, and every other person or persons commanded by such sheriff, deputy sheriff, or constable, which command either of them may lawfully give, must seize and apprehend such persons so unlawfully and riotously assembled, and continuing after proclamation so made, that they may be proceeded with according to law. And if any of the persons so unlawfully and riotously continuing together, to the number of twelve, for the space of one hour after the making such proclamation, shall happen to be killed, maimed or hurt, in dispersing or apprehending, or in indeavouring to disperse or apprehend them, by reason of their resisting, the person or persons dispersing or endeavouring to disperse or apprehend them, every such sheriff, deputy sheriff, or constable, and all and singular the persons aiding or assisting them, or any of them, shall severally be discharged, freed and indemnified from any bill, complaint, indictment or action that may be commenced against him or them, on that account. And if any person forcibly, wilfully, or knowingly oppose or obstruct any person or persons who shall begin or attempt to make such proclamation, whereby the same shall not be made, or after such attempt and obstruc-

Form of proclamation.

How to proceed against such as continue together after proclamation.

If persons resisting be killed or wounded, officers, &c. guiltless.

Penalty for obstructing officers in making proclamation.

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APPOINTMENT AND GENERAL DUTY.

tion, shall continue together and not disperse, each and every person so offending shall be punished by fine, not exceeding one hundred dollars, or be imprisoned not exceeding six months.(q)

Sheriff, &c. to receive delinquents from other states.

Every sheriff, deputy sheriff, or constable, within their respective precincts, must receive every inhabitant of the state charged with the commission of any crime, who may be tendered to him by any sheriff, deputy sheriff, or other proper officer, belonging to any of the neighbouring states, who shall have a warrant from proper authority to deliver such inhabitant, and him or her forthwith cause to appear before some justice of the peace of this state, to be examined in the premises, as the case may require.(r)

Sheriff, &c. removed from office to execute precepts in his hands.

When any sheriff, deputy sheriff, or constable, shall be removed from or resign his office, he may and shall execute all writs and precepts in his hands at the time of such removal or resignation.(s)

Not to appear as attorney, or fill writs.

No sheriff, deputy sheriff, or constable, shall be suffered to appear in any court, or before any justice of the peace, as attorney, or counsel to any party in any suit, nor be allowed to make any process, or fill up any writ, declaration or complaint, or draw or make any plea, except in his own cases; and all such acts done by either of them shall be void.(t)

Penalty for assuming office of sheriff, &c.

And if any person or persons not being a sheriff, deputy sheriff, or constable, or other officer whose duty it is to keep the peace, or apprehend persons for violating the same, shall falsely pretend to be any or either of said officers for any purpose whatever, and shall presume to act as such, or to require any

(q) St. V. I. 358, 359, 360.
(r) Ibid. 314.
(s) Ibid. 314.
(t) Ibid. 313.

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other person or persons to assist or aid him in any matter or thing belonging to a sheriff, or any such officer is assumed, he shall upon conviction of any such offence forfeit and pay a fine not exceeding two hundred dollars, according to the nature, aggravation and circumstances of the offence, at the discretion of the court before whom the conviction shall be had, one moiety of which to the use of the county where the offence was committed, and the other to him or them who shall sue for and recover the same.(u) APPOINTMENT AND GENERAL DUTY.

A high bailiff is appointed in each county annually, at the stated session of the legislature, in the same manner as the sheriffs are appointed, and continues for the same time in office as sheriffs of the several counties; his duty is to serve all writs and processes for and against the sheriff. And when any writ, process or execution, issuing from proper authority, is directed to the high bailiff against the sheriff of the county, the high bailiff may take and confine in the gaol, in the same county, the body of any such sheriff, and while such sheriff shall be confined either within the walls or liberties of the prison on any such process, or in case the office of sheriff become vacant by death, removal, or any other way, the high bailiff has all the powers of the sheriff in keeping the peace, suppressing riots, serving writs, precepts, and other processes, and the same power in safe keeping the gaol or gaols in such county, admitting to bail, assigning bail bonds, as the sheriff of such county by law has, until such sheriff shall be released from such confinement by payment and satisfaction of the sum for which he was imprisoned, or until released by his creditor or creditors, or by order of law; High Bailiff, when and how appointed. His office and duty.

(u) St. V. I. 313.

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APPOINTMENT AND GENERAL DUTY.

and until such sheriff shall have procured from one of the judges of the county court of such county, a certificate making known that such sheriff is free from such his imprisonment; and has caused the same to be recorded in the county clerk's office of such county, and has delivered the same to the high bailiff of such county, who must, on receiving such certificate deliver up the custody of the gaol of such county, together with the prisoners therein, to such sheriff; and such high bailiff, in case the office of sheriff become vacant, by death, must perform all and singular the duties aforesaid, until the vacancy be filled according to law; and is under the same liabilities, and subject to the same penalties as is by law provided in case of sheriffs. And the person appointed high bailiff, must before he enter upon the execution of his office, be commissioned and sworn, and give bonds in the same manner as is directed in the case of sheriffs; and is allowed the same fees for services as are allowed by law to sheriffs; and may appoint such number of deputies and gaolers, when necessary, as the judges of the county court shall advise, who shall have the same powers, receive a deputation, and be sworn in the same manner as is directed in cases of deputy sheriffs. High bailiffs are also amenable and responsible for the neglect, default, ability and faithfulness of their deputies and gaolers, in the same manner as sheriffs are amenable and accountable for their deputies and gaolers.(v)

To be commissioned sworn and under bonds.

Fees.

May appoint deputies.

Sheriff, &c. to give receipts for writs.

Any person may demand of any sheriff, deputy sheriff, or constable to whom he may deliver any writ or process, a receipt therefor, under his hand, in which the sum or thing in demand, the date of such writ or process, and of its delivery, shall be contained, and on his refusal to execute such receipt, others

(v) St. V. I. 314, 315, 317, 318.

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present may set their hands as witnesses to such delivery. And all sheriffs, deputy sheriffs, and constables, must receive all writs at any times and places within their respective precincts, (unless they can show reasonable cause to the contrary) and must execute and return the same, agreeably to the directions in them respectively given.

APPOINTMENT AND GENERAL DUTY.

To receive all writs, &c. And execute the same.

And if any sheriff, deputy sheriff, high bailiff, his deputy or constable, shall wilfully refuse or neglect to serve any such writ or process issuing from lawful authority, and delivered to him to serve and execute, or shall wilfully neglect to make return thereof, or shall make a false or undue return thereof, such officer on conviction before any court having cognizance thereof, shall pay a fine not exceeding one hundred dollars, according to the nature and aggravation of the offence; and the constable, sheriff, or high bailiff, who shall have so wilfully refused or neglected to serve such writ, or to make return thereof, or who shall have made a false or undue return of such writ or process, shall pay to the party grieved all damages thereby in any way sustained, with costs of recovering the same. And all processes served by any sheriff, deputy sheriff, or constable, must be by him returned to the court or justice to whom they are made returnable, before the time set therein for the appearance of the party.(w)-

Penalty for executing, or making false return.

If any sheriff or constable shall neglect or refuse, on demand made to pay to the creditor in any execution, his agent or attorney, all such sums of money as such sheriff or constable shall have received on such execution, he shall forfeit and pay to the person

To pay creditors monies collected on execution.

(w) St. V. I. 312.

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APPOINTMENT AND GENERAL DUTY.

to whose use he received such money *fifteen per cent. interest* thereon, so long as he shall detain the same after demand made.(x) And no officer shall be allowed any fees for a *non est inventus* return on any writ, precept or execution, delivered to him to serve and return.(y)

No fees on *non est.*

No appeal granted on suits, vs. sheriff, &c.

No appeal or review shall be allowed on any suit against a sheriff, high bailiff, or constable, for not executing or duly returning any writ of execution to him delivered to serve, in cases where a receipt was given by or demanded of such officer at the time of the delivery thereof, nor on any suit brought by a sheriff, high bailiff, or constable, on any receipt or writing obligatory, executed for goods or chattels seized or taken by virtue of any writ of execution, or on mesne process, in which receipt or writing the party executing the same promised to redeliver such goods or chattels, and has failed of performing accordingly. And no appeal shall be allowed on any suit brought by a sheriff or high bailiff against his deputy or sureties, on any bond executed to the sheriff to indemnify him against any act, default, or neglect of his deputy.(z)

Nor on suits brought by them, &c.

Nor against deputies or sureties.

Impeding officer, how punished.

If any person or persons shall impede or hinder any executive officer, acting under the authority of the state in the execution of his office, such person or persons, on conviction thereof, shall pay a fine not exceeding two hundred dollars each to the treasury of the county in which the conviction is had, and if any such person or persons be not of sufficient ability to pay such fine, and the costs of prosecution, the court may assign such person or

(x) St. V. I. 313.
(y) Ibid. 314.
(z) Ibid. 54, 55.

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persons in service to any citizen of this state for so long a time as may be necessary to make satisfaction of such fine and costs. And on conviction of a second offence of the like kind, the person convicted, in addition to the punishment aforesaid, shall be imprisoned in some jail in the state one whole year.(*a*)

APPOINTMENT AND GENERAL DUTY.

Sheriffs &c. removed from office to execute precepts in his hands.

When any sheriff, deputy sheriff, or constable, is removed from or resigns his office, he must execute all writs and precepts in his hands at the time of such removal or resignation.(*b*)

Deputies of sheriff and high bailiff in certain cases.

When any sheriff is imprisoned, his deputies must serve and return all writs and executions delivered to them, within three days after the day of such sheriff's commitment, and high bailiff's deputies have like power to serve such writs as are delivered to them within three days after such sheriff is restored to the exercise of his office.(*c*)

Sheriff, &c. to seize tools for counterfeiting.

Every sheriff, high bailiff, constable and grand juror, must seize every stamp, dye, and any other tool or instrument made and kept for the purpose of counterfeiting coins, and the same immediately convey to some proper authority, and there give information of the place in which, and the person from whom such tools were taken. And every officer must give information to some justice of the peace, of any place in which he may have reasonable cause to suspect any such tools or instruments are concealed, or coins are counterfeited.(*d*)

(*a*) St. V. 1. 353, 354.
(*b*) Ibid. 314.
(*c*) Ibid. 318.
(*d*) Ibid. 315.

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II. PROCESS.

PROCESS.

Process in civil cases, by summons or attachment.

Manner.

THE ordinary mode of process in civil causes, in the county courts and supreme courts of judicature within this state, is by summons or attachment, according to prescribed forms. Every such writ or process returnable to any county court must be signed by a judge or clerk of the same, or by a justice of the peace of the same county; and every writ or process returnable to the supreme court must be signed by a judge of the clerk of such court. All writs and process signed by a judge or clerk of the county or supreme court, as well original as judicial, may run into any county or place in the state, and be there executed by any officer to whom directed. Every original writ or process returnable to either of said courts, must mention the court, time, and place of appearance, and contain a declaration setting forth the cause of action, according to due form of law; and every writ and process so issued must be directed to the sheriff, his deputy, some constable of the town where service is to be made, except where both sheriff and constable are parties or interested, in which case the writ or process may be directed to, and service made by the high bailiff, or any disinterested constable within the county, who shall be therein named. And in case no such sheriff, deputy sheriff, or other proper officer can be reasonably had, the writ or process may by the authority issuing the same be directed to an indifferent person, being named. And all such writs and processes must be served, in all cases, at least twelve days before the session of the court to which they are returnable, including the day of service. But no writ in any civil cause may be made returnable

To whom directed.

When served.

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to any adjourned county court. And every writ or process issued against any sheriff, deputy sheriff, high bailiff or constable, for any nonfeasance, malfeasance, or misfeasance in their respective offices, must be served at least eighteen days before the session of the court to which the same is made returnable. And every writ or process against any county, town, district, society, trustees, proprietors, or other community or corporation, must be served at least thirty days before the session of the court to which the same is made returnable.(a) PROCESS.

Writs of error and audita querelas, returnable to the supreme court, must be signed by a judge of the supreme court, who must also take security on each according to law at the time of signing and allowing said writs, which must appear thereon. Writs of *habeas corpus cum causa*, issued in vacation, must also be signed by a judge of the same court. Audita querelas, returnable before any county court, must be signed by two judges thereof, who or one of whom must also take security as the law directs, and minute the same on the writ.(b) Writs of error, and audita querelas. Habeas corpus.

Justices of the peace have within this respective limits, jurisdiction of, to hear, try and determine, all pleas and actions of a criminal nature, if the fines and forfeitures are within the sum of seven dollars, and the corporal punishment shall not exceed ten stripes; and may bind over to be tried in the county or supreme court, all criminal offenders, the enormity of whose misdemeanors surpasses their power to try.(c) And every justice of the

(a) St. V. I. 61, 62.
(b) Ibid. 57, 58.
(c) Ibid. 168.

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PROCESS.

Justices of the peace may issue process civil and criminal returnable before themselves. Exceptions to that jurisdiction.

peace, may, within his legal limits, hear, try and determine, all pleas and actions of a civil nature, (other than actions for slanderous words, false imprisonment, replevin above the sum of seven dollars, trespass upon the freehold, and where title of land is concerned,) where the demand does not exceed the sum of thirty-three dollars, and also to hear, try and determine on all specialties, notes of hand, and settled accounts, not exceeding the sum of fifty-three dollars.(*d*) And every justice of the peace within his jurisdiction may on application, as nearly as may be in the form prescribed by law, grant writs of summons, attachment, warrant, and execution, as the case may require, directed to the sheriff of the county, his deputy, or either of the constables of the town where the service is to be done, where the demand of the plaintiff doth not exceed the aforesaid sums, taking security for the cost of the prosecution, in all cases where by law such security is required to be taken, and every such writ of summons or attachment, must be served at least six days before the time therein appointed for the trial; and in every case where such writ of summons or attachment shall be served in any other county, different from the county in which such trial shall be had, the same shall be served at least twelve days before the time therein appointed for trial. And every such writ of summons or attachment may run into any town or county in the state.(*e*) And all such writs must be made returnable before the authority which issued the same.(*f*)

Writs of summons and attachment returnable to justices when served.

When bonds for prosecution must be given.

The authority issuing any process whatever, to summon or attach any person to answer before any

(*d*) St. V. I. 159.
(*e*) Ibid. 172.
(*f*) Ibid. 178.

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PROCESS.

court in the state, if the plaintiff be not a freeholder, or if a freeholder, but residing without the state, or if the process be an attachment against any person or persons within the state, must, before signing thereof take sufficient security to the defendant or defendants, by way of recognizance that the plaintiff or plaintiffs shall prosecute his, her, or their writ to effect, and answer all damages if judgment be rendered against him, her, or them. And must at the same time make a minute of such recognizance, with the name of the surety or sueties, and the sum in which they are bound, upon such writ, and sign such minute, and if any writ be otherwise issued, the same on motion shall be abated.(*g*)

How noted on the writ.

The judges of the court of chancery, while any bill is pending before them, may, on sufficient reason being shown, and verified by affidavit, issue a writ of sequestration against the goods, chattels or estate of the defendant or defendants in such bill. And such writ of sequestration must be served in the same manner as in case of attachment on mesne process, and the estate thereby sequestered, shall in like manner be holden to respond the decree which shall be finally made on such bill.(*h*)

Court of chancery may issue writs of sequestration.

On complaint made of forcible entry into, or detainer of lands, tenements, or other possessions, two justices of the peace, one of whom must be a judge of the county court, may issue a warrant in form prescribed by law, directed to the sheriff of the same county or his deputy, commanding him to apprehend the person against whom the complaint is made, and to bring him or her before the same justi-

Process in forcible entry and detainer, by whom issued.

(*g*) St. V. I. 70.
(*h*) Ibid. 117, 118.

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PROCESS. And how served.

ces at a day in such warrant named, which must not be less than six days from the time of issuing such warrant, and at a place therein mentioned. And if the sheriff or his deputy cannot find the party against whom the warrant issued, he may six days before the time appointed for returning the same, leave a true and attested copy of such warrant at the usual place of abode of such person; and if at the return of the warrant, he shall not be able to find or apprehend the person against whom the warrant issued, he must make a return of such facts, and that he hath so left a copy as aforesaid, and when the same was done.(*i*)

(*i*) St. V. I. 215, 216, 217.

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III. SERVICE.

SERVICE.

Service of writ of summons.

ALL writs of summons must be served on the defendant or defendants, by delivering him, her or them, a true and attested copy of such writ, with the officer's return thereon, or by leaving such copy at the place of his, her or their usual abode, with some person of sufficient discretion then resident therein; and if there be no such person with whom such officer can leave such copy, he must then lodge the same at the house of his, her or their usual abode, in such situation as the defendant or defendants will most probably receive it, and the manner of such service must be particularly expressed in the return made by such officer.(*a*)

How writs must be served on towns, &c.

When any town, body politic or corporate, or proprietors of common and undivided lands, trustees of schools, academies or colleges are sued, an attested copy of the writ must be delivered to the clerk of such town, body corporate or proprietors of common and undivided lands, or trustees, or to one of the principal inhabitants or members, thirty days before the sitting of the court to which the same is returnable, or left the like number of days before the sitting of such court at his last usual place of abode. And when any suit shall be brought against the inhabitants of any county, the same must be served on the state's attorney for such county, or if such attorney be interested or engaged for the plaintiff, on the treasurer or sheriff of such county, in the same manner as is directed in cases of suits against towns, &c. (*b*)

And how on counties.

(*a*) St. V. I. 62, 253, 254.
(*b*) Ibid. 253, 254.

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SERVICE.

Writs of attachment on goods or chattels.

Writs of attachment may issue against the goods, chattels or estate of any persons, and for want thereof against their bodies.(c) And when the goods, chattels, or estate of any person or persons are attached at the suit of another, a copy of such attachment, and a list of the articles attached, attested by the officer serving the same, must be delivered to the party whose goods or chattels are so attached, or left at the house of his, her or their usual abode, as in the service of summons, and if the person or persons whose goods are attached be not an inhabitant or inhabitants of the state, such copy must be left with his, her, or their agent or attorney, if any be known, and for want thereof at the place where such goods or chattels were attached, and the service thereof must be certified by a sworn officer who executed the attachment, or by the affidavit of some disinterested person who delivered the same. And the goods and chattels so attached, must be holden thirty days from the time final judgment shall be rendered in such suit, or the day on which first by law the plaintiff is entitled to execution without leave of the court. And unless the plaintiff shall within such term of thirty days take such goods and chattels in execution, the same will be discharged from such process, and be no further liable to answer such judgment than though the same had not been attached.

Goods, &c. how long held.

May be replevied.

But when any goods or chattels are so attached on mesne process, the defendant or defendants may replevy the same, and any person authorized to issue attachments, may on application of such defendant or defendants issue a writ of replevin in form prescribed by law, directed to the sheriff of the county, or his deputy, in which service is to be made, who must, before he serve the same, require the plaintiff or

(c) St. V. I, 84.

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plaintiffs in such replevin to execute a bond to the plaintiff or plaintiffs in the original process, with sufficient surety or sureties in such sum to the value of which attachment was directed to be made, which sum, the authority signing such writ of replevin, must truly insert; and the bond so taken must be conditioned as follows, viz.

SERVICE.

Sheriff before he serve writ of replevin must take bond.

"Whereas, A. B. hath caused the goods and chattels of C. D. viz. (one horse, &c. as the case may be,) to be attached by a writ of attachment, made returnable to the —— court, next to be holden at ——, in the county of ——, on the —— day of —— next, and by the precept of said writ, the officer serving the same was commanded to attach the value of —— dollars; and whereas the said C. D. has prayed out a writ of replevin to replevy said goods and chattels, directed to E. F. sheriff of the county, or his deputy; now the condition of the above obligation is such, that if the said C. D. shall return the said goods and chattels to be replevied to him by virtue of said writ, so that they may be taken on an execution which may be issued on a judgment within sixty days from the rendition of the same, then this obligation to be void, otherwise of force." And such bond being executed, the officer must cause replevin to be made, and must return such writ with his doings thereon, together with such bond to the clerk of the court to which the original writ of attachment was made returnable. And if the plaintiff or plaintiffs shall not be able to recover satisfaction of the judgment which may be rendered on such bond, if prosecuted within one year from the rendition of judgment in the original action, through the insufficiency of the principal or surety or sureties in such bond, the officer shall be liable in an action of the case for just damages.(d)

Condition.

Sheriff liable for insufficient bonds.

(d) St. V. I. 62, 63, 67, 72, 73, 103.

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SERVICE.

Attachment how served on real estate.

