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JUSTICE AND SHERIFF.

PRACTICAL FORMS

FOR THE USE OF

**JUSTICES OF THE PEACE, SHERIFFS, CORONERS
AND CONSTABLES;**

CONTAINING

FORMS OF PROCEEDINGS,

AND THE

REVISED STATUTES OF NEW-HAMPSHIRE,

RELATING TO

THE DUTIES OF THOSE OFFICERS.

BY SAMUEL D. BELL.

CONCORD:

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# PROCEEDINGS IN CIVIL CASES.

## CHAPTER 1.

### OF THE JURISDICTION OF JUSTICES.

- |                                             |                                    |
|---------------------------------------------|------------------------------------|
| 1. Jurisdiction of justices in civil cases. | 2. Justices not to act as counsel. |
|---------------------------------------------|------------------------------------|

§ 1. Every justice of the peace within his county may hear, try and determine all pleas and actions in which the title to real estate shall not be drawn in question, when the damages demanded do not exceed thirteen dollars and thirty-three cents. *R. S. 346, §1.*

§ 2. No justice shall be of counsel nor act as an attorney to either party, nor advise nor assist any party in any case before him. *R. S. 347, §14.*

## CHAPTER 2.

### OF WRITS IN ORDINARY CASES.

- |                                                |                                         |
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| 1. Proceedings to be in English language.      | 10. Form of summons.                    |
| 2. Requisites of writs.                        | 11. Forms altered before justices.      |
| 3. Justice writs, how directed.                | 12. Other process to be conformable.    |
| 4. Justice writs, how returnable.              | 13. Notes on writs.                     |
| 5. If defendant has property out of county.    | 14. Seal.                               |
| 6. Writs to be summons, capias and attachment. | 15. Direction to sheriff of any county. |
| 7. Form of attachment.                         | 16. Direction, if sheriff party.        |
| 8. Form of summons on attachment.              | 17. Defendant's name, how inserted.     |
| 9. Form of capias and attachment.              | 18. Defendant's name, if unknown.       |

- |                                                       |                                                 |
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| 23. Mode of inserting defendant's name and character. | 34. Attorney may indorse plaintiff's name.      |
| 24. Amount to be attached.                            | 35. Summons to be left when goods are attached. |
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| 26. Plaintiff's name and addition.                    | 37. Blanks, how filled.                         |
| 27. Mode of inserting plaintiff's name and character. | 38. Declaration, how inserted.                  |
| 28. Declarations.                                     | 39. Indorsements, how stated.                   |
| 29. Causes of action when joined.                     | 40. Damages, when stated.                       |
- Forms of Declarations.*

§ 1. All writs, declarations, processes, indictments, answers, pleadings and entries in the courts and before justices, shall be in the English language and no other. *R. S. 361, ch. 182, § 1.*

§ 2. All writs and processes, issuing from the clerk's office of any court, shall be in the name of the State of New-Hampshire; shall be under the seal of such court; shall bear teste of the chief, first or senior justice of the court who is not a party, and shall be signed by the clerk, and directed to the sheriff of any county in the state, or his deputy; shall have force in any county, and be obeyed and executed by any officer to whom they may be directed. *R. S. 361, § 2.*

§ 3. Writs issued by justices of the peace shall be directed to the sheriff of the county, or his deputy, and to any constable of any town in the county, or to either of said officers. *R. S. 361, § 4.*

§ 4. They shall be made returnable before such justice at a day, hour and place named therein, and shall be signed by him. In all other respects they shall be substantially in the form prescribed by law. *R. S. 361, § 5.*

§ 5. When a defendant has personal property liable to attachment, in any county in which he does not reside, a justice of the peace may direct his writ or execution to the sheriff of any county or his deputy, or to any constable of any town in which the defendant resides or has such property. *R. S. 361, § 6.*

§ 6. Original process in said courts shall be summons, attachment and *capias*, and shall be in the forms prescribed by law. *R. S. 361, § 3.*

§ 7. The *Forms of Writs* shall be in substance as follows in the following cases :

### ATTACHMENT.

#### The State of New-Hampshire.

R— ss.(2.) *To the Sheriff of the County of R., or his Deputy, or to any Constable of any Town in said County.*  
 [L. S.](1.)