When the real estate of any person or persons shall be attached, a true and attested copy of such attachment, together with a description of the estate taken, must be, by the officer serving the same, delivered to the party whose estate is so attached or left at his, her or their dwelling place, or last usual place of abode: and the officer making such service, must also leave a true and attested copy of such attachment together with a description of the estate so attached, with the town clerk of the town in which such estate lies, or in the county clerk's office of the same county, if there be no such town clerk: and if the party whose estate is so attached, do not reside within the state, such copy must be delivered to his, her, or their agent or attorney, if any be known, and if no such tenant, agent, or attorney be known, a copy of such writ with the officer's return thereon, lodged in the town or county clerk's office, in which any deed or conveyance of such estate ought by law to be recorded, shall be decreed sufficient service, and the real estate so attached, shall be holden five calendar months from the time of rendering final judgment in such suit, computing from the first day the plaintiff is entitled to execution without leave of court, and if the plaintiff do not within said term of five months, take such estate in execution, the same will be discharged, and no longer be held by such attachment.(e)

How long it shall be held by attachment.

On the body of the defendant.

When the body of any defendant or defendants, is, or are taken on mesne process in any civil action, or suit, or warrant, for the collection of rates or taxes, the officers erving such process must deliver to him, her, or them, an attested copy thereof, if requested; and if he, she, or they, do not procure some person

(e) St. V. I. 63, 67, 104.

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or persons to become surety or sureties to the satisaction of the officer serving the same, or the creditor or creditors in such process, by such surety or sureties endorsing his, her, or their names on the back of such writ, as bail thereon, or such defendant or defendants shall not discharge his, her, or their bodies by exposing sufficient property to secure such officer, he must commit such defendant or defendants, or debtors to the gaol of the county in which such defendant or defendants shall have been so taken, or in case there be no legal gaol, in the county, then to the next county in which there is a legal gaol, and the keeper of such gaol must receive such defendant or defendants; and such officer must deliver to the keeper of such gaol an attested copy of such attachment, with his return of commitment thereon, and the keeper of such gaol shall in all cases be liable to answer for the safe keeping of such prisoner or prisoners, in the same manner as when legally committed on execution. But if the plaintiff or plaintiffs in such action shall not, within fifteen days after the rendering final judgment thereon, to be computed from the first day the plaintiff is entitled to execution, without leave of court, charge such defendant or defendants with execution, he, she, or they shall be discharged from confinement. *(f)*

SERVICE.

May commit the same.

How long holden.

And no suit shall be prosecuted against any officer or other person taking bail in manner aforesaid, when the bail at the time of taking the same, was amply sufficient. And when the surety or sureties shall have endorsed his, her, or their name or names as bail as aforesaid, the officer serving such writ, must deliver to such surety or sureties, a bail piece in the form following, viz:

Officer not liable to any suit, if bail are sufficient.

(f) St. V. I. 64, 67, 68, 104.

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SERVICE.

Form of bail piece to be delivered by officer.

State of Vermont,

County, ss. —— the —— day of —— A. D. —— A. B. of —— in the county of ——, is bailed by C. D. of —— in the county of ——, upon a writ of attachment, to the value of dollars, returnable to the——court, to be holden at——in and for the county of —— on the day of next, at the suit of F. F. demanding dollars (pounds, &c.) damages, he (she or they) having endorsed the original as by law directed.

Attest. G. H. Sheriff, &c.

Bail may at all times commit principal.

And such surety or sureties may at all times commit the principal to gaol, when they think there is danger that he will abscond, be out of the way, or lurk in any other county; and for that purpose they

And obtain a warrant for that purpose.

may obtain a warrant from any judge, or justice of the peace in the county in which such principal shall reside or be found, to take his body, directed to the sheriff or his deputy, him commanding to arrest such surety or sureties in apprehending such principal, and when taken, such officer must commit him to the keeper of the gaol, within the county in which he was arrested on the original process, or in the county in which said process is pending or was made returnable, agreeably to the direction in his warrant: and the keeper of the gaol must receive such principal, and him safely keep until he shall procure sufficient bail to the satisfaction of the sheriff to whom the warrant shall have been directed, or to the plaintiff in the original process, or until such principal be removed or discharged by due course of law. And a copy of such warrant, attested by the officer executing the same, shall be sufficient authority to such gaoler. And such bail shall in no way be holden to answer any judgment that may be rendered on such original process, unless the creditor shall within

Bail exonerated if debtor be not charged in execu-

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sixty days from the rendition of final judgment on said process, cause execution issuing thereon to be levied on the goods, chattels, or body, of the defendant or defendants, or cause a return of *non est inventus* to be regularly made thereon, which execution must be taken out within thirty days from the time at which final judgment is rendered, and be put into the hands of some officer proper to levy and serve the same.(*g*)

SERVICE. tion within 60 days, or a non est returned. Execution must be taken out in 30 days.

All writs of error, writs of scire facias, writs of review, and other writs, the service of which is not particularly directed by the statute, where the defendant, respondent, or party upon whom service is to be made is an inhabitant of the state, or an occasional resident therein, must be served in the same manner as writs of summons are to be served. But when the defendant, respondent, or party on whom service is to be made is not an inhabitant of the state, the service must be made on his, her, or their known agent or attorney, or for want thereof on the attorney in the original action; and when no such agent or attorney is known, the service must be made by leaving a true and attested copy of such writ with the clerk of the court to which such writ is returnable, at least twelve days before the session of such court.(*h*)

Writ of error, scire facias, wrtis of review, &c. how served.

No person after the setting of the sun on Saturday, until after twelve o'clock on Sunday night, may serve or execute any writ, process, warrant, or decree, (except escape warrants, and warrants for apprehending the principal in favour of bail, and in cases of trea-

Writs not to be served on Sunday, nor the evening before or after.

(*g*) St. V. I. 65, 66, 67. III.
(*h*) Ibid. 63, 64.

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services.

son, felony, and breach of the peace,) and any service or execution of any writ, &c. during the time from sunset on Saturday, till after twelve o'clock on Sunday night, is null and void, and the person making such service is liable to answer in damages to the party aggrieved, as if he had done the same without any writ, process, warrant, order, judgment or decree.(i)

(i) St. V. I. 278.

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IV. EXECUTIONS.

EXECUTIONS.

Executions how directed.

EXECUTIONS issued in this state, run in the name of the state of Vermont, are directed to the sheriff or his deputy of the county, or either constable of the town where the same is to be executed. Style, "By authority of the state of Vermont." Are signed by the justice or clerk of the court from which the same issue, are made returnable within sixty days, or to the next court, (if not less than sixty days,) express the nature of the action on which they respectively issue, and the attornies of record for the plaintiff and defendant must be endorsed on the back of every such execution, by the authority signing the same.(*a*)

Signed.

And endorsed.

What estate of debtor liable to execution, and what not.

All the personal estate of the debtor, except one cow, and such suitable apparel, bedding, tools, arms, and articles of household funiture necessary for upholding life, and even those if turned out by the debtor,(*b*) and all his houses, lands and tenements, belonging to him in his own right in fee, or for his own life, or for the life of another, paying no rent for the same.(*c*) And all his real estate held in joint-tenancy, coparcenery, or tenancy in common, with the real estate of other persons, and all the rents, issues and profits of lands and tenements leased for life or years, are liable to be taken in execution,(*d*) as is also the body of the debtor, but neither his body nor real estate may be taken, if moveable or personal estate of his can be found sufficient to satisfy the debt, damages or costs in the execution, but for want of such

(*a*) St. V. I. 94, 113, II. 356, 358.
(*b*) Ibid. 321.
(*c*) Ibid. 323.
(*d*) Ibid. 326, 327.

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EXECUTIONS.

moveable or personal estate, the creditor may elect to take either the body or real estate of the debtor.(e)

When judgment is rendered against any town, district, parish or society, execution must issue against the goods or chattels of the inhabitants of such town, parish, district or society, and may be levied and collected of the same.(f) And when against the trustees of colleges, academies, schools, and proprietors of common and undivided lands, estates or interests, execution must issue against the goods and chattles of such trustees and proprietors, to be levied of the same,(g) and when against the inhabitants of any county, execution must issue against the goods and chattels of the inhabitants thereof.(h)

Officer must endorse time of receiving execution.

Every sheriff, constable, or other officer, to whom any execution shall be delivered, upon the receipt of the same, must without fee endorse upon the back thereof the day of the month and year when he received the same. And if two or more executions are delivered to the same person, that which was first delivered must be first satisfied.(i)

First delivered must be first levied.

How served.

The sheriff or other officer to whom a writ of execution is directed and delivered, must repair to

☞ Every citizen enrolled and providing himself with arms, ammunition and accoutrements required by law, holds the same exempted from all suits, distress, execution, or sales for debt, or for payment of taxes. And during the term of ten years from the sixth day of November 1801; no sheep or lambs are liable to be taken on execution, unless the owner possess in his or her own right a greater number than ten, but if more, ten only are exempted.(1)

(1) St. V. II. 131, 26.

(e) St. V. I. 322, 323, 354, 255.
(f) Ibid. 301.
(g) Ibid. 302.
(h) Ibid.
(i) Ibid. 328.

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the debtors usual place of abode, if within his precincts, and demand of such debtor the sum in debt, damages or costs, contained in such execution, with all legal charges of serving the same, and upon such debtor's refusal or neglect to pay such sum with the costs aforesaid, the officer must levy the same upon the proper goods or chattels of such debtor, or such as shall be shown him by the creditor or creditors, excepting as above one cow, and such suitable apparel, bedding, tools, arms and articles of household furniture as may be necessary for the upholding life, unless turned out by the debtor to satisfy such execution. And all goods and chattels so levied upon by such officer, must be by him safely kept, at the expense of the debtor, until they shall be sold as the law directs, or the executions shall be otherwise satisfied. And the officer must forthwith advertise the same, therein enumerating the goods or chattels so levied upon, on the sign post of the town in which they were taken, (or at such other place as may be agreed upon by the officer and debtor,) and the goods and chattels so posted, are to be sold at public vendue at such sign post, (or at such other place as the officer shall think most advantageous to the debtor,) at the time and place therein mentioned, which may not be less than fourteen days from the time of setting up such notification. And if within the time such goods or chattels shall have been so posted, the owner shall not redeem the same by otherwise satisfying the execution and the officer's costs and charges thereon, such goods or chattels must be sold at public vendue, to the highest bidder at the place of sale, or such part thereof as shall be sufficient to satisfy the execution with costs thereon. And the monies arising upon such sale, must be applied to the payment of the charges and the satisfaction of the execution. And the officer must return the

To be levied on goods and chattels.

Except, &c.

Goods, &c. taken to be advertised before sold.

To be sold at vendue, and when.

Overplus to be returned

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overplus, if any there be, upon demand thereof made: and the officer serving the execution must make return thereof with his doings thereon, particularly describing the goods or chattels taken and sold, and the sum for which such article is struck off. And if any officer shall be guilty of any fraud or collusion in the sale or return, as before directed, he will be liable to the debtor to pay him treble damages for the sum so defrauded, to be recovered by action on the case, with costs.(*k*)

Officers guilty of fraud to pay treble damages.

Property taken on execution when the owner is doubtful, the plaintiff to indemnify therefor.

But if any sheriff, constable, or other officer, shall levy an execution on property, and a doubt shall arise whether the right of such property be in the defendant, such officer may apply to the plaintiff, his attorney of record, or agent, for a writing of indemnification, with sufficient surety for the sale of the property seized, which if the plaintiff, his attorney or agent, refuse or fail to make and execute within a reasonable time after such application, the sheriff or other officer will be justified in delivering up such property to the party from whose possession the same was taken, and may take other property, or the body of the debtor, and for want thereof may return a *non est inventus*.(*l*)

Execution levied on real estate.

When the debtor in execution, his agent or attorney shall not expose and tender personal estate sufficient to satisfy the execution and all legal charges, and the creditor shall direct to levy the execution upon the real estate of the debtor, and shall have extended it thereon, such estate must be appraised by three judicious and disinterested freeholders of the vicinity in the town or place in which such estate lies, or if the town or place be a party, or there be no freeholders living therein, then of the next

Must be appraised by freeholders.

(*k*) St. V. I. 321, 322.
(*l*) Ibid. 328.

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adjoining town or towns, one of whom may be chosen by the debtor or debtors, one by the creditor or creditors, their attornies or agents, and the other may be mutually chosen by the parties, their agents or attornies: but if they do not agree on a third person, or if either or both of the parties, their agents or attornies neglect to choose, the officer serving the execution may apply to some justice of the peace of the county in which the estate lies, who by law may judge between the parties in civil causes, who must appoint one or more appraisers as the case may require, who after being duly sworn by such officer, must appraise such estate as shall be shown them, at its true and just value in money, to satisfy the same execution with all fees. And the officer must set out such estate, so by them appraised, by proper metes and bounds, or describe the same with as much precision as the nature and situation thereof will admit. And such officer must cause such execution, with a return of his doings thereon, to be recorded in the record of lands in the town in which such real estate, houses, lands or tenements are situate, or in the office wherein deeds respecting the same are required by law to be recorded, and also to be returned into the office of the clerk of the court or justice of the peace from which such execution issued, and there to be recorded.(*m*)

EXECUTION.

Chosen by the parties.

Or appointed by a justice, and sworn.

Execution and return must be recorded, &c.

When any execution shall be extended on rent, issues and profits of lands and tenements, the officer so extending the same must give seizin thereof to the creditor or creditors, his, her or their agent or attorney, and must cause the tenant or tenants thereof to attorn and become tenant or tenants of such creditor or creditors, and pay the rents to him, her

How to proceed with execution levied on rents, &c.

(*m*) St. V. I. 322, 323.

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EXECUTION.

or them accordingly; and upon refusal thereof, to turn such tenant or tenants out of the possession thereof, and give livery, seizin and possession of the same to such creditor or creditors, to hold and enjoy such lands and tenements until such execution and the costs thereof, with legal interest, be fully satisfied and paid.(*n*)

Execution may be levied on the body of the debtor which may be committed to gaol.

When personal or moveable estate of the debtor cannot be found sufficient to satisfy the debt, damages, or cost in the execution, and the legal fees thereon; and the creditor or creditors do not elect to take the real estate of the debtor, the officer must take his body, and him or her commit to the keeper of the common gaol in the county in which the execution is served, and the debtor must there remain until he or she shall pay the debt, or damages or costs for which he or she is committed, with the officer's and prison keeper's fees thereon, or be otherwise discharged by order of law. And every officer who shall commit any person to gaol, by virtue of any writ or warrant of distress or execution, must deliver a copy of such writ, warrant or execution, and of his return thereon, signed by such officer to the keeper of the gaol, which copy, so delivered and signed, shall be sufficient warrant to the keeper of the gaol to receive such prisoner, and him or her hold in safe custody until discharged by order of law.(*o*)

If there be no legal gaol in the county, prisoner may be committed in any county in the state by direction of the court

If there be no legal gaol in the county where the debtor in any execution resides, the court issuing such execution must command the sheriff, deputy sheriff, constable, or other officer to whom the writ of execution is directed, to commit the person or persons mentioned in such execution to any gaol in any county in

(*n*) St. V. I. 326.
(*o*) Ibid. 322, 356.

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the state, as shall by the court be considered the most convenient; and the keeper of the gaol in such county, in such case, is to receive such person or persons, and commit or keep him or them within such gaol. And the like may be done in case of the issuing of any other warrant of commitment, lawfully issued by any court of justice in the state.(p)

EXECUTION. issuing the execution.

When any execution is delivered to the sheriff, constable, or other officer of any other county than that in which the creditor resides, such creditor, or his attorney of record, must name some person in the county in which the execution is to be levied, to be the agent of such creditor for the particular purpose of receiving the money on such execution, and for giving unto and receiving from the sheriff, constable, or other officer, any notices which may be necessary relating thereto, and of payments made. And notices given to such agent shall be as effectual as if made or given to the creditor. And if any creditor or his attorney of record shall fail to appoint such agent, no judgment shall be entered against the sheriff, constable, or other officer, for the non-payment of the money mentioned in such execution, unless a demand thereof shall have been first made of such sheriff, constable, or other officer in his county, by the creditor or some other person having a written order from him: nor in any case of failure in appointing such agent, shall the sheriff, constable, or other officer or prisoner, be obliged to give notice previous to the discharge of such prisoner, or upon his taking the oath of an insolvent debtor.(q)

Plaintiff in execution to name agent in certain cases.

When any judgment is recovered in the name and for the use and benefit of this state, for any sum or

Execution in behalf of the state to be

(p) St. V. I. 399.
(q) Ibid.

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EXECUTION.

Levied on goods and chattels.

sums of money in any of the courts of law thereof, execution reciting such judgment shall issue thereon, which shall be directed to such officer or officers as writs of execution are by law to be directed to, who shall be thereby directed to levy the monies mentioned and expressed in such execution, of the goods, chattels, and estate of such debtor or debtors, and for want thereof, on his, her, or their body or bodies, and to commit him, her, or them unto the common gaol. And in all such cases, the sum or sums of money mentioned and expressed in such execution, (where the same can be done,) shall be satisfied out of such goods or chattels. And when real estate shall be taken, the officer serving such execution must give public notice that the same will be sold at public vendue, mentioning the time and place of sale, by posting up notifications in two or more public places in the town or place in which such real estate lies, if the same be inhabited, thirty days before the time of sale, and also in two or more public places in two adjoining towns, and when the sum of such execution levied on real estate as aforesaid, amounts to two hundred dollars, the officer executing the same must in addition to such notifications, cause an advertisement of the time and place of such sale to be published in some public newspaper, printed in the county in which such real estate lies, three weeks successively before the day of sale, if any such newspaper be there printed; but if not, the officer must cause such advertisement to be published in a newspaper printed in the state the nearest to the county in which such land lies. And in case the estate so notified for sale, shall not be disposed of at the time and place appointed, the officer must adjourn the vendue not exceeding three days, and so from time to time until the sale shall be completed. And when such officer shall have so

On real estate, to be sold at vendue.

Advertised in a newspaper.

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sold such real estate, he shall in his said capacity make, acknowledge, and deliver to the highest bidder a good and sufficient deed or deeds of the real estate so sold,(r) and make return of such execution, with his doings thereon, according to the directions therein given. EXECUTION. Officer must give deed.

Whenever execution is issued against any town, district, parish or society, it must be levied of the goods and chattels of the inhabitants of such town, district, parish or society, and when any execution is issued against the trustees of colleges, academies, schools, and proprietors of common and undivided lands, estates or interests, the same must be levied of the goods and chattels of such trustees and proprietors, all in the same manner as when executions are levied upon the goods and chattels of private debtors. And when execution is issued against the inhabitants of any county, the officer to whom such execution is delivered, must, before he proceed to levy the same, call on the treasurer of such county for the payment thereof, and if such treasurer shall not pay the whole amount of the execution, with the legal cost thereon, the officer must proceed to levy and collect the same, or such part thereof as shall remain due thereon, of any of the inhabitants of such county. But the officer may in no instance levy or collect of any one individual, a greater sum than one hundred and fifty dollars, nor a less sum than twenty dollars, if the execution exceed the latter sum, unless it be to satisfy the balance of such execution, with legal costs thereon. And the officer must deliver to the person or persons from whom he shall receive any part of such execution, a certificate specifying the particular sum he may so have Execution against any town, &c. And county how served.

(r) St. V. I. 329, 330.

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EXECUTION.

received, and make return of such execution according to the directions thereof.

Estate, real and personal, attached on mesne process, held, though the party die pending the suit except, &c.

Goods or estate attached upon any writ or process, pending in any court in the state at the time of the death of either party, are not thereby released or discharged, but are held good to respond the judgment to be given on such writ or process, in the same manner as if such deceased party were living, unless in a case of insolvency and a commission issued, which dissolves the attachment from the time of the death of the original defendant, and operates a return of the goods or estate attached.(*t*)

Where no commission of insolvency issues, the real estate of any testator or intestate liable to execution vs. executors or administrators.

And where no commission of insolvency has issued, the real estate of any testate or intestate is always liable to be taken and levied upon, by any execution issued upon judgment recovered against executors or administrators, in such capacity, for the proper debts of the testator or intestate, and the proceedings in levying such executions on such estate, must be the same as in other ordinary cases of levying executions on real estate.(*u*)

Court of chancery may issue execution to have effect as if issued by court of law.

When any final decree is made in the court of chancery against any party, a writ of execution may issue in the same form, and in all things have the same effect, as writs of execution on judgments at law.(*v*)

When sentence of death is to be executed, it must be by hanging the person condemned by the neck until dead.(*w*)

(*t*) St. V. I. 141, 142.
(*u*) Ibid. 141.
(*v*) Ibid. 117.
(*w*) Ibid. 348.

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EXECUTION.

Process from judge of probate, how executed.

If any person or persons neglect or refuse to perform any sentence, order or decree of any judge of a court of probate, such judge may issue process to the sheriff of any county to take and imprison such person or persons, until he, she or they perform such sentence, order or decree, and the sheriff to whom such process is directed and delivered, must cause the same to be duly executed, and confine the person or persons against whom such process was issued as in execution, until he, she or they be delivered according to law. And if any sheriff neglect his duty therein, he is answerable to the party grieved, in such manner as he would be answerable upon process of the like nature, issued from the supreme court of judicature.(x)

State treasurer's extent against delinquent.

If any constable or collector neglect to pay into the state treasury any tax, by the time prescribed in his warrant, the treasurer thereof must issue his extent to the sheriff of the county in which such delinquent constable or collector lives, requiring him to levy such rate or tax, on the sum remaining due therin, of the goods, chattels or estate of the constable so neglecting, and such sheriff must forthwith serve such extent on the goods, chattels or estate of such constable, according as constables are to serve their warrants, * (giving fourteen days notice of the sale of such constable's or collector's goods or chattels; and if real estate be taken by such sheriff, he must advertise and sell such estate in the same manner, subject to the same term for redemption as allowed in case of the sale of lands by constables for the payment of taxes,) and must pay such tax so collected into the treasury, returning the overplus, if any be, to the constable or

* *Vide* how served by sheriff.

(x) St. V. I. 150, 151.

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EXECUTION.

collector, after deducting the like costs as in case of executions: but if the sheriff make a return of *non est inventus* on such extent, the treasurer must thereupon issue his extent, directed to such sheriff, against the goods or chattels of the inhabitants of the town, parish or district, in which such constable or collector belongs, and such sheriff must levy and collect the same as aforesaid, of the goods of the select men, or any of the principal inhabitants of such town, parish or district, advertising the sale fourteen days as aforesaid. And if any such sheriff neglect or refuse to execute any such extent delivered to him, against any constable, collector, town, parish or district, or neglect or refuse to return such extent, or to account to the treasurer issuing the same, for the sum due thereon, within sxity days from the time such sheriff receives such extent, such treasurer must issue his extent against such sheriff, directed to the high bailiff of the county in which such sheriff lives, which high bailiff must levy and collect the same of the goods, chattels or estate of such sheriff, (and the mode of notifying, advertising and selling, and time of redemption, is the same as in case of delinquent constables,) or for want of such goods, chattels or estates, he must commit such sheriff to the gaol of such county, or if there be no gaol in such county, to the gaol of the next county where there shall be a sufficient goal, and must leave with the gaoler a copy of the extent, and the sum due thereon, together with his fees ; and the keeper of such gaol must receive such delinquent sheriff, and him safely keep until he pay the sum due on such extent, with the high bailiff's fees and costs of commitment, and will be answerable for his escape, except when he escapes through the insufficiency of the gaol, in which case the county in which such sheriff belongs will be accountable, and will have right to recover such sum

Treasurer's extent vs. sheriff, how served by high bailiff.

If no gaol in his county, high bailiff must commit sheriff to the gaol of the next county having a sufficient one.

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as they are liable to pay in consequence of such escape, from such delinquent sheriff or his bondsmen. And if any high-bailiff neglect or omit to discharge his duty aforedescribed, he forfeits double the sum contained in such extent to the treasury to which such tax was made payable, to be recovered with costs by the treasurer issuing such extent, in an action of debt, to be brought on the statute in such case made and provided, against such high-bailiff, or against him and his bondsmen.(y) EXECUTIONS.

All sheriffs, high-bailiffs, their respective deputies and constables, must enter on the back of each writ by them served, whether the same be a writ of summons, attachment, or execution, the particular items of their services for which they charge fees, one of which items must specify the number of miles from the place of service to the place of return of such writ, and no fees may be taxed in any bill of cost by any court in the state, nor be recoverable by any officer for such service, unless the items be so entered. And if any officer serve any writ drawn in any note originally extended to him, and by him assigned, the writ being filled in the name of the assignee of such note, such service will be void, and the writ on motion must abate.(z)

Sheriffs, &c. to enter items of fees upon writs.

Fees not so entered not to be taxed.

Officer serving writ drawn on note originally given to him, writ must abate.

No cost may be allowed to any sheriff, sheriff's deputy, high-bailiff or constable, in any action brought on a receipt for property taken by execution, unless the defendant delay final judgment, by obtaining a continuance or appeal from a judgment of a justice of the peace in such suit, and final judgment shall be rendered against him, in which case plaintiff shall recover his full costs.(a)

(y) St. V. I. 437—440.
(z) Ibid. 319, 320.
(a) Ibid. 102.

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PRISONS AND PRISONERS.

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Gaol how built and repaired.

GAOLS are built and maintained, or kept in repair, at the expense of the respective counties in which they are, but it is the duty of the sheriff in each county, when the gaol therein is found by a grand jury to be insufficient, or when the same shall have been broken, or by any other accident is out of repair so as to be dangerous to trust prisoners therein, immediately by and with the advice and under the direction of one or more of the judges of the county court in his county, to repair such gaol or gaols, and keep an accurate account of the monies by him expended in such repairs, and exhibit the same to the judges of the county court in the same county, who must audit the same, and direct their clerk to draw an order on the treasurer of such county for the sum found due to such sheriff, and such treasurer must immediately pay the same.(*a*)

Sheriff may occupy or lease gaolhouses and expend rents in repair.

Each sheriff may occupy, use, or lease out for the term of his office, all the apartments of the gaol-house, or houses in his county, not appointed for the safe keeping of prisoners, and the lands or other appurtenances of such gaol the property of such county, and may with the advice and under the direction of the judges of the county court in his county, when necessary, lay out the rents in repairing such gaol or gaols. And when any sheriff personally occupies any gaol-house and its appurtenances, the judges of the county court must assess the rent to be paid by such sheriff, and he must account for the sum by

(*a*) St. V. I. 280—282.

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them assessed. And the several sheriffs must keep exact accounts of all monies by them respectively expended in repairing gaols, and the same being allowed and certified by the respective county courts, will be allowed them in their settlements with their respective county treasurers, to be made on the last day of November or first day of December in each year, when each sheriff must account with and pay over to the several county treasurers all monies due, or received for such rents not so expended. And on neglect of any sheriff to render such account, and pay over the monies arising from the rents of any gaol, it is the duty of the state's attorney, if a settlement be not timely made, to commence a suit in the name of the county treasurer against such sheriff, at the next county court after such neglect has happened; and if on trial it appears that the sheriff has expended the full amount of such rents on repairs on such gaol, but not rendered his account thereof, he must pay the costs of suit.(*b*)

Must keep exact accounts and render them to county court.

And pay over surplus to treasurer of the county.

And on neglect to render account, &c. liable to suit and cost, though, &c.

Each sheriff has also the custody, rule, keeping and charge of the gaol or gaols in his county, and of the prisoners therein, and must keep the same by himself or a deputy gaoler, for whose acts and doings he must be responsible.(*c*) And each sheriff is also liable for all escapes made from the gaol or gaols in his county, excepting of such prisoners as are committed from some other county. But if the sheriff shall make it appear, to the satisfaction of the judges of the county court within the same county, that any escape in question was made through the insufficiency of the gaol, and not by any negligence of his, either in keeping the prisoner or prisoners, or in repairing the

By whom kept.

Sheriff liable for escapes.

Entitled to remuneration, if through insufficiency of the gaol.

(*b*) St. V. I. 315, 316, 318, 319.
(*c*) Ibid. 309.

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gaol or gaols, the county shall be answerable to such sheriff for all legal costs and damages which he may sustain in consequence of such escape.(d)

May give evidence of circumstances of an escape.

When any action is brought against a sheriff, for the escape of any prisoner, such sheriff may on trial of the cause produce evidence of the circumstances, situation and property of the prisoner, when such escape was made, and all the circumstances attending such escape, and the creditor shall recover no more than his reasonable and just damages sustained in consequence of such escape, and his legal cost.(e)

Persons committed must pay charges of commitment and support, &c.

Every person committed to the common gaol in any county in the state, by lawful authority, for any offence or misdemeanor, having the means and abilty, must bear his or her reasonable charges for conveying or sending him or her to such gaol, and also the charges of such person or persons as shall be appointed to guard him or her thither. And must pay for his or her own support while in gaol, before he or she shall be discharged: and his or her estate, whether real or personal, is subject to the payment of such charge or charges, and for want of such estate, he or she may be assigned in sevice by the county court in the county where such charge or charges shall accrue, to any person who shall appear and discharge the same. But all prisoners must be permitted to provide for themselves food, bedding, linen, and other necessaries, as they shall think fit. And no keeper of a common gaol may demand of a prisoner any other or greater fees than his commitment, discharge, or chamber room, than shall by law be allowed. And if any such keeper shall do, or cause

But may provide for themselves.

Gaoler not to demand illegal fees, or injure prisoner on penalty.

(d) St. V. I. 281.
(e) Ibid. 281.

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or suffer to be done, any wrong or injury to any prisoner committed to his custody, contrary to the intent of the law, he shall pay treble damages to the party aggrieved, and also such fine as the county court of the county in which the offence is committed, shall, upon information or complaint to them made, think reasonable.(*f*)

Gaoler on tender of money must board prisoner.

The keeper of any common gaol in the state, on application of any prisoner committed to his custody in confinement, or in the liberties of the gaolyard, on tender of the money from such prisoner so committed, for one week's board, or for any shorter or longer time, (as the board shall become due,) must board and find such prisoner with good and wholesome food and drink, for the same sum allowed for state prisoners, unless in a time of scarcity, and in such case the keeper may take no more than the common price of boarding in the vicinity of such gaol. And any such keeper who shall refuse to board such prisoner, or shall demand and receive a greater price as aforesaid, shall forfeit and pay to such prisoner the sum of five dollars, to be recovered by an action of the case, upon the statute in such case made and provided, in any court proper to try the same.(*g*)

Penalty for refusing to board or extorting price.

Gaolyards to be set out by county court.

Prisoners for debt admitted to the liberties on giving bond.

The several county courts, in their respective counties, must set out yards to the respective gaols for the liberty of the prisoners. And any person imprisoned in gaol on mesne process in any civil action, or upon execution founded upon any proper action of debt, covenant, contract, or promise, unless such execution shall have issued on a judgment rendered on a bond given for the liberty of the gaol

(*f*) St. V. I. 282.
(*g*) Ibid.

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yard, for the breach of the condition of such bond, shall be admitted to the liberties of the gaolyard, such prisoner first giving bond to the sheriff of the county in which he is imprisoned, with one or more sufficient sureties, being freeholders resident within the state, to be bound jointly and severally in such sum as the sheriff shall direct, with a condition in the same bonds underwritten, in the form following, to wit: "The condition of this obligation is such, that whereas the above bounden ——, now a prisoner in the common gaol, in ——, in the county of ——, and state of Vermont, by virtue of an execution in favour of ——, of ——, in the county of ——, and state of ——, for the sum of —— dollars and —— cents, (debts, damages or costs, as the case may be,) and for the sum of —— dollars and —— cents costs, with —— cents for said execution, and the officer's fees on the same, to the amount of —— dollars and —— cents, issued on judgment, before (here set forth the court, time, &c.) and signed by, (here mention the authority signing the execution.) (Or when the bond is taken on mesne process, insert in the condition, "Now a prisoner in the common gaol, at, &c. at the suit of ——, of ——, in the county of ——, and state of ——, demanding in his writ, debt or damages, to the amount of —— dollars.) Now if the said —— shall faithfully and absolutely remain within the limits of said gaolyard, and shall not depart therefrom until he, she or they, (as the case may be,) shall be lawfully discharged without committing any escape before such damage, or doing any act by which the said sheriff as aforesaid shall be damnified in consequence of admitting the said —— to the liberties of said prison, but shall at all times indemnify and save harmless the said sheriff in the premises, then this obligation to be void and

Condition of the bond.

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of no effect, otherwise to abide and remain in full force and virtue. PRISONS AND PRISONERS.

Signed, sealed and delivered in presence of } L. S. L. I. L. S.

And the blanks in said condition must be filled up as the respective cases may require.(*h*)

Bond assignable to creditors, who may sue in their own names.

When the condition of any bond, legally taken as aforesaid for admitting a debtor imprisoned to the liberties of the gaolyard shall be broken, such bond shall be assignable to the creditor or creditors, who may maintain their action thereon in his, her or their own name, and shall be entitled to all the privileges and advantages thereon, to which the sheriff or other officer taking the same would be entitled if the action had been brought by him; and no action shall be maintained against any officer taking such bond, for an escape or other cause mentioned in the condition thereof, unless the creditor or creditors shall have sued the bond taken by such officer, and so assigned, and been unable to receive the debt or damages, if the sheriff or other officer who took the bond shall upon demand made, assign such bond to the creditor or creditors, and if the signer or signers of such bond shall be unable to satisfy the judgment recovered thereon, or if the creditor or creditors shall not be able to recover judgment on such bond against him, her or them, on account of the neglect, laches or default of the officer, the creditor or creditors may sue such officer taking such bond, upon the original cause of action, and shall recover against him all damages which such creditor or creditors may have sustained.(*i*)

Obligors unable to pay, &c. sheriff liable.

(*h*) St. V. I. 283, 284, 293.
(*i*) Ibid. 284, 285.

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PRISONS AND PRISONERS.

Prisoners for debt admitted to oath and liberated.

When any person imprisoned in gaol, by virtue of any execution issuing from any court within the state, on a judgment recovered on a proper action of debt, covenant, contract, or promise, or for costs recovered on abatement, non-suit, discontinuance or demurrer, shall not have estate either real or personal to the value of twenty dollars, necessary apparel and bedding for himself excepted, nor sufficient to pay the debt, damages or cost for which he is committed, and has not disposed of the same after commitment, except for the purpose of necessary subsistence of him or herself and family, nor sufficient to support him or her in prison, such person

Mode of proceeding.

may apply to two justices of the peace, one of whom must be a judge of the supreme court of judicature, or a judge of the county court for the county in which he or she is imprisoned, praying to be discharged from his or her confinement, on taking the oath herein after prescribed, and such justices, or either of them to whom application shall be made,

Creditors to be notified.

must issue a citation to notify the creditor or creditors in such execution, of such prisoner's taking the privilege and benefit allowed in and by an act, entitled, An Act relating to gaol and gaolers, &c. of the time when and place where they will attend to administer the oath to such prisoner, and for such creditor or creditors to appear, and show cause, if any, he, she or they have, why such prisoner should not be discharged on taking such oath, which citation must be served on the creditor or creditors of such prisoner, if he, she or they live within the state, his, her, or their executor or administrator; and if such creditor or creditors live without the state, upon his, her, or their agent or attorney, who brought the suit on which the judgment whereon the execution issued by which the prisoner stands committed was rendered, at least twenty days

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before the time appointed for taking such oath, by the same officers, and in the same manner as is directed in the service of civil writs and processes. And if any creditor or creditors live without the state, and have no such agent or attorney living in the state, a true and attested copy of such citation must be left with the clerk of the court, or justice of the peace by whom such execution was signed, at least thirty days before the time appointed for taking such oath. And if such creditor or creditors, or his, her, or their legal representatives, make it appear to the satisfaction of such justices, that the prisoner hath practised fraud, deceit or falsehood, in the management of his estate, real or personal, to take advantage of said act, or show other sufficient cause, he or she may not be admitted to take such oath. And if no objection be made by the creditor or creditors, or some other person, the justices must carefully examine by witnesses, or by interrogatories to the prisoner under oath, into his circumstances, situation, and property, before they administer the oath. And if upon such examination, such justices shall be of opinion that the prisoner is a fit and proper subject of the privilege and benefit of said act, they must administer to him or her the following oath, to wit:

If creditor live without the state, &c. notice to be left with the clerk of the court.

Justice to examine into circumstances of prisoners.

"You, ——, solemnly, sincerely and truly swear, (or affirm) by the name of the everliving God, without evasion, equivocation, or mental reservation, that you have not any estate, real or personal, except necessary apparel and bedding for yourself and family, in possession, remainder, or reversion, to the value of twenty dollars in the whole, nor sufficient to pay the debt, damages or cost for which you are committed; nor have you since your commitment disposed of the same, except for the necessary sub-

Oath.

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PRISONS AND PRISONERS.

sistence of yourself and family, and that you have not directly or indirectly disposed of all or any part of your estate to defraud or deceive any of your just creditors. So help you God." (Or in case of the affirmation,) "under the pains and penalties of perjury."

Justices to make two certificates.

Which oath or affirmation, being by such justices administered to and taken by such prisoner, they must then make two certificates in the form following, viz:

"State of Vermont, county of ——, ss.

"To A. B. keeper of the gaol in ——, in the county of ——, aforesaid, *Greeting:*

"Whereas C. D. a prisoner in your custody, on an execution at the suit of E. F. of ——, in the county of——, &c. for the sum of ——, (debt, damages, or costs, as the case may be,) and for the sum of —— cost of suit, signed by G. H. (clerk or justice of the peace, as the case may be,) and dated at ——, the —— day of —— Anno Domini, has this day taken the oath, (or affirmation) in an act entitled, 'An Act relating to gaols, or gaolers, and for the relief of prisoners imprisoned therein.' The said E. F. having been duly notified, (did or did not attend as the case may be,) and in our opinion the said C. D. ought to be discharged.

This —— day of ——, A. D.

J. J. Judge of ——.

H. L. Justice of Peace."

"State of Vermont, county of —— ss,

"To all persons to whom these presents shall come, *Greeting:*

"Whereas C. D. a prisoner in the common gaol, in ——, in the county of —— aforesaid, on an exe-

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ention at the suit of ——," [to be concluded in every respect as in the preceding form.] The former of which certificates must be delivered to the keeper of the gaol, and the latter to the prisoner. And such prisoner then satisfying the creditor or creditors, for all charges incurred in providing for his or her support in prison, and also the keeper of the gaol for past charges, shall thereupon be discharged, and his or her body be thereafter exempt from execution for the same debt or debts. But his estate remains liable as well for such debt or debts, as for prison charges, during his imprisonment.(j)

PRISONS AND PRISONERS.

Persons infamous not admitted to the oath, nor debtors of the state, &c.

No person who by the conviction of any crime is rendered incompetent to testify, nor any person imprisoned on any debt or demand in behalf of the state, or behalf of the state and another, or of any party aggrieved, who shall have recovered against such person for the breach of any penal law, may be admitted to such oath.(k)

Justices may adjourn.

The justices, or either of them called to administer such oath, may adjourn the hearing for any length of time they or he may judge reasonable. And if upon hearing, they shall judge the prisoner not a proper subject of such relief, and shall not administer such oath, and the prisoner shall afterwards make another application, and a citation shall thereon issue, the application must be made to the justices who composed the former court, if in commission; and if one only of those justices be in commission, then to him, and one of the judges of the supreme court of judicature, or a judge of the county court of the same county. And any citation

Prisoner may make second application, proceedings thereon.

(j) St. V. I. 285, 286, 287, 288.
(k) Ibid. 288, 289.

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PRISONS AND PRISONERS.

issued on any application otherwise than as above must be dismissed.(*l*)

Cost taxed, or prisoner not admitted to the oath.

If any prisoner shall cause a citation to be levied on any creditor or creditors, his, her, or their agent or attorney, and such prisoner shall not be admitted to take such oath, the justices must tax costs for the creditor or creditors, and issue execution thereon in favour of such creditor or creditors as shall attend by him or herself, or themselves, or his, her, or their agent or attorney.(*m*)

Debtors in gaol may tender estate to creditors.

When any person who is confined in gaol for any debt or execution, (if such debtor may by law be admitted to the liberties of such gaol) shall personally, or by his agent or attorney, offer or tender to his creditor, or to the agent or attorney of such creditor, who has the care of the collection of such debt, his or her property, lying or being within the state,

To be appraised.

either real or personal, to be appraised at its just and true value in money, by indifferent men to be chosen by such debtor and creditor, or in case they cannot agree on such appraisers, by three judicious and disinterested freeholders, to be appointed by a judge of the county court in the same county, and

Appraisers to be sworn.

sworn to the faithful discharge of their duty in such appraisal, in payment of such debt for which he is

Creditors refusing property, debtor may dispose of it to other creditors.

committed, if the creditor, or his or her agent or attorney for the space of twenty days neglects or refuses to agree in the appointment of appraisers, or to accept such property at their appraisal in payment and satisfaction, such debtor may sell or dispose of all or any part of his or her property, which he or she may have so tendered in payment of any other just

(*l*) St. V. I. 289.
(*m*) Ibid.

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demand which existed against him or her at the time of such commitment. And when such debtor shall so have expended all his or her property, real and personal, in payment of his or her just debts, or in support of his or her family, or for both, and shall have complied with the requisition of the law in such case provided, and before set forth, and shall take the following oath: "You ——, do solemnly, sincerely, and truly swear, (or affirm) by the name of the everliving God, without evasion, equivocation, or mental reservation, that you have not any estate real or personal, except necessary apparel and bedding for yourself and your family, in possession, remainder, or reversion, to the value of twenty dollars in the whole, nor sufficient to pay the debt, damages, and costs for which you are committed; and that you have not, directly nor indirectly, disposed of all, or any part of your estate, to defraud or deceive any of your just creditors. So help you God." (Or in case of affirmation,) "under the pains and penalties of perjury." Such debtor is entitled to all the privileges provided for insolvent debtors.(*n*)

PRISONS AND PRISONERS.