We command you to attach the goods or estate of (3) A. D., of, &c. to the value of (4)—dollars, and summon him (if to be found in your precinct) to appear before me, J. P., a justice of the peace for said county of R., (5) at my office in C., in said county, on Saturday, the second day of May next, at ten of the clock in the forenoon, to answer to (6) B. P., of —, in a plea of (7) —, to the damage of the said B. P., as he says, the sum of (8) — dollars, and make return of this writ, with your doings therein.

Dated the (9) — day of —, A. D., —.  
 R. S. 362, § 10. — —, *Justice of the Peace.*

### § 8. SUMMONS, WHERE GOODS ARE ATTACHED.

#### The State of New-Hampshire.

R— ss. *To (3) A. D., of —.*

[L. S.](1) We command you to appear before me, J. P., a justice of the peace for said county of R., (5) at my office in C., in said county, on Saturday, the second day of May next, at ten of the clock in the forenoon, to answer to (6) B. P., of, &c., in a plea of (7, 8); which plea the said B. P. has commenced against you, to be heard and tried before me; and your goods and estate are attached to the value of — dollars, for security to satisfy the judgment which may be recovered against you.

Fail not of appearance, at your peril. Dated the (9) — day of —, A. D., 18—. — —, *Justice of the Peace.*  
 R. S. 362, § 11.

### § 9. CAPIAS AND ATTACHMENT.

#### The State of New-Hampshire.

R— ss.(2) *To the Sheriff of the County of R., or his deputy, or to any Constable of any Town in said County.*

[L. S.](1) We command you to arrest the body of (3) A. D., of —, or to attach his goods or estate to the value of (4) — dollars, (if to be found in your precinct) and summon him to appear before me, J. P., a justice of the peace for said county of R., at (5) my office in C—, in said county, on Saturday, the second day of May next, at ten o'clock in the forenoon, to answer to (6) B. P., of —, in a plea of (7.) —. To the damage of the said B. P., as he says, the sum of (8) — dollars, and make return of this writ, with your doings therein. Dated the (9) — day of —, A. D. —.  
 R. S. 363, § 12. — —, *Justice of the Peace.*

## § 10. Summons.

**The State of New-Hampshire.**

R— ss.(2.) *To the Sheriff of the County of R—, or his Deputy, or to any Constable of any Town in said County.*

[L. S.](1.) We command you to summon(3) A. D., of —, (if to be found in your precinct) to appear before me, J. P., a justice of the peace for said county of R—,(5) at my office in C—, in said county, at ten of the clock in the forenoon, to answer to(6) —, of —, in a plea of(7) —, to the damage of the said B. P., as he says, the sum of(8) — dollars, and make return of this writ and your doings therein.

Dated the(9) — day of —, A. D. —.

R. S. 363, § 13.

— —, *Justice of the Peace.*

§ 11. The foregoing forms are altered to adapt them to proceedings before justices. The forms of other writs, as replevin, trustee, scire facias, &c., will be inserted hereafter, in the chapters relating to those subjects.

§ 12. In cases where no form of process is prescribed by law, such process shall be made conformable to the forms prescribed in this chapter (*R. S. ch. 182*) so far as the nature of the case will admit. *R. S. 361, § 7.*

§ 13. Notes are inserted above, for the purpose of considering in order the several parts of each writ, and the usual modes of filling the blanks.

§ 14. *Note (1.)* The seal is indispensable. Without it any writ is void, and affords no justification to the justice, officer or party, for any thing done under it. *See § 2, ante; Hutchins v. Edson, 1 N. H. R. 139.*

§ 15. *Note (2.)* See § 6. If the defendant has property liable to attachment in any county in which he does not reside, the direction should be—“*To the Sheriff of any County, or his Deputy, or to any Constable of the town of —, in the County of —.*”

§ 16. If the sheriff is a party, the direction may be—“*To the Coroner of the County of —, or to any Constable,*” &c.; or the direction, “*To the Sheriff of any County, or his Deputy,*” may be merely omitted. *R. S. 357, § 3.*

§ 17. *Note (3.)* The Christian name and surname of the defendant, if known, should be inserted at length. The initial of a middle name is sufficient. It is not essential that the name should be correctly spelled, if the customary pronunciation of the true name and of that given in the writ is the same. “*Kiah,*” for “*Currier*”; “*Petrie,*” for “*Petris*”; “*Kay,*” for “*Key*,” have been held sufficient. —2 *N. H. R. 557, Tibbetts v. Kiah.*

§ 18. When the name of a defendant is not known to the plaintiff, the writ may issue against him by a fictitious name; and if duly served it shall not be abated for that cause, but may be amended on such terms as the court may order. *R. S.* 362, § 9.