And take the oath.

Oath.

And when the body of any prisoner is legally discharged from prison, by virtue of any of the laws in force relating to gaols and gaolers, such person is for ever freed from arrest and imprisonment, for any debt due and owing at the time of his being so discharged, to the creditor or creditors on whose suit he is so discharged.(*o*)

Body of debtor not liable on former debt to some creditor.

The common gaols in the counties of Bennington, Windham, Rutland, Windsor, Addison, Franklin and Essex, and the city of Vergennes, and in Burlington

Gaols for confining prisoners committed under the authority of

(*n*) St. V. I. 289, 299.
(*o*) Ibid. 303.

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PRISONS AND PRISONERS.

the United States.

in the county of Chittenden, and in Danville in the county of Caledonia, are gaols for the receiving and safe keeping prisoners committed under the authority of the United States, until discharged by due course of the laws thereof. And the keepers of said gaols respectively must receive such prisoners, under the like pains and penalties for neglect of duty therein, as they are by law subject to in the case of prisoners committed under the authority of this state; provided that the United States pay to the keepers of such gaols, for the use and keeping of them respectively, at the rate of fifty cents per month for each person who shall under their authority be committed thereto, during the time such prisoner shall be confined therein, and also support such of said prisoners as may be committed for offences, and also pay to the keeper of such gaol the customary fees for committing and discharging such prisoners; and the keepers of such gaols respectively must at the end of every twelve months from the first day of December in each year, render an account and pay to the treasurer of the county in which he is keeper of the gaol, or the treasurer of the city of Vergennes when keeper of the gaol therein, all monies they may have respectively received from the United States for the use and keeping of such gaols, except the customary fees for committing and discharging prisoners.(p)

Gaolers must receive and safe keep such prisoners.

Gaoler to account with county treasurer, &c.

Provided always, that no county sheriff, deputy sheriff, nor gaoler, shall be liable for the escape of any prisoner who may have been committed under the authority of the United States, when made through the insufficiency of the gaol.(q)

County sheriffs, &c. liable for escape.

(p) St. V. I. 298, 290, 602.
(q) Ibid. 290.

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PRISONS AND PRISONERS.

Gaolers must receive delinquent soldiers committed by execution issued by captain of militia company and directed to orderly or other serjeant.

When any orderly serjeant of any militia company in the state shall, by virtue of any execution issued by the captain or commanding officer of such company, against the goods, chattels and estate of any delinquent non-commissioned officer or soldier of such company, to collect a lawful amercement of such delinquent, and for want of such goods, chattels or estate to satisfy such execution, to take the body of such delinquent, and him commit to the keeper of the gaol in the same county, (or for want of a sufficient gaol in such county, to the nearest gaol in any other county,) within the prison, the keeper of the common gaol in the county to which the delinquent belongs, (or the keeper of such nearest gaol in any other county, as the case may be,) must receive and safely keep such delinquent until such execution be fully paid, and all costs arising thereon, or until he be otherwise discharged by order of law.(r)

Breaking gaol.

How punished.

If any person or persons directly, or indirectly break open, or counsel, aid and assist in breaking open any gaol, or place of confinement in which any prisoner is confined by the authority of the state, such person or persons shall on conviction thereof, pay a fine not exceeding two hundred dollars to the treasury of the county in which such offence was committed, and be imprisoned six months; and if any such person or persons at the expiration of such term shall not be of sufficient ability to pay such fine and the costs of prosecution, he, she or they, may be assigned in service by the court to any citizen of the state, for so long a time as may be necessary to make satisfaction for such fine and costs. And for a second offence, may be fined three hundred dollars, and imprisoned one year.(s)

(r) St. V. II. 150, 151.
(s) Ibid. I. 354.

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PRISONS AND PRISONERRS.

Sheriff to commit certain persons to gaol in Vergennes,

When any writ, process, warrant or execution, issuing from the authority of the state, is directed to any officer or indifferent person in the county of Addison, by which it becomes his duty to commit the person or persons therein named to the county gaol in the said county, and such officer or indifferent person finds that the person or persons named in such precept are confined in the gaol of the city of Vergennes, or legally bailed within the liberties thereof, such officer or indifferent person must commit such person or persons (so committed on bail) to the gaol of the city of Vergennes. And the keeper of such gaol must receive such person or persons within the prison. And the sheriff of said city must, so far as respects such person or persons so committed, be governed in all things by the law directing county sheriffs in their office and duty. And such person or persons so committed, are subject to all the restraints, and entitled to all the privileges to which persons confined in county gaols, are by law in like case entitled.

City and city sheriffs liable for escapes.

And the city and sheriff thereof, are in all things liable for escapes, in the same manner as counties and county sheriffs are by law accountable. And no officer or indifferent person may remove any person committed to gaol in Vergennes, or bailed within the liberties thereof by virtue of any process whatever, except by habeas corpus legally issued.(t)

Prisoners not removeable but by habeas corpus.

(t) St. V. I. 296, 297.

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VI. BAIL.

BAIL.

ALL prisoners, except in execution, or committed for capital offences, when the proof is evident or presumption great, are bailable by sufficient sureties, nor may excessive bail be required. And any judge of the county court within the county where any person is confined for any bailable offence, may bail such prisoner, by taking a recognizance with sufficient sureties, in such sum or sums as such judge shall think proper, to the treasurer of the state or of the county, as the case may be.

Whenever bonds are given for the admission to th liberties of the gaolyard, any person therein imprisoned on mesne process, such bail has the same privilege of exonerating himself, by delivering up the principal, as the bail signing on the back of the attachment, without commitment.

Whenever a surety shall surrender the body of the principal in court, before entering judgment on scire facias, and an officer is by the court ordered to receive such principal, he may be detained by such officer so long as the court shall direct, not exceeding twenty days, that his body may be taken in execution.(a)

(a) St. V. I. 64.

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VII. HABEAS CORPUS.

HABEAS CORPUS.

Habeas corpus, by whom granted.

THE several county courts, and the supreme court of judicature, may issue writs of *habeas corpus* necessary for the exercise of their respective jurisdictions. And either of the judges of the supreme court of judicature, in the recess of the court, may grant writs of *habeas corpus* for the purpose of inquiring into the cause of commitment, provided

In what cases not grantable.

that such writs of *habeas corpus*, in no instance extend to prisoners in gaol, unless when they are committed for trial in some court in the state, or are necessary to be brought into court to testify, or to be surrendered in discharge of bail, and such principal is confined in any gaol in the state out of the county in which such principal is required to be surrendered. The writ may run into any county in the state, and be there executed by any officer to whom it is directed, and the principal after being surrendered in court, and his bail discharged, must, by the officer executing such writ, be remanded to the gaol from which he was taken, by virtue of an order of the court for that purpose; an attested copy of which, lodged with the gaoler, is a sufficient authority for him to detain such principal in his custody, in the same manner as though he had been committed on mesne process; and such removal is no escape, and the creditor must have the same time allowed him to charge such principal in execution on the original judgment, as in other cases of a like nature. And the party praying out such writ must pay to the officer executing the same, such reasonable sum for his services as shall be allowed by the judge of the court respectively.(a)

(a) St. V. I. 58, 59.

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VIII. JURORS.

JURORS.

Sheriff must serve venire for summoning petit jurors.

WHENEVER any sheriff, or sheriff's deputy, shall have received a lawful venire facias, issued by the clerk of any county, or supreme court, for summoning jurors to attend either of said courts, to be holden in any county, such officer must within fifteen, and not less than seven days before the session of the court to which such venire is made returnable, and at which the jurors to be drawn are to serve, repair to the town clerk's office in each town named in such venire, and in presence of such town clerk, or in his absence, in presence of one or more of the select men of such town, draw out of the box containing the names of the persons nominated by the authority of such town to serve as petit jurors, the number his venire directs him to summon, and must summon the person whose names are so drawn, by reading such venire in their hearing, and notifying them respectively of their being drawn to sevre as jurors agreeably to the precept of such venire, or by leaving a copy of such venire with such notification endorsed thereon, as is directed in the service of writs of summons, in civil processess. But if such person or persons is or are either absent or sick, that it is probable he or they cannot attend such court, the name or names of such person or persons must be returned into the box, and others drawn in their stead and summoned in the like manner. And such sheriff or his deputy must return such venire, with the names of the persons so summoned endorsed thereon, to the clerk issuing the same, on the second day of the session of such court.(a) The like proceedings must in

Manner of drawing jurors.

And of summoning them.

If person drawn be sick or absent, his name must be returned and another drawn and summoned.

Venire must be returned second day of court.

(a) St. V. I. 77, 78.

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jurors.

Grand jurors to be drawn and summoned in like manner, &c.

all respects be had, in executing venires issued for summoning persons to serve as grand jurors in any court, and such venires must in like manner be returned to the clerk of the court from which they issued.(*b*)

Sheriff neglecting to serve venire, finable.

And if any sheriff or his deputy refuse or neglect to serve any such venire, or to make seasonable return thereof to the clerk, the sheriff will be amerced a sum not exceeding twenty dollars, unless he show sufficient cause for such refusal or neglect.(*c*)

Tales de circumstantibus.

When a sufficient number of jurors do not appear to make up the panel or panels, the court may order the sheriff, or other officer to fill up such jury or juries by summoning either with or without a precept a sufficient number of judicious men, being freeholders of the vicinity.(*d*)

Court may order additional panel.

Whenever the supreme or any county court shall, during their respective sessions, order an additional panel of petit jurors, and the clerk shall issue a venire directed to the sheriff, or his deputy, requiring him to summon such number of petit jurors as is in such venire directed, to appear before such court at a time in such venire specified, such sheriff or deputy must execute the same accordingly, and in case of refusal or neglect, be subject to the same penalties as for refusal or neglect, or not making sufficient excuse as above mentioned, for not executing venires issued before the commencement of the session of such court.(*e*)

(*b*) St. V. I. 78, 79.
(*c*) Ibid. 79.
(*d*) Ibid. 80.
(*e*) Ibid.

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JURORS.

Forcible entry.

On complaint of inquiry of forcible entry into, or detainer of land, tenements or possessions, the justices to whom such complaint is made, and who have jurisdiction of the case, may issue a precept to the sheriff of the county, or his deputy, commanding him to cause to come before them twelve men to be drawn and summoned in the same manner as petit jurors, to serve before the county or supreme courts, at a certain time and place in such precept mentioned, and at the time and place appointed for trial on hearing such complaint, and if a sufficient number of jurors summoned by the sheriff do not attend, the justices may order the sheriff or his deputy to complete the number by returning others forthwith. *(f)*

Jury of inquest, how summoned.

When for taking an inquest on the body of a person found dead, a justice of the peace issues his warrant, directed to the sheriff, or to a constable of the town or place from which jurors are to be summoned, specifying the number of jurors to be summoned in such town or place, the officer to whom the warrant is directed, must forthwith execute the same, by summoning the number of jurors expressed in such warrant, qualified as the law requires, for jurors attending county courts, and inhabitants of the town or place in which the dead body has been found, or of that and the adjacent towns, as the justice orders to attend, such justice at the time and place specified in such warrant, which done, such officer must repair to the place where the dead body is at the time mentioned, and make return of the warrant with his doings thereon, unto the justice

(f) St. V. I. 216.

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JURORS.

Penalty on officer for neglect of duty therein

who issued the same. And if any sheriff or constable shall unnecessarily fail of executing any such warrant, directed and delivered to him for that purpose, or of returning the same as above required, he will forfeit the sum of seven dollars.(g)

(g) St. V. I. 257—259.

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IX. CONSTABLES.

CONSTABLE.

Constables have in towns the same powers as sheriffs in county.

CONSTABLES in their respective towns, have the same powers as sheriffs in their counties, are under the some liabilities and subject to the same penalties, and are equally protected in the execution of their office, but may not arrest without written warrant.(a)

First constable to collect state and other taxes

The first constable chosen annually, must collect all the state and other taxes required by law, and account therefor with the several treasurers to whom the taxes are respectively payable, agreeably to his warrant.(b)

Treasurer to issue his warrant to constable to collect taxes.

When the general assembly grant any rate or tax to be levied on the inhabitants of the state, the treasurer of the state for the time being, must issue his warrant, by authority of the state, to the first constable chosen in the respective towns, parishes or districts therein, subject to the payment of such rate or tax, commanding him to levy and collect such rate or tax, and pay the same into the treasury by the time prescribed in the act granting the same; and every constable on receiving from the select men of his respective town, parish, or district, an assessment or rate bill of the tax to be collected, must immediately give at least six days notice to each inhabitant or resident of his respective town, parish or district, taxed in such assessment or rate bill, of the sum at which he, she or they assessed, and of the time and place at which he will attend to receive such rate or tax, before he shall make any distress thereof, unless

(a) St. V. I. 311, 312.
(b) Ibid. 415.

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CONSTABLE.

in cases where such constable has just reason to think any person is about absconding, or moving out of his town, parish or district. And upon the neglect or refusal of any person or persons so to pay his, her, or their rates or taxes, the constables must distrain the goods or chattels of the person or persons so neglecting to satisfy such rate or tax, and shall be allowed eight cents on every dollar for his trouble, exclusive of his lawful fees for travel, and all other necessary and reasonable charges.(c)

Constable may distrain goods, &c.

And when any goods or chattels are so distrained, the constable must keep the distress four days, (unless the money and all costs for which the distress is taken be sooner paid,) at the cost and charge of the owner. And if he do not pay the rate, and all the costs and charges thereon accrued, within the four days, the constable after posting the distress for sale six days in some public place within the town, parish or district in which it was taken, must sell the same at public vendue, to the highest bidder. And after deducting the rate or tax, and the cost of keeping and selling such distress, the constable must return the overplus, if any there be, to the former owner, or pay the same on demand; and also furnish such former owner with the account of the rate or tax, with the costs arising on such distress if requested.(d)

Mode of selling.

For want of goods or chattels whereon to make distress, the constable may take the body of the person or persons neglecting or refusing to make payment, and him, he or them commit to the common gaol in the same county, (if there be a sufficient one in the same county, if not, to such other one as the constable shall judge best,) and such person so

For want of goods and chattels, body taken.

(c) St. V. I. 433, 434.
(d) Ibid.

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committed, must there remain until such rates or taxes and lawful costs be paid.(e) CONSTABLE.

Gaolers to receive delinquents.

When any person is so committed, the constable must leave with the keeper of the gaol an attested copy of his warrant, and thereupon certify the sum or sums of money such person is taxed in his rate bill or assesment, and his legal costs, and that he has taken the body for want of goods or chattels whereon to make distress. And such an attested copy and certificate thereon, will be a sufficient authority to require the keeper of the gaol to receive and detain such prisoner in custody, until he pay the sums so certified, with costs of commitment and charges of imprisonment. And the gaoler will be answerable for his escape, except when he escapes through the insufficiency of the gaol, in which case the county from which such delinquent was committed will be answerable.(f)

Constables may extend warrants on lands.

When any person is absent against whom a constable has a state tax or rate to collect, and he can find no goods or chattels within the town whereon to make distress, such constable may extend his warrant for the collection of such rate or tax on the lands of such absent person, and must publish the same for sale in one or more of the newspapers in which land taxes are by law to be published, three weeks successively, mentioning the time and place of sale, the last day of which publication must be at least ten days before such day of sale; and also set up a notification of such sale in the town where the land lies, and in two adjacent towns. And if such rate or tax, with the legal costs, be not paid

Mode of sale.

(e) St. V. I. 435.
(f) Ibid.

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CONSTABLE. within that time, the constable may sell so much of such person's land at public vendue as will pay such rates or tax and all costs and charges. But if Redemption. the owner or owners of any land so sold, their heirs or assigns, executors or administrators, shall pay or tender to such constable the full sum for which such land was sold, with legal costs and twelve per cent interest thereon, within one year from the day of such sale, the constable may not execute a deed for the land so redeemed, and the title will not be conveyed by such vendue sale, and the constable must pay to the purchaser the money so by him Constables to execute a deed. received. But if the land so sold be not so redeemed, the constable must execute to the purchaser a deed in form following, viz:

From of deed. "Know all men by these presents, that I ——, of ——, in the county of ——, in the state of Vermont, collector of taxes of and for the said town of ——, in said county, for the year ——, by virtue of the laws of this state, relating to levying and collecting rates and taxes in the several towns, in this state, for and in consideration of —— to me in hand paid, before the delivery hereof, by ——, of ——, the receipt whereof I do hereby acknowledge, have given, granted and sold, and by these do give, grant, sell and convey unto him, the said ——, his heirs and assigns forever, the following and described piece or parcel of land, lying and being situate in said town of ——, bounded as follows, to wit: he the said ——, being the highest bidder for the same at a public vendue, legally notified, and holden at the dwelling-house of ——, in said town of ——, on the ——, day of ——, for the sale of land in said town of ——, belonging to delinquents of said rate or tax. To have and to hold said granted premises, appurtenances thereof, to him the said ——, his heirs and assigns, in fee

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simple power. And I ——, the collector as aforesaid, do in my said capacity agree, to and with the said ——, his heirs and assigns to warrant and defend the said premises to him the said ——, his heirs and assigns, against all the lawful claims and demands of any person or persons whatsoever. In witness whereof, I have hereunto set my hand and seal, the —— day of ——."

"Signed sealed and delivered
in presence of ——."

Constables may collect out of their town.

Every constable or collector, duly authorized to collect the state or any other rate or tax, has the same power and authority in any of the towns, parishes or districts in the state, as the same officers have in their own precincts, to levy and collect the respective taxes from any person or persons whose polls or estate are in their list or rate bill, and are allowed six cents per mile for their travel, and may levy and collect such rates or taxes, or such part thereof, as shall be due at any time after the expiration of three years as well as before, and are liable for neglect in not making such collection.(*g*)

Must serve notice on persons chosen to town offices to take the oath, &c.

Also to new comers to leave the town.

Constables must serve notifications directed to them, and signed by the select men of their town, on persons chosen town officers, to appear before the authority in such notification described, to take the oaths by law prescribed. And must also serve a notice in like manner directed and signed, to warn new comers to leave the town, in the same manner as a writ of summons must by law be served, and must make return thereof in eight days after serving the same.(*h*)

(*g*) St. V. I. 435—437.
(*h*) Ibid. 400, 401.

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X. DISTRIBUTION OF LAWS.

DISTRIBUTION OF LAWS.

State printers to deliver laws, &c to sheriffs and take receipt.

Sheriffs to distribute laws, journals, &c.

THE printer or printers who print the acts, laws and journals of the general assembly, under their authority must convey them to the sheriffs of the several counties, taking their receipts for the same. And the sheriffs upon the receipt of such acts, laws and journals, and all other public papers, proclamations and warrants committed to them by order of the general assembly, or by the governor of the state for the time being, must distribute such acts, laws, journals and proclamations, to the town clerks of the several towns within their respective counties, or in the absence of such clerk to a justice of the peace, or one of the select men of such town, taking his receipt for the same; and must deliver all warrants from the governor to the officers to whom the same are directed, or to one in his absence, within the time directed by law, or within four weeks after such acts, laws, journals, proclamations or other public papers are delivered to them, if no time be limited by law. And also must deliver all warrants from the treasurer of the state, or from the county treasurer, to the first constable or collector of the state taxes, in the several towns in such county within such times. And upon neglect or refusal of any sheriff to deliver such acts, laws, proclamations, journals or warrants, or other public papers, within the times limited, he shall for every such neglect or refusal forfeit and pay to the treasury of the county where such sheriff belongs, the sum of twenty dollars, with costs of prosecution, to be recovered by action of debt before any court proper to try the same, by the state's attorney of the county. And no sheriff may be allowed pay

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DISTRIBUTION OF LAWS.

for such services until he produce such receipt to the auditor of accounts against the state. And the sheriffs of the several counties, for the distribution of each and every packet containing the laws or or journals of one session, or other public proclamations, warrants or papers, for which it becomes necessary to make a separate distribution, are entitled to receive from the treasury of the state (except for the distribution of warrants for county taxes, which must pe paid out of the respective county treasuries) the sums following, to wit: the sheriff of Bennington county, four dollars; the sheriff of Windham county, five dollars and fifty cents; the sheriff of Windsor county, six dollars; the sheriff Rutland county, six dollars; the sheriff of Orange county, six dollars; the sheriff Addison county, four dollars and fifty cents; the sheriff of Chittenden county, five dollars; the sheriff of Caledonia county, six dollars; the sheriff of Franklin county, five dollars.(a)

(a) St. V. II. 325, 326.

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XI. OATHS.

OATHS.

BY the constitution, all civil officers must take and subscribe the oath (or affirmation) of allegiance following, to wit:

Oath of fealty.

"You solemnly swear, (or affirm) that you will be true and faithful to the state of Vermont, and that you will not directly nor indirectly do any thing injurious to the constitution or government thereof, as established by convention. So help you God." Or, (in case of affirmation,) "under the pains and penalties of perjury."

And also the oath (or affirmation) of office following, to wit:

Oath of office.

"You solemnly swear, (or affirm) that you will faithfully execute the office of ——, for the —— of ——, and will therein do equal justice to all men to the best of your judgment and abilities, according to law. (If an oath,) So help you God; (If an affirmation,) under the pains and penalties of perjury."(a)

(a) St. V. I. 42, 43.

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XII. FEES.

Sheriff's and Constable's Fees.

FEES.
Sheriff's and constable's fees.

FOR serving every process on each defendant, if by reading, six cents; if by copy, seventeen cents.
For taking bail, seventeen cents.
For each mile's travel for the service of all writs and processes, to be computed from the place of service to the place of return, six cents.
For levying each execution amounting to three dollars or under, fifteen cents; for each three dollars over, four cents.
For each day's attendance on appraisement, or sale of estate taken in execution, thirty-four cents.
For attendance before a justice court, when required, thirty-four cents.
For attending freeholder's court, per day, one dollar.
Copy of an execution, when extended on land, and the return thereof to the office for record, fifty cents.
For attendance on the general assembly or supreme or county court, per day, one dollar.
Constables for the like service, one dollar.

Collectors of taxes to be allowed the like fee as sheriffs in cases of execution, when they levy on persons or estate, and one dollar out of each fifty dollars collected and paid into the state or county treasury. Provided no sheriff, constable or other officer, shall be entitled to any fees for a *non est inventus* on any civil writ or process.

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FEES.

For sheriff's, &c. assistants, per day, sixty-seven cents; for half a day, thirty-four cents.

For appraiser's of real estate on execution, per day, sixty-seven cents;(a) for half a day, thirty-four cents.

Gaoler's Fees.

Gaoler's fees.

To gaolers for commitment of a prisoner, thirty-four cents; for discharge of do. thirty-four cents.

Diet per week for state prisoners, one dollar.

For bond for liberties of the prison, thirty-four cents.(b)

Sheriff, &c. to give bill of fees, &c. receipt.

Every sheriff, deputy sheriff, bailiff, or constable, who shall demand and receive fees for services by them or either of them performed in their, or either of their said capacities, must if required at the time of receiving such fees, or making such demand by the person from whom such money is received or demanded, make out and deliver to him a particular statement of the items of such services, with the sums demanded therefor, and must receipt the same; and if any such officer knowingly and wilfully demand and receive any more or greater fees, for any services by him performed in such his official capacity, than is by law allowed, or if he shall demand and receive fees for services not performed, (unless it be for services which by law he is obliged to perform after receiving such fees,) he shall forfeit and pay to the party injured four-fold the sum or sums by him unlawfully taken and received, with costs of suit, in an action of the case in any court proper to try the

Penalty for taking unlawful fees.

(a) St. V. II. 387.
(b) Ibid. 389.

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same. And if any such officer shall neglect or refuse to give such statement and receipt, when so demanded, he shall forfeit and pay for every such refusal and neglect the sum of *ten dollars*, with costs of prosecution, to the use of the town in which such offence shall be committed, to be recovered in any court proper to try the same, on the complaint or information of any town or county informing officer. And the person demanding such statement and receipt, may be a witness in such cause, unless disqualified to be a witness in any case.(c)

FEES.

And so refusing to give bill and receipt.

(c) St. V. II. 400, 401.

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CHAP. VI.

Statute regulations in the State of Rhode-Island.

I. APPOINTMENT AND GENERAL DUTY.

APPOINTMENT AND GENERAL DUTY

Sheriffs appointed by general assembly. Must be freeholders when elected, and inhabitants of their respective counties: be sworn or affirmed and give bond with sureties. No member of assembly can be elected, nor can sheriff, &c. be a member of assembly. Each sheriff may appoint deputies. And how.

IN this state sheriffs are annually appointed by the general assembly, one for each county; every person elected to that office, must at the time of his election be a freeholder, and an inhabitant of the county for which he is elected, and previous to his entering on the duties of his office must be sworn or affirmed to the faithful performance thereof; and must moreover give bond with two sufficient sureties to the general treasurer, in the sum of six thousand dollars, for the due and faithful execution of his office according to law.(*a*) No member of either house of assembly is eligible to the office of sheriff, or may hold a deputation under him; nor is any sheriff, deputy sheriff, or gaoler, eligible as a member of either house of assembly.(*b*) Each sheriff may appoint as many deputies, being freeholders and inhabitants of the county, as he deems necessary for his assistance in the due performance of the duties of his office, which appointments must be in writing, under the hand and seal of the sheriff, and must be lodged and recorded in a book kept for that purpose;

(*a*) St. R. I. 400.
(*b*) Ibid.

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APPOINTMENT AND GENERAL DUTY.

in the office of the clerk of the court of common pleas, in the county for which they are appointed, previous to their entering on the duties of their office, and they must be sworn or affirmed in like manner as the sheriffs, and give bonds with sufficient sureties to the sheriff in the sum of three thousand dollars, for the faithful execution of their office. Each sheriff may also appoint a gaoler, or keeper of the prison in his county, who must also be sworn to the faithful performance of the duties of his office, and must likewise give bond in the same manner as deputy sheriffs. And the sheriff may at pleasure revoke all such deputations, but such revocations must be entered in the book kept for recording deputations as aforesaid.(c) Every sheriff may appoint a special deputy, for the service of any writ or precept to him directed upon the back of such writ or precept, but such special deputy must be sworn before some judge or justice of the peace, duly and faithfully to execute such writ or precept, which must be certified by such judge or justice under such deputation.(d) Each and every sheriff is responsible and accountable for any neglect or misfeasance in office of his deputies and gaoler, and in all cases where any person is entitled to an action for any neglect or misfeasance in office, of any deputy sheriff or gaoler, he may have his election to bring the same either against the sheriff or against such deputy or gaoler.(e)

Deputies must be sworn.

And gaolers also to be sworn.

Sheriff may revoke deputations.

May appoint special deputies.

Sheriff liable for neglect and misfeasance of his deputies.

Deputies also liable.

Sheriff must attend general assembly.

It is the duty of the sheriffs to attend the general assembly when sitting in their respective counties, and also the supreme judicial court, the court of common pleas, and court of general sessions of

(c) St. R. I. 400, 401, 402.
(d) Ibid. 402.
(e) Ibid.

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the peace, when holden in their several counties. And the sheriffs and their deputies must execute within their respective counties all lawful precepts directed to them, and issued under the authority of this state, and may command all necessary assistance in the execution of their duty.(f)

APPOINTMENT AND GENERAL DUTY

Sheriffs and their deputies must execute all lawful writs, &c.

In case of the death of any sheriff, his deputy or deputies, and gaoler continue in office, unless otherwise removed, and must exercise the same in the name of the deceased, until another sheriff be appointed and sworn or affirmed, and the neglect or misfeasances of such deputy or deputies and gaoler, in the mean time as well as before, will be breaches of the bond given by the sheriff who appointed them, and the executors or administrators of the deceased sheriff may have the like remedy for the defaults and misfeasances in office of such deputy or deputies, and gaoler, during such interval as they would have been entitled to if the sheriff had continued in life, and in the exercise of his office until his successor was appointed and sworn or affirmed. And every sheriff who is not re-elected when his term of office expires, or whose office becomes vacant by removal or resignation, may notwithstanding officiate as such until his successor is sworn into office,(g) if that take place during the space of one week after the first Wednesday of May.(h)

Deputies may act after decease of their principal, and their neglects will be a breach of the bond, &c.

Sheriff may officiate one week after the election, in case —

It is also the duty of the sheriffs, to furnish the general assembly when sitting in their respective counties, with copies of the laws and other proceedings of the general assembly, which shall from time to time be transmitted to them as by law provided;

Sheriff to furnish the assembly with the laws, &c.

(f) St. R. I. 402.
(g) Ibid. 402, 403.
(h) Ibid. 126.

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APPOINTMENT AND GENERAL DUTY.

and also to deliver commissions, proclamations, schedules, and all other public acts, to the persons to whom directed in their respective counties, without expense to the state.(*i*)

Sheriff to attend commencement, at Providence.

And the sheriff of the county of Providence, must attend the celebration of the commencement of the university or college in this state annually, and preserve the civil peace, good order and decorum during the same.(*j*)

Supreme court and county court may remove deputies.

The supreme judicial court, and the courts of common pleas in the respective counties, on complaint made to them, may remove any deputy sheriff or gaoler for misdemeanour in office.(*k*)

Voluntary escape.

If any gaoler or keeper of a prison, shall voluntarily suffer any prisoner committed unto him to escape, he shall suffer and undergo the like pains and penalties as the prisoner so escaping was sentenced to suffer and undergo, or in case such prisoner so escaping, at the time of such escape is not a convict, the gaoler or prison keeper voluntarily suffering such prisoner to escape, shall suffer and undergo

Pains and penalties for

the like pains, punishments, and penalties, as the prisoner so escaping is or may by law be subject to, if convicted for the crime or crimes with which he stands charged, unless the prisoner escaping, stands charged with or is convicted of some crime the punishment whereof is by law capital, in which case the gaoler or prison keeper permitting such escape shall be fined not exceeding three thousand dollars, and be imprisoned not exceeding six years.(*l*)

(*i*) St. R. I. 402.
(*j*) Ibid. 403, 404.
(*k*) Ibid. 404.
(*l*) Ibid. 595, 596.

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APPOINTMENT AND GENERAL DUTY.

And if any gaoler or prison keeper through negligence suffer any prisoner accused or convicted of any crime to escape, he shall be fined not exceeding one thousand dollars, and imprisoned not exceeding one year. But if any prisoner committed for debt on mesne process or execution escape from prison, against the consent and without the permission of the sheriff or prison keeper, and the sheriff or prison keeper, within three months next after such escape, recover the prisoner so escaped, and return him back to prison again, the sheriff or gaoler are liable to nothing further than the cost of any action which shall have been commenced against him for such escape.(m)

Negligent escape.

Pains and penalties for.

Conveying instruments to prisoners.

And if any person shall directly, or by any means, ways or means howsoever, without the knowledge or privity of the gaoler, convey any instrument or other thing whatsoever to any prisoner or into any prison, whereby any prisoner may break the prison, or work himself unlawfully out of the same, or in any way thereby escape, the person so offending shall be fined not exceeding five hundred dollars, and be imprisoned not exceeding one year. And if any prisoner make his escape by means of any instrument, tool, or other thing, so conveyed without the knowledge and privity of the gaoler, the person so conveying the same shall be liable to pay all such sums of money as the prisoner stood committed for, and shall suffer all such punishments, pains and penalties as the escaped prisoner would be liable to on the charge or conviction on which he stood committed, unless such prisoner would have been liable to capital punishment, in which case the person assisting in such escape shall be fined not exceeding three thou-

How punished.

(m) St. R. I. 396.

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APPOINTMENT AND GENERAL DUTY.

sand dollars, and be imprisoned not exceeding five years.(n)

Gaolers must receive prisoners committed under the United States.

The keeper of the respective gaols in the counties of New-port, Providence, Washington, Bristol and Kent, must receive and safely keep therein all prisoners committed under the authority of the United States, until they shall be discharged by due course of the law thereof, under the like penalties as in case of prisoners committed under the authority of this state, the United States paying for the use and keeping of such gaols at the rate of fifty cents per month for each prisoner committed under their authority, during the time such prisoner shall therein be committed. The United States also supporting such of said prisoners as shall be committed for offences.(o)

(n) St. R. I. 596, 597.
(o) Ibid. 616, 617.

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II. PROCESS.

PROCESS.

How writs to be issued.

ALL writs, original and judicial, issued in the name of the State of Rhode-Island and Providence Plantations, must be under the seals of the respective courts from which they issue, be signed by the clerk, and bear test of the first justice thereof not a party to such suit, and be directed to and served by the sheriff or his deputy, unless the clerk of the court from which any process issues be a party, in which case, such writ and other process must be signed by one of the justices of the court from which such writ or other process issues. And if the sheriff be a party in any suit, all writs and process therein to be served in the county whereof he is sheriff must be directed to and served by one of the town sergeants in such county, not a party to such suit,(*a*) and may run throughout the state, being directed to the proper officer in the county wherein they are to be served.(*b*)

To whom directed.

Justice's writs, by whom signed, and to whom directed.

And all writs returnable for trial before a justice of the peace, or warden of the town, must be signed by a justice of the peace or warden of the town where the action is commenced, and be directed to the sheriff, his deputy, or either of the town sergeants or constables in the county in which such suit is brought.(*c*)

Original writs must be summons or writs of arrest, and

An original writ for bringing any cause or suit to trial before any court, must be either a *summons* or a *writ of arrest*,(*d*) and if issued out of the court

(*a*) St. R. I. 201, 145, 148.
(*b*) Ibid. 149,
(*c*) Ibid. 188.
(*d*) Ibid. 194.

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PROCESS.

served 20 days before the sitting of the court unless.

of common pleas, must be served twenty days before the day of the sitting of the court to which the same is returnable,(e) unless such writs issue from and are returnable to a special court of common pleas, in which case service may be made of such writs at any time after issuing the same, six days before the sitting of such special court.(f)

Justice's writs to be served 6 days before trial.

All writs and summons returnable for trial before a justice or warden, must be served at least six days before the day of such trial.(g)

(e) St. R. I. 148.
(f) Ibid. 151.
(g) Ibid. 189.

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III. SERVICE.

SERVICE.

AN original summons must be served, by reading the same to the person to be summoned, or by leaving an attested copy thereof at his last and usual place of abode by the officer to whom the same is directed, and a writ of *scire facias* must be served in the same manner, and a certificate of such service by the officer who made the same shall be considered due proof therof.(*a*)

Manner of serving summons.

And of scire facias.

Whenever a writ of arrest is delivered to any officer, duly authorized to serve the same, he must use his best endeavours to arrest the body of the defendant; but if such officer cannot find the body of the defendant within his precincts, he must attach his goods and chattels, to the value commanded in the writ, if so much can be found, and may attach any less value, if the plaintiff or his attorney shall give order therefor on the back of such writ; and when any attachment is made in manner aforesaid, the same will be sufficient to bring the cause to trial, and the officer who shall make any attachment as aforesaid, must at the time of making the same leave an attested copy of such writ, with a copy of his return or doings thereon at the defendant's usual place of abode, with some person there, that the defendant may have knowledge of the suit.(*b*)

And of writ of arrest.

Goods and chattels may be attached.

And when a writ is taken out against any person whose body or personal estate cannot be found within the state, the words *or real estate* may be added in

Real estate may be attached.

(*a*) St. R. I. 206, 226.
(*b*) Ibid. 189, 201, 202.

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SERVICE.

the writ, next to the words goods and chattels, and the officer to whom the writ is directed may attach the real estate of the person indebted as aforesaid, in the same manner as is directed for attaching personal estate, and the officer upon attaching any real estate as aforesaid, must leave a copy of the writ by which the same is attached, and of his doings thereon with the person in possession, and also with the town clerk of the town in which such real estate lies; but if no person be in possession the officer must set up notifications thereof in three public places in the town where such real estate lies.(c)

Manner of making service and return.

Precepts may be served in any part Narragansett Bay.

All the waters of Narragansett Bay, situate to the northward of Field's Point, are a part of the county of Providence, and within the jurisdiction of said county, and all other waters of said bay do not make a part nor are within the jurisdiction of any particular county of this state, but any sheriff or other officer duly authorized, belonging to either of the counties of this state, may serve any writ or other process of a civil or criminal nature within any part of the waters of said Narragansett Bay.(d)

No civil process may be served on Sunday.

No civil process whatever may be served on Sunday, but every such service shall be utterly void.(e)

Summons for witness and attachment against witness, how served.

A summons for a witness must be served by reading the same to him, and an attachment for disobeying the summons, and to bring the witness into court, must be served in the same manner as any other warrant of arrest.(f)

(c) St. R. I. 202, 203.
(d) Ibid. 206, 207.
(e) Ibid. 206.
(f) Ibid.

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SERVICE.

Officer must take bond before serving writ of replevin.

Before any service is made of any writ of replevin, the officer to whom such writ is directed, and who has received the same for service, must take the bond of the plaintiff in such writ to the defendant, with sufficient surety or sureties, in the sum of —— dollars, being twice the value of the goods and chattels described in such writ to be replevied, to prosecute such writ of replevin to final judgment, and to pay such damages and costs as the defendant in such writ may recover against him, and also to return and restore the same goods and chattels, in like good order as when taken, in case such shall be the final judgment, (*g*) the form of which bond is given in the appendix.

How defendant in replevin may be summoned.

When the defendant in replevin cannot be found, an authentic copy of the writ of replevin, attested by the officer being left at the house or usual place of abode of the defendant, six days if before a justice, and twenty if before the court of common pleas, prior to the time of trial, will be sufficient to oblige the defendant to answer the suit.(*h*)

First attachments to be first satisfied

In attachments of real estate, goods and chattels, and in all foreign attachments, he who first procures any such attachments to be made for any just debt, is entitled to have such his debt for which he so attached as aforesaid, satisfied before any other debt for which the same may be attached or taken by execution at the suit of any other person, and all others in order of attachment. And as different attachments of the same real or personal property may happen to be made on the same day, the the officer who makes any such attachment, whether on real or per-

Time of attachment must be entered in the writ.

(*g*) St. R. I. 233.
(*h*) Ibid. 240.

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SERVICE.

sonal estate, or by service of a copy of a writ on any person for the purpose of attaching any estate in his hands, must in his return set forth the time of day when such attachment was made, to the end that the priority of attachment may be known*.(i)

Personal estate of concealed debtors, how to be attached.

And when any person resides or is absent out of the state, or conceals himself therein, the personal estate of such person lodged or lying in the hands of his or her attorney, agent, factor, trustee, or debtor, is liable to be attached to answer any just debt or demand, and the serving any person or persons who have such personal estate in their hands, with a copy of the writ taken out against such absent or concealed person, shall be good service of such writ.(j)

Petitions to general assembly, how served and returned.

Whenever any person prefers a petition to the general assembly, praying that any judgment, rule of court, or determination whatever, may be set aside, or that execution may be stayed, and the secretary issues a citation for the adverse party (if he or she think fit) to appear at the session of the general assembly to which such petition is preferred, to show cause why such petition should not be granted, the adverse party must be served with such citation, and a copy of such petition by the sheriff of the county, or his deputy, where he or they may dwell, ten days at the least before such session of the general assembly, and if such person or persons cannot be found by the sheriff or his deputy, the leaving a copy of such petition and citation at the usual place of his

* Warrants of distress must be executed in the same manner and the officer to be held to the same rules as in executing attachments in civil actions. St. R. I. 202.

(i) St. R. I. 204, 205.
(j) Ibid. 208, 209.

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or their abode will be good service, and the sheriff or his deputy must make return of all his proceedings to the clerk of the house of representatives, at the first opening of the general assembly.(*k*) SERVICE.

When any person named defendant in any writ of partition is not an inhabitant of this state, or by reason of his absence cannot be personally summoned to answer thereto, legal service of such writ shall be made by leaving a copy of such writ with the tenant in possession, (if any there be,) of the estate whereof partition is demanded.(*l*) Writs of partition, how served on absent defendant by sheriff.

In proceedings in cases of forcible entry or detainer, service of the summons on the party complained against, must be made in a copy thereof left at his usual place of abode, six days exclusive before the day appointed by the justices or wardens for trial.(*m*) In forcible entry or detainer, summons, how served.

The sheriff or his deputy, charged with the service of a writ of estrepement, may according to the directions in such writ, stay all waste and take such aid as shall be necessary for that purpose.(*n*) Sheriff may take aid in service of writ of estrepement.

A writ of review must be taken out and served thirty days before the sitting of the court to which the action of review shall be brought, and the reason of such review must be in such writ of review contained, and the officer must take good and sufficient bail in all writs of review, when bail is required and it may be done to answer the judgment which shall be given thereon. And where the body of the defendant cannot be found, nor sufficient estate can be found to attach, to answer such writ of Writs of review, how served. Officer must take bail. May attach money, goods and chattels in his hands.

(*k*) St. R. I. 131, 132.
(*l*) Ibid. 270.
(*m*) Ibid. 254.
(*n*) Ibid. 259.

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SERVICE.

review, the officer may attach the money, goods or lands by him received, levied or attached, in pursuance of the former judgment obtained, if the same be remaining in his hands or unsold at the time of his receiving the said writ of review. And whenever any writ of review is brought against any person living out of the state, and to be found therein, the leaving a copy of such writ with the attorney who signed the original writ and declaration, or either of them, or the attorney who signed the plea or answer filed, or with the special agent of the defendant in review, will be good service to bring the same to trial, if the plaintiff in review or his attorney shall give order in writing on the back of the writ of review thereon, naming the attorney or agent to be served with a copy.(*o*)

Defendant living out of the state, service may be made on attorney or agent.

Sheriffs, &c. must serve precepts from courts of probate.

May be punished for contempt.

All sheriffs, deputy sheriffs, town serjeants and constables, must duly execute all precepts to them directed by any court of probate. And all contempts of authority in any cause or hearing before such court, may be punished by fine not exceeding twenty dollars, or imprisonment not exceeding twelve hours, at the discretion of the court.(*p*)

Members of assembly exempted from arrest.

All and every person or persons who shall be chosen to serve as members of the general assembly, and the estates of such person or persons, shall be free and exempt from all writs of summons, arrest, attachment and execution whatsoever, at the suit of any private person, to answer any debt or damages due or pretended to be due to such private persons, during the session of the general assembly, and also three days before the beginning of such session, and three days next after the end thereof.(*q*)

(*o*) St. R. I. 179, 180.
(*p*) Ibid. 277.
(*q*) Ibid. 207, 208.

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IV. EXECUTION.

EXECUTION.

Executions, how they run.

EXECUTIONS in this state run against the goods and chattels and body of the debtor,(a) or against his body, goods, chattels, or real estate.(b)

When to be issued from supreme court, and court of common pleas.

No execution may be issued on any judgment rendered in the supreme judicial court, or any court of common pleas, unless such be a special court, until the expiration of five days next after the rising of the court at which such judgment shall be rendered, and every execution issued from either of the said courts, except as before excepted, must be made returnable to the next succeeding term thereof, and must be returned by the officer charged therewith, within five days from the day appointed by law for the sitting of the court from which it issued; and if such officer shall not return the same within that time, he shall be liable therefor as by law prescribed.(c)

When returnable.

When issuable from special court, and when returnable.

But all executions on judgments of such special courts of common pleas, may be issued immediately after the rising of such special courts, and must be returnable into the clerk's office in fourteen days after being issued.(d)

When issuable from justice or warden and when returnable.

No execution obtained on a judgment of a justice or warden, may be taken out in less than five days after judgment rendered, and all such executions

(a) St. R. I. 196.
(b) Ibid. 203.
(c) Ibid. 175, 176.
(d) Ibid. 151.

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EXECUTION.

must be returned to the justice or warden who granted the same, within three months after the same shall have been taken out, or in case of his death or removal from the town, then to the town clerk, and must be directed in the same manner as the original process, and served in the manner executions are to be served which are to be issued out of the courts of common pleas, and if levied on goods and chattels, the same must be advertised immediately by the officer who shall have the same execution in charge, and exposed to sale in ten days, unless in that time redeemed; and after sale if there be any overplus money, the same must be returned to the owner.(e)

How served

Execution granted by secretary of state for costs, when returnable.

Execution granted for costs by the secretary of state, are returnable to the next general assembly.(f)

How satisfied by levying on goods and chattels.

And in all civil cases, when execution is levied on any goods or chattels, such goods or chattels must be kept in the officer's hands, and advertised ten days before they may be exposed and offered for sale, in order that the person who owned such goods and chattels may, if he think proper, pay the money due, together with the costs which shall have accrued thereon, and thereupon have his said goods and chattels restored to him again. But in case such owner shall not redeem them as aforesaid, the officer must sell the same at public auction to the highest bidder, and if any overplus shall remain after the debt, costs and charges are paid, the same must be returned by the officer to the owner, or to any person legally qualified on his behalf to receive the same.(g)

(e) St. R. I. 193.
(f) Ibid. 433.
(g) Ibid. 202.

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EXECUTION.

And when any execution is granted against the real estate of the debtor, attached in the original action, and the officer charged with the service of such execution shall have levied the same on such real estate, he must set up notifications in three or more public places in the town where such real estate lies, for the space of three months after such execution is levied, before the same may be exposed to sale, notifying all persons concerned, of the attachment and intended sale of said estate, that the owner of such estate may have an opportunity to redeem the same. But if no person appear to redeem the said estate, then the officer must sell the same, or so much thereof as shall be sufficient to satisfy the judgment obtained, and the costs, at public auction; and a deed thereof by him given, shall vest in the purchaser all the estate, right and interest which the debtor had herein at the time the estate was originally attached as aforesaid, and the surplusage of the money that shall arise from the sale of the said estate, after satisfying the execution and the costs thereon, shall be lodged in the general treasury for the owner thereof, and be liable to be attached for his other debts. And whenever execution issued upon any judgment, where real estate was not attached on the original writ, and by reason that neither the personal estate of the debtor nor his body can be found, such execution shall be levied on the real estate of such debtor, and the officer charged with the service of such execution, must proceed in the manner aforedirected, in case of levying an execution on real estate attached on the original writ.(*h*)

How proceeded with when granted against real estate attached.

Real estate must be sold at public auction by officer.

When execution may be levied on real estate, though not attached on original writs.

If any officer shall at any time have two or more executions in personal actions directed to him to serve,

Execution may be set off in case, &c.

(*h*) St. R. I. 204.

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EXECUTION.

wherein the parties shall be reversed, and shall sue and be sued in the same right and capacity, he shall offset the same, and levy and collect the balance only, from the party from whom it shall be due.(*i*)

Real estate of deceased persons liable for the payment of debts by actions against heirs or devisees. How to be sold.

The real estate of deceased persons is liable to the payment of their just debts, by actions to be brought against the heirs at law, or devisees of such estate, and execution issued upon judgment obtained against such heirs at law or devisees, may be levied thereupon. And the sheriff must sell such real estate, or so much thereof as shall be sufficient to satisfy such execution, at public auction to the highest bidder, having first set up notifications of such sale for the space of three months before the sale thereof, in three public places in the town where such real estate lies, and shall give a deed thereof to the purchaser, in like manner as is prescribed by law as aforestated.(*j*)

Execution against heirs or devisees how to be levied.

And if any action be brought against the heirs or devisees of any testator or intestate, for any debt due from such testator or intestate, the same must be brought against all the heirs and devisees who hold the real estate by devise or descent from such testator or intestate if to be found, and execution must be served upon, and the debt and costs recovered, collected out of the same, if such real estate remain unaliened and can conveniently be so done.(*k*)

First attachment or suit to be first satisfied.

And the creditors who shall commence their actions against the heirs or devisees as aforesaid, shall be entitled to satisfaction of the debts due them respectively from the testator or intestate, in the same or-

(*i*) St. R. I. 165.
(*j*) Ibid. 396.
(*k*) Ibid.

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der in which their writs shall be served, by attaching the real estate, or in case of alienation then in the same order in which their writs shall be served, by summoning the heir or devisee who shall have alienated as aforesaid.(*l*) EXECUTION.

Writs of seizin dower, how executed.

Upon rendering judgment for any woman to recover her dower in any lands, tenements, or hereditaments, and a writ of seizin directed to the sheriff of the county, or to his deputy, such sheriff or other person to whom by law such writ of seizin is directed, must cause her dower in such writ described to be set forth to her by three disinterested freeholders of the same county, under oath, which oath shall be administered by any justice, to set forth the same agreeably and impartially as conveniently may be.(*m*)

Executions against delinquent collectors how to be executed.

Every sheriff who shall receive any execution, obtained by the general treasurer against any delinquent collector of taxes and his sureties, directed to such sheriff, must immediately on the receipt of the same, attach and take into his possession all the estate real and personal within his precincts belonging to such officer, and must immediately after such attachment advertise the said estate, real and personal, to be sold at public auction within twenty days thereafter, and must cause so much of said estate to be sold as will be sufficient to pay and satisfy the amount of such execution, and all incidental expenses and costs.(*n*) But in case of accidents, or extraordinary storms or tempests, by reason whereof few or no purchasers may attend, such sheriff may adjourn the sale of the estates so attached from one day to the next, and so for three adjournments, but no longer.(*o*)

Sale of estate taken by such execution may be adjourned.

(*l*) St. R. I. 307.
(*m*) Ibid. 245, 246.
(*n*) Ibid. 414.
(*o*) Ibid. 415.

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EXECUTION.

Warrant of distress against town treasurer to be executed in the same manner.

If any town treasurer shall refuse, or neglect to deliver to the general treasurer the bond of any delinquent collector to be prosecuted, the general treasurer shall immediately issue a warrant of distress against such town treasurer, directed to the sheriff or his deputy of the county in which such town treasurer resides, and the said sheriff or deputy shall on receipt of the same attach and take into his possession all the estate real and personal of such town treasurer, and sell the same at public auction, in the same manner he is above directed to sell the estates of delinquent collectors. And if the estate of such town treasurer, attached and sold as aforesaid, be not sufficient to discharge the tax for which such delinquent collector is in arrear, together with the cost of executing said warrant of distress, he must commit the body of such town treasurer to gaol.(p)

For want of estate his body may be committed to prison.

Real estate taken by such executions or warrants must be advertised 20 days in the town where such real estate lies.

The advertisements for the sale of real estate as aforesaid, to be made by the sheriff, must be by setting up notifications thereof in two or more public places in the town where such real estate lies, twenty days at least previous to such sale, and a deed or deeds thereof executed by the sheriff who shall sell the same, will vest in the purchaser or purchasers all the estate, right and title, the owner or owners thereof had, in or to such real estate, at the time the same was first notified for sale as aforesaid.(q)

Warrants of distress, how to be executed.

And in case any officer for taxes, or by any warrant of distress whatsoever, shall distrain the goods and chattels of any person, the officer who shall make such distraint must proceed in the same manner, and

(p) St. R. I. 415, 416,
(q) Ibid. 416.

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be holden to the same rules as must govern his conduct in attachments in civil actions.(r) EXECUTION.

The sheriff, after having levied an execution on any land mortgaged to the state's trustees, for which a judgment of court has been obtained, must set up notifications in three or more public places in the town, and one notification on or near the door of the court house in the county in which the land lies, for the space of three months after execution is levied, and before the land is exposed to sale, notifying all persons concerned of the whole proceedings, that the mortgager of the said land, his heirs and assigns may have time and notice to come in and redeem the same; and if no one appears to redeem the said land, then the sheriff must sell the same at public auction, and a deed thereof by him given will make the buyer a good estate against the mortgager, his heirs or assigns. And the money arising by the sale, after all lawful costs and charges are deducted, must within three months after the sale, be paid by the sheriff into the grand committee office, and be accounted for at the next succeeding audit: and a receipt of the keeper of said office will be a full discharge to the sheriff, for the sum so paid. And if the sheriff who sold the land shall neglect to pay the money arising on the sale, within the time aforesaid, he will forfeit the whole sum the land sold for, to be sued for by an action of debt, in which he will not be allowed to make any plea, but only to issue.(s)

Lands mortgaged to the state, how to be sold.

Proceeds, when to be paid.

Penalty on sheriff for neglect.

(r) St. R. I. 292.
(s) Ibid. 404, 405.

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V. BAIL AND PRISONERS ON CIVIL PROCESS.

BAIL, &c.

Sheriffs and other officers to let persons arrested to bail.

ALL sheriffs, deputy sheriffs, town sergeants or constables, making any arrest by virtue of any original writ on mesne process in a civil action, must let the person so arrested to bail, on his giving sufficient surety for his appearance at the court to which such writ or process is returnable, and to abide the final judgment which shall be rendered thereon. And the person becoming bail for any person or persons, must give bond to the sheriff, if the writ or process be served by the sheriff or his deputy, and if the writ or process be served by the town sergeant or constable, the bail bond must be given to the person making such service, or the person becoming bail as aforesaid may endorse his name on the back of the writ or process, which will hold him as bail for all purposes, as if he had given bond as aforesaid.(*a*)

Bail, how to be taken.

When to be charged in execution.

And if any person be committed to gaol for want of bail, on mesne process in a civil action, and final judgment be rendered against him or her in such suit, he or she may be detained in such gaol for the space of thirty days after the rising of the court at which such final judgment is rendered, in order to be taken in execution; and if the creditor shall not within thirty days after the rising of such court take the principal in execution, the sheriff must discharge him upon his paying the legal prison fees.(*b*) And the sheriffs of the several counties may grant or allow to any prisoner imprisoned for debt, either upon

Debtor to be allowed the liberty of the yard, &c. on giving bond.

(*a*) St. R. I. 224.
(*b*) Ibid. 226.

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mesne process or execution, a chamber or lodging in any of the houses or apartments belonging to such prison, and liberty of the yard within the limits thereof upon reasonable payment to be made for chamber room, such prisoner giving bond to the creditor with two sufficient sureties, being inhabitants of and freeholders within this state, bounden jointly and severally in double the sum for which he is imprisoned in the form following, viz: "That if the above bounden A. B. now a prisoner in the state gaol in B. within the county of N. at the suit of the said C. D. do and shall from henceforth continue and be a true prisoner in the custody, guard, and safe keeping of I. S. keeper of the same prison, and in the custody, guard, and safe keeping of his deputy, officers and servants, or some one of them, within the limits of the said prison until he shall be lawfully discharged, without committing any manner of escape or escapes during the term of his restraint, then this obligation to be void, or else to remain in full force and virtue."

BAIL, &c.

Form of condition of bond.

And when any bond, given as aforesaid for the enlargement of any prisoner, is put in suit, and judgment is rendered thereupon, neither the principal nor any of the sureties in such bond will be entitled to relief from any of the provisions before stated, but they must be committed to close gaol until the contents of the execution be paid, or until they be discharged by the creditor or creditors therein named.(c)

Such bond being sued, the obligors not allowed the liberty of the yard.

And if any person imprisoned on mesne process or execution, issued from any court in this state, shall complain to any justice of the court of common pleas

Poor prisoners, how to be discharged.

(c) St. R. I. 226, 227, 228.

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BAIL, &c.

in the county where such person is committed, that he hath no estate, real or personal, wherewith to support himself in prison, or to pay prison charges, and shall request the privilege and benefit prescribed in the act, entitled, "An Act relating to bail on mesne process in civil actions, and for the relief of poor prisoners for debt;" and if in the proceedings had on such application and request, any two justices of such court of common pleas, disinterested and not related to either of the parties, shall make and deliver to the keeper of such prison a certificate in the substance and form following, viz: "N. —— ss. To ——, keeper of the prison at ——, in the county of ——. We, the subscribers, two of the justices of the court of common pleas for the said county of ——, hereby certify, that A. B. a poor prisoner confined upon mesne process (or execution, as the case may be,) for debt, in the prison at —— aforesaid, hath caused D. E. the creditor at whose suit he was so confined, to be notified according to law of his the said A. B's desire of taking the benefit of an act, entitled, "An Act relating to bail on mesne process in civil actions, and for the relief of poor prisoners for debt." And in our opinion the said A. B. hath not any estate, either real or personal, sufficient to support himself in prison; and that he hath not conveyed or concealed his estate, with desire to secure the same to his own use, or to defraud his creditors, and that we have after due caution to the said A. B. administered to him the oath or affirmation prescribed in the act aforesaid. Witness our hands and seals, this —— day of ——, in the year ——."

Form of certificate to be given a poor prisoner when admitted to take the oath prescribed for his relief.

If the prisoner is imprisoned on

Such keeper of such prison must thereupon set such prisoner at liberty, if he is not committed for

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BAIL, &c.

any other cause, unless the person imprisoned as aforesaid is imprisoned on mesne process, in which case he must be retained in prison until the expiration of six days after final judgment on such process, if the crediton shall pay to the prison keeper in advance, at the rate of one dollar per week, for the support of such prisoner; and if the creditor shall at any time before the expiration of said six days, neglect to pay to the prison keeper in advance as aforesaid, the person imprisoned as aforesaid shall be discharged from such imprisonment, and at the expiration of the said six days after final judgment as aforesaid, such prisoner shall be discharged if he will give his note of hand for the amount of the judgment, with lawful interest, payable to the creditor at the expiration of two years from the time of giving the same, if the same shall be requested by the creditor, his agent or attorney, and not otherwise. And if such person is imprisoned in execution, at the time of taking the oath as aforesaid, he shall be forthwith discharged from his imprisonment, if he will give his note to the creditor payable as aforesaid, for the contents of such execution, and all costs thereon, such note being requested by the creditor, his agent or attorney, in manner aforesaid.(*d*)

mesne process, he must be retained in prison six days after final judgment.

Having taken said oath, must then be discharged on giving his note, if required.

If imprisoned on execution, must be forthwith discharged on giving his note, if required, for debt and costs.

If any sheriff, deputy sheriff, town sergeant, constable or keeper of a gaol, shall take or receive from any prisoner in his or their custody any bond, obligation, covenant, promise or assurance whatsoever, to indemnify and save harmless the person taking the same, for the enlargement or ease of such prisoner, in any other form or manner than is prescribed

Bonds for the ease of prisoners void.

(*d*) St. R. I. 228, 229, 230, 231.

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BAIL, &c.

by law for taking bail on mesne process in a civil action, or is prescribed in the act aforesaid for the case of prisoners confined on mesne process or execution, every such bond, obligation, covenant, promise, or assurance, shall be utterly void.(e)

(e) St. R. I. 231, 232.

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VI. HABEAS CORPUS.

HAB. CORP.

IF any officer in whose custody any prisoner at any time is, shall not within six hours after demand made, deliver such prisoner a true copy of the warrant or process by which he stands committed, such officer shall forfeit to the party aggrieved the sum of one hundred dollars.(a) Penalty for neglecting to let prisoner have a copy of commitment.

And any person imprisoned in any common gaol, or otherwise restrained of his personal liberty by any officer or officers, or any other person or persons, for any cause or upon any pretence whatever, he or any person in his behalf may complain in writing to the supreme judicial court of this state, in term time in any county, or to any one or more of the justices thereof in the vacation time of the said court, and upon such complaint, and upon view of the copy of the warrant (if any there be,) by which such person stands committed, or upon his affidavit certified by a justice of the peace, or on the oath of the person applying on his behalf, or any other credible witness, or upon the affidavit of such witness certified as aforesaid, if he lives more than twenty miles from such court or judge applied to, that a copy of such warrant has been demanded and denied, the said court in term time, and the said judge in vacation must award a writ of *habeas corpus*, directed to the officer or person imprisoning or restraining the complainant, returnable forthwith to such court or justice who awarded the same, except the complaint be in favour of persons committed for a capital crime, or on suspicion thereof, or as accessary to the same before the fact plainly and specially expressed in the

When writ of habeas corpus lawful.

By whom granted.

To whom directed.

(a) St. R. I. 236.

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HAB. CORP.

warrant of commitment, or persons convict or in execution by legal process, criminal or civil, or committed by mesne process for want of sufficient bail.(b)

By whom tested and signed.

And such writ when awarded by the said court, must be signed by the clerk, tested by the first justice who is not a party thereto, and sealed with the seal of said court; but when awarded by any judge in the vacation, must be only under the hand and seal of such judge, and must direct the place to

How obeyed.

which the complainant shall be brought.(c) And when any person shall bring and offer such writ of habeas corpus to the officer or person to whom the same is directed, he must receive the same, and upon payment or tender of such charges for bringing the complainant from the place of imprisonment, as the court or judge who grants the writ shall order, (if the person complaining be confined in a common gaol or under the custody of an officer, otherwise without such payment or tender,) to the place mentioned in the writ, such officer must have the body of the complainant before the court or judge who awarded the writ, unless committed and detained for some capital crime as aforesaid, at the place therein mentioned,

How returned.

within three days, and must return the same, and certify thereon the true and all the causes of his or her taking or detaining. But if after awarding such writ by the said court in term time, and before the return thereof, the said court shall rise or be adjourned, the same with the body of the complainant must be returned to, had and certified before some judge of the said supreme court.(d)

Penalty for neglecting to obey such writ.

If any officer or person to whom any writ of *habeas corpus* shall be directed, shall refuse to receive the

(b) St. R. I. 232. 233.
(c) Ibid. 233.
(d) Ibid. 234, 235.

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same, or after receipt thereof, shall refuse or neglect to yield such obedience thereto as the law aforestated requires, (the complainant performing the conditions required,) unless prevented by the sickness of the prisoner or other necessity, he for such refusal or neglect, in each and every particular, shall forfeit to the party aggrieved the sum of one hundred dollars, and for any false return to such writ, will be liable to the action of the party for his damages, and the court or judge respectively may further punish every disobedience to such writ as a contempt, and compel obedience thereto by process of attachment.(e) And none of the penalties aforesaid will bar any action at common law by false imprisonment or unlawful restraint.(f)

HAB. CORP.

And for a false return, court may punish as for contempt.

The supreme judicial court, and courts of common pleas, may respectively issue writs of habeas corpus to bring into court any person imprisoned under the laws of the state, who is a party or witness in any suit pending in such court, and may issue writs of scire facias in all cases prescribed by law, and writs of protection against arrests in civil actions, for all parties and witnesses in any cause pending before them, whenever the same is required.(g)

Courts supreme, and of common pleas may issue writs of habeas, protection, and scire facias.

(e) St. R. I. 236.
(f) Ibid. 237.
(g) Ibid. 161.

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VII. JURORS.

JURORS.

Sheriffs must execute venires issued by supreme judicial court, court of common pleas and justice of peace, for jurors.

WHENEVER the supreme judicial court, court of common pleas, or of general sessions of the peace when sitting in any county, on account of any insufficient number of jurors attending such courts respectively, or a special court of common pleas if issue in fact shall be joined in any action herein, or two justices or wardens in case of forcible entry or detainer, shall issue a writ of *venire facias* to the sheriff of the county where such court is sitting, to return such a number of good and lawful men as are wanting from any county to serve as long as the court may have occasion for them, such sheriff must execute the same according to the directions thereof, and if by any means there shall not be a sufficient number of jurors attending such special court, they may direct the sheriff to return a sufficient number of the bye-standers, freeholders to complete the jury, and the like must be done in case of forcible entry or detainer, and grand jurors, where the number is deficient in any court.(*a*)

Jurors exempted from arrest.

And all persons who shall be lawfully drawn to serve on any grand or petit jury in any court within this state, they and their estate shall be free and exempt from all summons, arrest, attachment and execution, during the sitting of such court wherein they are drawn to serve, if such jurors are not dismissed before, and also three days next before the sitting of such court, and three days after they shall be legally dismissed and discharged from such service.(*b*)

(*a*) St. R. I. 157.
(*b*) Ibid. 208.

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VIII. RIOTS.

RIOTS.

Sheriff deputy sheriff town serjeant and constable must make proclamation to rioters.

IF any persons, to the number of twelve or more, being armed with clubs or other weapons, or if any number of thirty or more shall be unlawfully, routously, riotously, or tumultuously assembled, any sheriff, deputy sheriff, town sergeant or constable, shall among the rioters, or as near to them as he can safely come, command silence while proclamation is making, and shall openly make proclamation in like words:

"*State of Rhode-Island and Providence Plantations,*

Form of proclamation.

"By virtue of an act of this state, made and passed in the year of our Lord one thousand seven hundred and ninety-eight, entitled an act to prevent routs, riots and tumultuous assemblies, and the evil consequences thereof, I am directed to charge and command, and I do accordingly charge and command all persons being here assembled, immediately to disperse themselves, and peaceably to depart to their habitations or their lawful business, upon the pains inflicted by the said act. God save the State."

May seize such as refuse to disperse, and call aid therefor.

And if such persons assembled as aforesaid, shall not disperse themselves within one hour after proclamation is made, or attempted to be made as aforesaid, it shall be lawful for every such officer to command sufficient aid, and he shall seize every such person, who shall be had before a justice of the peace. And the aforesaid sheriff, or deputy sheriff, are empowered to require the aid of a sufficient number of persons in arms, if any of the prisoners

Sheriff or deputy sheriff may require men in arms for aid.

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RIOTS.

assembled are in arms, and if any such person or persons shall be killed or wounded, by reason of his or their resisting the persons endeavouring to to disperse or seize them, the said sheriff, deputy sheriff, town sergeant, constable, and their assistants, shall be indemnified and held guiltless. And if any person being comanded by such sheriff, deputy sheriff, town sergeant, or constable, as aforesaid, shall refuse or neglect to afford the assistance required, and shall be convicted thereof upon the oath of either of the said officers so commanding, or other legal evidence, he shall forfeit and pay a sum not less than seven dollars, nor exceeding, thirty dollars, according to the aggravation of the offence.

Penalty for refusing to sheriff, &c.

And all persons who for the space of one hour after proclamation made, or attempted to be made, as aforesaid, shall unlawfully, routously, riotously, and tumultuously continue together, or shall wilfully hinder or obstruct any such officer, who shall be known or shall openly declare himself such, from making such proclamation, shall on conviction thereof, forfeit a sum not exceeding one thousand dollars, and shall suffer imprisonment, not more than twelve months.(a)

(a) St. R. I. 582—584.

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IX. TOWN SERGEANT AND CONSTABLE.

TOWN SERGEANT AND CONSTABLE.

Constable and town sergeants how appointed. Must be sworn.

TOWN SERGEANTS and constables are annually chosen by the freemen in town meeting, and must be sworn to a faithful discharge of their respective offices; and at the time of being so sworn, must each give bond with sufficient surety or sureties, to the town treasurer of the town to which he belongs, the constable in the sum of three hundred dollars, and the town sergeant in the sum of seven hundred dollars, each conditioned for the faithful performance of their respective offices.

Not obliged to serve more than once in seven years.

No person is obliged to serve in either of those offices more than one in seven years, otherwise whoever is elected to either office, and shall refuse to serve, will forfeit, a constable the sum of five dollars, the town sergeant seven dollars, to the use of the town, to be respectively levied and collected by a warrant of distress, signed by a justice of the peace or warden of such town, directed to the sheriff of the county, or his deputy.(*a*)

Town sergeant's alone.

The town sergeant must warn jurors drawn in his town, to serve in any court, at least six days before the sitting of such court,(*b*) and must, when requested by an overseer of the poor of his town, warn a meeting of the town council thereof, notifying the time and place of such meeting.(*c*) And must also execute a warrant, issued by a justice of the peace or warden of the town, for calling a town meeting for the speedy ordering and making a sale, to be

(*a*) St. R. I. 231—233.
(*b*) Ibid. 183.
(*c*) Ibid. 353.

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TOWN SERGEANT AND CONSTABLE.

collected for the reimbursement of the town treasurer for monies paid on judgment rendered against him, for a debt due from such town.(d)

Duty of town sergeants and constable indifferently. To warn town meetings.

Whenever the town clerk of any town shall issue his warrant for calling a town meeting, prescribed by law, directed to the town sergeant or any constable of such town, requiring him to post up written notifications in three or more public places in such town, of the day for said meeting to be holden, and of the business required by law in such meeting to be transacted, or for calling a town meeting upon special request directed as aforesaid, requiring such town sergeant or constable to give personal notice to the individual freemen of such town, of the time when and place where such meeting is to be holden, and of the business therein to be transacted, such town sergeant or constable who shall receive such warrant directed as aforesaid, must execute the same according to the directions therein contained. And if any town sergeant or constable, who shall have so received such warrant from such town clerk, shall refuse or neglect to serve the same, he will forfeit for such neglect the sum of fifty dollars, to be recovered by an action of debt, one half to the use of the town, and the other half to the use of the person who shall sue for the same.(e)

Penalty for neglect.

Must execute orders of removal.

Whenever the town council of any town in this state shall make an order for the removal of any person resident in such town, not legally settled therein, who has become or is likely to become chargeable to such town, directed and given to the to the town sergeant or one of the constables of such town, he must proceed forthwith to remove such

(d) St. R. I. 330, 331.
(e) Ibid. 329, 330.

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person, and such of his family, if he have any, as by law ought to be removed with him to the town or place to which he is adjudged by such order to belong, and there deliver him to one of the overseers of the poor of such town, and leave an authentic copy of the order with the said overseer.(f)

TOWN SERGEANT AND CONSTABLE.

And such town sergeant or constable, may go into any town in the state for putting such order in execution, and must make return upon such order to the town council which granted the same, at their next meeting. And in case any town sergeant or constable shall refuse or neglect to put such order in execution when delivered to him, he shall for every such refusal or neglect forfeit the sum of twenty dollars, to be recovered by the town treasurer at the court of common pleas, in the county in which the town lies wherein such forfeiture arises, or before a justice court in said town, to and for the use of the poor of said town. And the town sergeant or constable who shall remove any poor person or persons as aforesaid, shall be allowed and paid at the discretion of the town council for his trouble, out of the treasury of the town from which such person or persons is or are removed.(g)

(f) St. R. I. 353.
(g) Ibid. 355.

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X. DEEDS.

DEEDS.

Sheriff's deed of land sold on execution.

FORM of a deed, to be given when real estate is sold on execution, viz:

"To all people to whom these presents shall come, I send, *Greeting:*

"Whereas an execution against ——, was by me, the said ——, levied on (here describe the premises). And whereas on the —— day of —— all the estate, right, title, interest and property of the said ——, in the premises aforesaid, were by me, the said ——, sold at public auction, for the satisfaction of the said execution to ——, who was the highest bidder, for the sum of ——, which the said —— hath since well and truly paid to me the said ——. Now know ye, that by force and virtue of the law in such case made and provided, I, the said ——, in consideration of the sum of money paid unto me as aforesaid, do by these presents, bargain, sell, assign, and set over unto the said ——, his heirs and assigns, forever, all the lands, tenements, and hereditaments, as the same are above described, with all the estate, right, title, interest, property, freehold, and inheritance of the said ——, of, in, and to the said premises, and appurtenances. To have and to hold the said premises and appurtenances to the said ——, him and assigns for ever. In witness ——."(a)

Sheriff's deed of land sold on execution.

Form of the sheriff's deed of land, mortgaged to the state and forfeited, and sold by him, viz.

Of lands mortgaged to state trustees.

"To all people to whom these presents shall come, I, A. B. sheriff of the county of ——, in the state of Rhode-Island, &c. send, *Greeting:*

(a) St. R. I. 203, 204.

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DEEDS.

"Whereas there is an act of the general assembly, made and passed at their session holden at New-Port, within and for said state, on the second Monday of June, A. D. 1754, entitled, "An Act empowering the sheriffs to sell and give deeds of lands mortgaged to the state," by virtue of which act the lands, or real estate of —— mortgaged to the state's trustees, and for which they obtained judgment at a court of common pleas, holden at ——, within and for the county of ——, on the —— Monday of ——, an execution hath been levied on the same, have been sold at public auction for the satisfaction of the said execution to ——, who was the highest bidder, for the sum of ——, which the said —— hath since well and truly paid me, the said sheriff, and all the steps of the aforementioned act of assembly hitherto exactly pursued. Now know ye, that by force and virtue of the said act, I, the said sheriff, in consideration of the sum of money paid unto me as aforesaid, do by these presents bargain, sell, assign, and set over unto the said ——, his heirs and assigns, for ever, all and every the aforesaid lands, tenements, and hereditaments, with their and every of their appurtenances, as the same are above described, with all the estate, right, title, interest, property, freehold and inheritance of the said ——, of, in, and to the said premises and appurtenances, to the said ——, his heirs and assigns for ever. In witness ——."(b)

(b) St. R. I. 406.

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XI. OATHS.

OATHS.

The Oath of office for Sheriffs and Deputy Sheriffs.

"I, A. B. do solemnly swear, (or affirm,) that I will faithfully execute all lawful precepts, issued under the authority of the state of Rhode-Island and Providence Plantations, and to me directed and delivered, and true returns make, and in all things well and truly and without malice or partiality perform the duties of the office of sheriff of the county of ——, (or deputy sheriff, as the case may be,) during my continuance in said office, and take my lawful fees only. So help me God."(*a*)

The Oath to be taken by Town Sergeant and Constables.

"You, A. B. do solemnly swear, (or affirm) that you will be true and faithful unto this state, and you will support the constitution of the United States, and that you will well and truly execute the office of —— for the ensuing year, or until another be engaged in your room, or you be legally discharged thereupon. So help you God. (Or, this affirmation you make upon the peril of the penalty of perjury.)"(*b*)

(*a*) St. R. I. 401.
(*b*) Ibid. 335.

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XII. FEES.

FEES.

EVERY person in this state who shall serve any process, civil or criminal, must endorse thereon the several items which constitute the amount of his fees, and on failure thereof the same may not be taxed in any bill of cost, nor be recoverable by law.(*a*)

Extortion by officers, how punished.

If any sheriff shall exact or extort more or greater fees than by law are stated and allowed, or under colour of his office, shall levy or demand and receive any more or greater sum of money than by any judgment, execution, order, decree, or warrant, he shall be authorized to levy or demand and receive, he shall be fined not exceeding five hundred dollars, and be imprisoned not exceeding two years; and shall also forfeit to the party aggrieved twofold damages, to be recovered by an action of the case.(*b*)

Sheriffs are allowed the following Fees, viz.

Sheriff's fees.

For serving a writ, if not more than a mile from the court house or place of appearance, twelve cents.

For every mile's travel out beyond a mile, and the same back, the travel to be computed from the place to which the writ is returnable, to the place where it is served, two cents.

(*a*) St. R. I. 223.
(*b*) Ibid. 593, 595.

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FEES.

For attending a prisoner before commitment, if actually committed, sixteen cents.

For the copy of a writ or warrant, not to be taxed if not actually given, ten cents.

For attending the general assembly, the supreme judicial courts, and courts of common pleas, by the day, one dollar.

For a bail bond in civil action, six cents; and where bail is taken by endorsement on the writ, the same.

For serving all executions where a party is committed to gaol, seventy cents.

For serving all executions where the money due thereon is collected, not exceeding four dollars, thirty cents.

If above four dollars, and not exceeding seven dollars, forty cents.

If above seven dollars, and not exceeding twenty dollars, sixty cents.

If above twenty dollars, and not exceeding thirty dollars, seventy cents.

If above thirty dollars, and not exceeding sixty dollars, eighty cents.

If above sixty dollars, and not exceeding one hundred dollars, one dollar; and for all executions above one hundred dollars, three quarters per cent. None of the lesser sums to be included in the greater.

For travelling fees to serve executions, the same as for serving writs.

For serving a writ or execution, returnable to any court out of the county, where the same is served, the same travel per mile as if returnable to a court in the county where served.

For serving a summons, if not more than a mile from the court-house or place of appearance, eight cents; if more than a mile, the same travelling fees as for the service of writs.

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For delivering possession of lands and tenements, while actually employed by the day, one dollar. FEES.

For advertising and selling at public auction real or personal estate, if under one hundred and fifty dollars, two per cent, if over one hundred and fifty dollars and under three hundred dollars, one and a half per cent. And for all sums over three hundred dollars, one per cent. And none of the lesser sums to be included in the greater.

For serving warrants and other criminal processes, the same as for serving writs, unless the court to which such warrant or process shall be returnable shall deem it reasonable to make a further allowance for extra services.(c)

Town Sergeants and Constables are allowed,

Town sergeant's and constable's fees.

For serving a writ, if not more than a mile from the place of appearance, twelve cents; if more than a mile, eight cents.

For every mile's travel beyond a mile, and the same back, two cents.

For bail bond on civil actions, six cents; and where bail is taken by endorsement on the writ, the same fee.

For a copy of a writ or warrant, ten cents.

For serving a summons and travel, the same as a sheriff.

For attendance upon the general assembly, the supreme judicial court, and the courts of common pleas, by the day, seventy-five cents.

For serving a warrant or other criminal process, the same as for serving a writ, unless the court to

(c) St. R. I. 220, 221, 222.

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FEES. which the same shall be returnable shall deem it reasonable to make a further allowance for extra service.(*d*)

For warning each juror by the town sergeant, shall be paid out of the town treasury, twenty-five cents.(*e*)

(*d*) St. R. I. 222.
(*e*) Ibid. 183.

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ADDENDA.

ARREST.

ARREST.

Privilege from.

A PLAINTIFF attending from day to day, waiting at a coffee-house in the vicinity of the court in which he has a cause pending, and in expectation of its trial, though not assigned for any particular day, is privileged from arrest on civil process.(*a*)

A person under recognizance to appear at the court of general sessions of the peace may not be arrested while attending such court, in pursuance of such recognizance, and if arrested on a *capias ad respondendum* issued out of the supreme court, and admitted to bail, will, on motion, be discharged, unless the plaintiff shall wave the arrest and issue a new process.(*b*)

A judge is not liable to arrest by process issuing out of his own court.(*c*)

(*a*) East. x. 488.
(*b*) Johns Rep. vii. 536.
(*c*) Ibid. viii. 353.

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ATTACHMENT.

ATTACHMENT.

Against sheriff.

WHEN the defendant was brought up on an attachment for not returning an execution issued and delivered to his deputy about fourteen years before, the defendant then being a sheriff; and the deputy, after the receipt of the execution, having absconded and died abroad, and it not appearing what had become of the writ, the court considered it unjust and oppressive after such a lapse of time, and the death of the deputy, and thereupon discharged the defendant.(*d*)

A rule to return a writ of *test. fi. fa.* which expired on the last day of the term, having been served upon the sheriff in due time, he may at the rising of the court on that day, if he makes no return before, be attached.(*e*)

The sheriff in vacation, made return of the writ before he was actually served with a rule for the attachment, and immediately after such service, he tendered the sum levied, deducting his poundage, and served the plaintiff's attorney with notice of moving the court on the first day of the ensuing term, to set aside the rule of the attachment, yet the attachment which issued afterwards on the same day was held to have regularly issued.(*f*)

(*d*) Johns. Rep. vii. 555.
(*e*) East. xi. 591.
(*f*) Ibid.

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BAIL.

BAIL.

Surrender of principal by bail.

IF bail surrender the principal to the gaoler of the county gaol before 12 o'clock on the return day of the writ, it being the first day of the term and the under sheriff living at the distance of seventeen miles, the next day by letter signifies his acceptance of the surrender, the bail bond is discharged.(*g*)

BONDS, NOTES AND PROMISES.

Bond of indemnity to prevent escape, void.

IF a defendant be arrested upon a *ca. sa.* by the under sheriff, who, while holding the prisoner on execution, takes a bond conditioned to indemnify him against all costs and damages which shall or may arise against him on account of his not committing the defendant upon the same *ca. sa.* and to pay the debt and costs for which the *ca. sa.* was issued, such bond is clearly void, it being taken for an indemnity for an escape then in contemplation, and the party not being entitled to bail.(*h*)

Negotiable promissory note not good for bail bond.

If a deputy sheriff, instead of taking a bail bond from a defendant arrested, take a negotiable promissory note payable to the defendant, and by him endorsed in blank to the officer, he cannot maintain an action upon the note against the promiser. Such note is within the statute of March 20th, 1801, vol. i. 210, and is void.(*i*)

(*g*) East x. 100.
(*h*) Johns. Rep. vii. 159. Co. x, 99. Johns. Cas. ii. 255. Yeb. 129. Cro. 66.
(*i*) Johns. Rep. viii. 98.

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BONDS, &c.

Deputy sheriff's promise to pay money collected on execution, good.

An action lies against a sheriff's deputy on an express promise to pay over to the plaintiff money collected on an execution in his favour by such deputy.(*j*)

Prison bond void for illegal condition.

If the sheriff take a bond from a debtor in custody, conditioned that such debtor shall keep within certain prison-bounds, "*until he shall have discharged the debt and costs, and save harmless the said sheriff,*" it is illegal and void, as well by common as statute law. The condition should only have required, that the prisoner should not depart the bounds, until thence discharged by due course of law.(*h*)

EXECUTION.

Execution discharged, if officer pay the amount to creditor.

IF an officer holding an execution for collection pay the amount thereof out of his own money, to the plaintiff, the execution is thereby discharged, and the officer cannot, for reimbursing himself, enforce it against the defendant, but is left to his remedy by action on the contract only, and if by his negligence or otherwise he lose that remedy, his claim is also lost.(*k*)

So if officer take a bond, &c. for amount from debtor.

If an officer take from the defendant in an execution a bond or other security to the amount of such execution, such bond, &c. are a payment of such execution which can no more be enforced against such defendant.(*l*)

(*j*) Johns. Rep. vii. 470.
(*h*) Hen. and. Mun. iv 277.
(*k*) Johns. Rep. vii. 426.
(*l*) Ibid. and Kele. 551.

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EXECUTION.

Officer may justify under execution not endorsed as to time.

A sheriff may justify under an execution on which he makes no endorsement of the time of his receiving it, and which he never returned.(*m*)

Sale of land on execution not completed, till deed executed and money paid.

A sheriff on sale of land on a *fi. fa.* may deliver a deed as an escrow, but the money must be paid on a day certain, or within a reasonable time, or the sale will be void. What is a reasonable time depends on circumstances, but it seems that it cannot extend beyond the return day of the *venditioni exponas*, or at most the next vacation.

A seizure and sale of land under a *fi. fa.* does not divest the estate of the debtor. It remains in him until the purchase money be paid and a deed delivered. Such sale is within the statute of frauds.(*n*)

Fi. fa. need not be returned.

If a sheriff in an action of trespass justify under a *fi. fa.* he need not show its return. If resort be had to ulterior process in execution against the goods to complete the justification, it may be necessary to show to the court the return of the prior writ in order to warrant the issuing of the other. But if no ulterior process be required, it is as unnecessary to show the return of a *fi. fa.* under which the officer justifies as of a *ca. sa.*(*o*)

Sheriff liable for extortion by deputy.

If a deputy sheriff take more fees for collecting money on an execution than the law allows, the sheriff is liable in an action to the party aggrieved, and it is immaterial whether the sheriff have knowledge thereof, and recognize the act of his deputy, or not.(*p*)

(*m*) Johns. Rep. viii.
(*n*) Johns. Rep. viii. 520. See vol. i. 214.
(*o*) East. x. 73.
(*p*) Johns. Rep. vii. 37.

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EXECUTION.

In Pennsylvania the sheriff may not make a lumping sale of distinct parcels of property taken in execution: he must sell them separately. The court will disallow in every case a lumping sale by the sheriff, where, from the distinctness of the items of property, he can make distinct sales. It is essential to justice and to the protection of unfortunate debtors that such should be the general rule; any other would lead to the most shameful sacrifices of property. There may be exceptions, but the purchaser must bring himself within them.(*q*)

Sale upon execution.

An officer who has taken goods upon an execution must sell them not merely to the highest bidder. If the highest bidder is unable to pay, the sheriff may offer them to the next highest bidder, and if the property be not paid for at the sale, the return should be, that the goods were knocked down to A. B. for so much, who did not pay the money, and therefore the goods remain unsold.(*r*)

When the sheriff levies an execution upon goods in the possession of the defendant, the court will not upon motion stay the proceedings, and direct an issue to try the property upon an allegation that a third person claims the property of the goods.

A levy upon any part less than the whole of a tract or lot of land is contrary to the statute, and void. To allow of such a procedure would tend wholly to defeat the design of the inquest.(*s*)

If a plaintiff levy a *fi. fa.* upon the defendant's land, and then charges him in execution upon a *ca.*

(*q*) Bin. i. 61.
(*r*) Dal. i. 419. Hardin's Rep. 181.
(*s*) Bin. ii. 216.

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sa. either the *fi. fa.* or *ca. sa.* may be set aside at the election of the defendant; but if he submit to the *ca. sa.* and obtain a discharge from it under the insolvent law, the *fi. fa.* and all proceedings under it are gone. And if the plaintiff sues out a *venditioni exponas*, under which the land is sold, the court will not permit the sheriff to acknowledge a deed to the purchaser.(*g*)

A sale of an estate for life, or of any other estate of uncertain duration, may be made upon execution without inquisition.

A sale of lands after the return day of the *venditioni exponas* will not be void if the lands be advertised for sale on a day before, and the sale be continued by adjournment. Where a sale is set aside and a *vend. exp.* is issued without a new levy, a sale under it will be void and the purchaser derive no title.(*i*)

The sheriff need not give to a defendant either a written or printed notice of an intended sale of his real estate upon execution, but must be able to prove actual notice. If in the advertisement for such sale the sheriff omit to mention a brick house and frame kitchen, or other building of value on the land to be sold, the sale will be void and set aside, though at the time of the sale the sheriff particularize the intended sale of such building.(*k*)

If in a sale by virtue of a *venditioni exponas* the defendant employ puffers to bid at the sale, it is a fraud on the real bidders, and the sale void.(*w*)

(*g*) Bin. ii. 218.
(*i*) Ibid. 80.
(*k*) Brown's Rep. 320.
(*w*) Ibid. 346.

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EXECUTION.

If a purchaser at a sheriff's sale possess knowledge of facts, which, if known, would have an influence on the sale, and he conceals such knowledge from others attending the vendue, and thereby gains an undue advantage, and purchases at a great under value, the court will set aside the purchase.(*x*)

If the sheriff seize goods upon a *fi. fa.* and leave them in possession of the defendant for near a year, having taken a bond from him, with security, at the time of the seizure, conditioned for the delivery of the goods to the sheriff, he loses the lien obtained by virtue of the seizure, and a *bona fide* purchaser, though acquainted with the seizure, will be protected.(*y*)

Ca. sa. infant committed upon.

A *ca. sa.* issued for costs against an infant defendant in ejectment is regularly issued, and when taken upon it, such infant may be committed.(*z*) *Sed quære.*

Sheriff not liable for title of land sold on execution, unless, &c.

If a sheriff sell land under colour of an execution, and receive the purchase money, and pay it over to the creditor, such sheriff is not liable to the vendee, though he obtain no title by the purchase,(*a*) unless the sheriff give a deed with covenants warranting the title.

The sheriff may not sell lands of the heir by virtue of an execution to sell lands in the hands of the executor.(*b*)

To give a good title to the purchaser of goods and chattels under a sale upon execution, the officer

(*x*) Brown's Rep. 187.
(*y*) Ibid. 366.
(*z*) Maryland Rep. 540.
(*a*) Haywood, N. C. Rep. I. 496.
(*b*) Ibid. 246.

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must take them into his actual possession, and have them present at the time and place of sale, and make delivery to the purchaser, otherwise the proceedings are void.(c) EXECUTION.

If a sheriff take goods by virtue of an execution, and before sale an injunction issues, he must stay proceedings, and restore the goods to the party. By so doing the sheriff is exonerated, though the plaintiff lose his debt.(d)

Money deposited in the hands of a deputy sheriff as a pledge for some particular purposes, and afterwards by the owner thereof lent to the sheriff, and applied by him to his own use before the issuing and delivery of the execution against the goods and chattels of the lender, is not liable to satisfy that execution.(e) Execution money.

A return upon a *ca. sa. cepi & mortuus est*, is good, without saying that the defendant died in prison.(f) Return.

SHERIFF.

An inquisition returned by the sheriff under a writ of inquiry may be amended after the defendant has excepted to the return.(g) Sheriff.

If a sheriff collect money on an execution and fail to return the truth of the case, he is liable to the

(c) Haywood, ii. 65.
(d) Ibid. 81.
(e) Hen. and Mun. ii. 85.
(f) Maryland Rep. 540.
(g) Ibid. 185.

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SHERIFF. plaintiff; but not to the defendant, who is not injured by the neglect.(a)

In an action against the sheriff for the misconduct of his officer in the execution of a writ, a particular warrant to such officer need not be proved; this is necessary only in the case of a bailiff; but in this state there are no bailiffs, their place being supplied by deputies, whose authority is sufficiently known by proof of a general privity with the sheriff. For the misconduct of his deputy the sheriff is answerable, whether he recognizes and adopts the acts of the deputy or not, and may indeed be subjected to exemplary damages. If a deputy enter the house of an administrator to look for goods of an intestate; and afterwards proceeds to levy upon the goods of the administrator, from whom nothing is due, he is a trespasser *ab initio*, and the sheriff liable.(b)

An assignment by a debtor of all his property to trustees for the benefit of such of his creditors as should within a given time execute to such debtor a release of all demands is good, if any of the creditors agree to accept it upon that condition, and is a transfer of the property for their use from the time of the acceptance. If, therefore a *fi. fa.* issued after the acceptance, but before the execution of a release, by any creditor, be by the sheriff levied upon the goods assigned, he is liable in trespass.(c)

Amendment. The court will allow the sheriff, on his affidavit of the omission of a fact in his return, which he intended to have stated, to amend it by adding thereto the fact so stated to have been omitted.(d)

(a) Hardin's Rep. 489.
(b) Bin. i 240.
(c) Ibid. ii. 174.
(d) Ibid. i. 499.

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SHERIFF.

Before executing a writ of replevin the sheriff ought to allow a reasonable time for the defendant to find security on a claim of property; otherwise in an action of trespass for removing the goods the sheriff cannot justify under the replevin.(*e*)

If a sheriff return that he has levied upon a *fi. fa.* goods to the value, and do not pay over the money, a distringas will lie against him.(*f*)

Return.

In an action of replevin brought by the sheriff for goods taken by him by virtue of a *fi. fa.* his return thereon is no evidence of a levy, which is a matter *in pais*, and must be capable of proof.(*g*)

POUNDAGE.

Poundage.

If the sheriff with the money raised by an execution upon land pay off a mortgage on judgment which had a lien prior to the judgment under which the sale is made, he is entitled to poundage upon the amount so paid, though it exceed the real debt in the execution; so he is for lien subsequent.(*h*)

The sheriff is not entitled to poundage upon a *ca. sa.* unless he receives and pays the money, though he arrest the defendant, whose notes are accepted by the plaintiff, and thereupon discharges the defendant. *By the court*—"The act of Assembly in giving poundage upon a *ca. sa.* confines it to cases where the money has been paid and received. It may be

(*e*) Dal. i. 225.
(*f*) Ibid. 312.
(*g*) Brown's Rep. 366.
(*h*) Bin. i. 97.

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POUNDAGE. hard upon the sheriff, but we cannot give what the act refuses."(*i*)

On a sale of real estate by the sheriff by virtue of an order issued under a writ of partition he is entitled to poundage.(*j*)

HABEAS CORPUS.

Habeas corpus. Though the sheriff recommit a defendant upon the same execution, he having been discharged from the first commitment, under a writ of habeas corpus, yet the sheriff does not thereby subject himself to the penalty of 500*l.* imposed by the habeas corpus act, that being imposed for commitments for criminal offences, and is not incurred by taking the party a second time into custody upon civil process.(*k*)

CONSTABLE.

Constable. A party who will maintain an action for an assault and battery against a constable who has arrested him under colour of a warrant for debt, must, pursuant to the act of Assembly of the 21st of March, 1772, first demand a copy of the warrant.(*l*)

(*i*) Bin. ii. 80.
(*j*) Brown's Rep. 92.
(*k*) Bin. i. 374.
(*l*) Brown, 306.

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ESCAPE.

ESCAPE.

IF a sheriff arrest a defendant on a *capias ad respondendum*, and before the return day goes out of office, the prisoner, being in custody, and the old sheriff neglects to deliver over to the new sheriff at the time of assigning the prisoner, the writ with the amount endorsed that the new sheriff may return it with his own proceedings thereon, and if bail be offered to the new sheriff before the return of the writ, he must accept it, (if sufficient,) and make return of the fact. And though the old sheriff return the writ *cepi corpus in custodia*, after the new sheriff had taken bail and the plaintiff proceeded to judgment, execution, and *non est inventus*, yet the new sheriff is not liable in an action for an escape.(*q*)

Escape from prison liberties, action for, does not lie, if prisoner return before action brought.

By the Act of April 28th, 1810, no action lies against the sheriff for a negligent escape of a prisoner in custody upon execution, on the liberties under bonds, if the prisoner return before action brought.(*r*)

A mere delivery of a *ca. sa.* to the plaintiff, is not an arrest of a prisoner in custody on execution.

A mere delivery of a *ca. sa.* to the sheriff against a prisoner in custody, on the liberties, is not *ipso facto* and *eo instanti*, an arrest so as to place the prisoner in custody under the execution by judgment of law. The doctrine in Frost's case, (Co. V. 89.) does not apply unless the prisoner be in close custody. In an action for an escape on account of the prisoner's going beyond the limits, there must be evidence of an actual arrest, or some act amounting to one, between the delivery of the execution and the prisoner's escape.(*s*)

(*q*) Johns. Rep. vii. 138.
(*r*) Ibid. 470
(*s*) Ibid. viii. 379.

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ESCAPE.

Court of common pleas may discharge a prisoner in custody on execution.

In debt for an escape of a prisoner in custody on execution, a discharge by the court of common pleas having jurisdiction in the case of the prisoner, is a sufficient justification of the sheriff; who need not inquire into the regularity of the proceedings by such court.(*t*)

Prisoner seen at large, *prima facie*, an escape.

If a prisoner in custody on execution, be seen at large without the liberties of the prison, it is sufficient evidence, *prima facie*, to subject the sheriff in an action for an escape.(*u*)

Amount recoverable in action on prison bond.

In an action on a prison bond by the sheriff, he is entitled to recover, not only the amount of the debt ond costs in the original suit, but also the cost of defending the suit against himself for the escape; and may give in evidence the *nisi prius*, record, and verdict, to prove the fact of a suit and verdict for the escape, and of the amount of the debt or demand.(*v*)

EVIDENCE.

Of money collected on execution.

IF the sheriff return that he has made a certain sum by virtue of an execution, ready to be delivered to the party entitled to receive it, this is sufficient evidence of the receipt of the money to charge him him with the amount, though in fact no money was by him actually received.(*w*)

If jury find that goods taken on *fi. fa.*

In an action for a false return of *nulla bona*, upon an execution, an inquisition made by a sheriff's

(*t*) Johns. Rep. viii. 472.
(*u*) Ibid. vii. 165.
(*v*) Ibid. 168.
(*w*) Ibid. viii. 20.

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EVIDENCE.

jury, finding that the goods taken on the *fi. fa.* are not the goods of the defendant, is conclusive for the sheriff, unless it be shewn that he did not act impartially, and with good faith in taking the inquisition.(*x*)

are not the defant's, sufficient.

If a defendant escape from an arrest upon a *ca. sa.* the plaintiff may bring his action against the sheriff for such escape, and also sue out a *fi. fa.* against the goods and chattels of the defendant, and may pursue both remedies concurrently until he obtain satisfaction upon one.(*y*)

Plaintiff may sue sheriff for escape, and prosecute a new execution at the same time.

Proof that the attorney for the plaintiff permitted the defendant to be discharged, is irrevelant on an action for escape of one on execution, because the attorney has no authority, as such, to discharge a defendant from an arrest on execution, until the money be paid. The most he can do is to receive the money recovered, and acknowledge satisfaction.(*z*)

Attorney cannot discharge debtor from execution without payment.

GAOL LIBERTIES.

When gaol liberties have been appointed by a court of common pleas, the sheriff is bound to take a bond if offered, according to the statute permitting a prisoner in execution to go at large within those liberties. It is not the duty of the sheriff, but of the prisoner to ascertain the lines, if in any part vague and indefinite; and at his peril, and at the risk of his bail to keep within them: and if he go beyond the

But for gaol liberties sheriff must take bond, if offered.

Prisoner must keep within limits at his peril.

(*x*) Johns. Rep. viii. 185.
(*y*) Ibid. 361.
(*z*) Ibid.

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GAOL LIBERTIES.

actual limits, the sheriff may maintain an action on the bond.(*b*)

When excused for stepping over them.

But the sheriff was held not liable for the escape of a prisoner in execution, on the liberties, under bond according to the statute, who inadvertently and involuntarily went beyond the limits, believing the place where, to be within them; and which was reputed and commonly considered to be within the liberties, until after the escape alleged, and who returned within the actual liberties before the action brought.(*c*)

Breaking doors under colour of execution, effect of.

Levy void.

Though it is said, Vol. I. p. 129, on the authority of Semaine's Case, (Co. V. 93.) "If an officer break a house by force of a *fieri facias*, he will be a trespasser by the breaking; yet the execution which he shall do in the house will be good;" yet the principles evidently recognised in the case of Lee and Gansell, (Cowp. I.) are inconsistent with the doctrine in Coke; and if correct, show that an unlawful breaking vitiates all subsequent proceedings.

(*b*) Johns. Rep. viii. 172, 173.
(*c*) Ibid. 175, 177.

FINIS.

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must serve all processes, i. 10. ii. 107, 109, 211, 218, 330, 405.
may appoint under sheriff, i. 10. ii. 4.
also a gaoler, i. 10. ii. 107, 213, 334.
general and special deputies, i. 10, 11, 13. ii. 5, 213, 214, 270, 330, 331, 404.
his under sheriff, gaoler and deputies must all be sworn, i. 11.
is answerable civiliter for all their acts, i. 11, 23, 24, 27. ii. 106, 107, 272, 331, 404.
may be amerced for acts of his officers, i. 12.
cannot restrict the power or authority of his under sheriff, i. 13, 14.
nor of his general deputies, i. 13, 14.
bond for that purpose, void, ibid.
has the custody of gaols, i. 14, 48.
ought to take bond from his officers, i. 14.

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Sheriff can appoint no more than one sheriff extraordinary, i. 15.
is not chargeable to plaintiff for acts of special deputy when nominated by and appointed at request of plaintiff, i. 15.
but when arrest is made by such special deputy, sheriff is responsible for the prisoner after committed, i. 15.
so when a person arrested is surrendered by his bail, i. 15.
is liable for the penalty of statute violated by his deputy, i. 16.
in action against, for act of his deputy, plaintiff must prove the original warrant directed by the sheriff to such deputy, i. 16.
service on agent of, to return writ not sufficient, i. 17.
the day on which he goes out of office included in the six months after for return of writs, i. 17.
entitled to fees if he commences execution, i. 17.
may sue at common law on bail bond in different court from that in which the original action was brought, i. 17.
not liable for not assigning bail bond which has been cancelled on surrender of prisoner, i. 17.
must make return on writ executed by him, though he go out of office before return day, and deliver it to new sheriff, i. 18.
must complete the levy of an execution commenced while in office, though his office expire before such completion, i. 18.
new sheriff must receive from old, prisoners and writs by indenture, i. 18.
if sheriff die in office, his successor must at his peril take notice of all prisoners in custody, and their causes of commitment, i. 19.
in execution of his office, if resisted, need not flee back to the wall, i. 19.
may use all necessary force, i. 14.
if killed in doing his duty, it is murder, but if he kills resistor, not, 1. 19.
is responsible for his deputies, as well in trespass as case, i. 19, 20.
may execute his office until the appointment of a successor, i. 20.
is liable to be arrested in New-York on civil process, i. 20.
is entitled to fees for summoning jury, though he go out of office before the venire is returned, i. 20, 21.
not liable in trespass for serving execution, because the defendant was misdescribed in the original writ, i. 23.
action against, for not assigning bail bond, need not be brought in the county whereof he is sheriff, i. 24.
has no authority to receive money on execution after the return day, i. 26.
if he send money so received to the creditor by mail, though ordered so to send money received on the execution, and the money is lost, it is the sheriff's loss, i. 26, 27.

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Sheriff is not answerable for contracts made by his deputies to do what the law does not require, i. 27.
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liable in trespass for executing process of court not having jurisdiction, i. 29.
may not, in Connecticut, be sued by court of attachment, i. 28.
liable to fine for not returning execution, i. 30.
may perform all ministerial acts by deputy, i. 30, 31.
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need not show his warrant, i 31.
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must receive all writs to him offered, and give receipts therefor, i. 62, ii. 7, 211, 272, 341.
may command a sworn officer by parole to serve a writ, i. 62, 63.
may not dispute the authority of the court issuing process, unless void on the face of it, i. 63.
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ERRATA.

Page 8, line, 3, for *issue* read *issues*, and for *land*, *lands*; 8, 14, dele *to* at the end of the line; 8, 16, dele *to*; 8, 22, for *of* read *on*; 8, 23, for *serving*, *saving*; 8, 30, for *vent*, *sent*; 10, 24, dele *of*; 13, 17, for *or* read *on*; 15, 8, for *time*, *place*; 17, 23, after *first* insert *jurors*; 19, 7, for *on* read *an*; 21, 22, for *succeeding*, *preceding*; 25, 9, for court *of* justices, court *or* justices; 26, 16, for *held*, *had*; 34, 21, dele *even*; 35, 16, For *justices* read *justice of the peace*; 39, 12, for *on petition*, *or petition*; 40, 24, for *for*, *forth*; 42, 15, for *prisoner*, *prison*; 46, 24, for *up*, *into*; 49, 30, for *tenants*, *tertenants*; 51, 33, for *officers*, *offences*; 52, 11, after *&c.* read *wherein* it is provided; 55, 17, for *mortgage*, *mortgagee*; 67, 7, after *remains*, read *taken*; 68, 23, for *muniments*, *miniments*; 69, 1, after *give*, read *notice*; 70, 3, after *capias in*, read *withernam*; 77, 23, after *any* read *persons*; 78, 21, for *then*, *there*; 80, 5, for *requests*, *neglects*; 80, 26, after *subscribed*, read *such oath*; 82, 18, for *return*, *virtue*; 92, 7, for *having*, *have*; 99, 15, for *of any*, *or*; and for *on*, *of*; 101, 18, for *small*, *all*; 106, 26, after *cause* read *be shown*; 106, 31, for *and*, *but*; 107, 8, dele *made*; 110, 15, for *to*, *by*; 115, 15, for *suit*, *writ*; 117, 2, for executed, *excited*; 140, 27, for *and*, *one*; 163, 18, for *no*, *a*; 164, 26, for *to* appoint, *must* appoint; 181, for a . at the end of the 11th, 19th, 23d lines, read as if a ; only had been inserted; 188, 13, for *unknown*, *known*; 208, 30, for *preserve*, *pursue*; 209, 14, after *find* read *opposition*; 220, 25, for *as*, *or*; 221, 20, add *time of trial*; 251, 14, for *lieu*, *lien*; 268, 19, after *must* read *each*; 276, 28, for *process*, *processes*; 291, 17, after *days* dele *to*; 298, 32, for *forfeit* read *forfeiture*; 354, 18, for *arrest*, *assist*; 374, 31, for *damage*, *discharge*; 385, 12, after *gaol yard*, read *of*; 395, 1, for *power*, *forever*; 426, 27, for *desire*, *design*.

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