§ 19. If the defendant is called by several names, he may be described with an alias, as *Joseph Nay, of C., in said county, laborer, otherwise called John Noyes, of C., in said county, laborer.*

§ 20. The place of residence of the defendant should be given; but it will be sufficient, if his present place of residence is uncertain, to describe him as "*late of C.,*" &c., where he has resided, or as "*now commorant in C.*"—the place where he is at the time.

§ 21. The addition of the defendant, that is, his degree, as esquire, gentleman, yeoman; or his trade or occupation, as husbandman, merchant, hatter, or the like, should be inserted. Scandalous additions, as *vagabond, thief, &c.*, make a writ abateable.

§ 22. No writ shall be abated, quashed or reversed through defect or want of form or addition only; and courts and justices may, on motion, order amendment in any such case. *R. S.* 375, § 10.

§ 23. The name of the defendant may be inserted thus:

*T. D., of M., in said county, yeoman;*

*T. D., of M., in said county, gentleman, and R. D., of G., in said county, laborer;*

*T. D., of M., in said county, husbandman; and A. D., wife of said T. D.;*

*T. D. & R. D., both of M., in said county, traders, and partners, (or late partners) under the firm of T. & R. D.*

*R. D., late of said M., husbandman, deceased, in the hands of A. D., of said M., esquire, executor of the will of said deceased, (or administrator of the estate of said deceased.)*

§ 24. *Note* (4.) The amount of property to be attached should be reasonable—sufficient to meet the amount of the debt or damages claimed, and a reasonable bill of costs. If the amount attached should be clearly excessive, the plaintiff would be liable to an action for malicious prosecution.

§ 25. "The day, hour and place" when the defendant



is required to appear, must be distinctly stated. It would be insufficient to insert the *town*, or the *day* merely, as is usual in writs returnable at the court of common pleas; a specific place, as, "the office of —," "the dwelling-house of —;" and the hour—as, "two o'clock in the afternoon," should always be inserted.

§ 26. *Note (6.)* The Christian name and surname of the plaintiff, his residence and addition, should be inserted in a similar manner to that of the defendant. See § 17, &c.

§ 27. The name of the plaintiff may be inserted thus:

*T. P., of N., in said county, (or in the county of C.) saddler.*

*T. P., of G., and R. P., of M., in said county, carpenters, and partners (or late partners) under the firm of T. & R. P.*

*T. P., of B., in said county, husbandman, executor of the will of C. D., late of said B., husbandman, deceased; or—administrator of the estate of C. D., late of said B., husbandman, deceased, intestate; or—administrator with the will annexed (of the estate not before administered) or, (during the minority of A. D., executor of the will) of C. D., late of said B., husbandman, deceased.*

*T. P., of B., in said county, yeoman, an infant under the age of twenty-one years, who sues this action by R. P., his father and next friend, (or his guardian duly appointed.)*

*T. P., of N., in said county, adjudged an insane person, (or a spendthrift) who sues this action by R. P., his guardian duly appointed.*

*T. P., of P., in said county, trader, assignee of the estate of J. B., of said P., decreed a bankrupt under the laws of the United States concerning bankrupts.*

§ 28. *Note (7.)* Here is to be inserted the declaration, of which a few of the most common forms are inserted at the close of this chapter.

§ 29. Causes of action of a similar kind may be joined in the same writ and no other. Thus several causes of action founded on contracts, may be joined, or several trespasses may be sued upon in one writ; but a count for breach of contract cannot be joined with one for trespass, or any wrong unconnected with contract.

§ 30. *Note (8.)* As the jurisdiction of a justice does not extend to cases where the amount demanded in damages exceeds thirteen dollars thirty-three cents, care must

be taken not to claim more than that sum—otherwise the whole proceedings will be void. *See* § 1.

§ 31. *Note* (9.) As all original writs must be served upon individuals fourteen days, and upon corporations thirty days before the time of trial, (*R. S.* 365, § 1) their date must be earlier than the return day by at least the same number of days, which must be computed *exclusive* of the day of trial.

§ 32. Care must be taken that writs are not dated or returnable on Sunday, as they would in that case be liable to be abated.

§ 33. All original writs shall, before they are served, be indorsed on the back thereof by the plaintiff, his agent or attorney, being an inhabitant of this state; and if the plaintiff is not an inhabitant of the state, by some responsible person who is such inhabitant. *R. S.* 365, § 17.

§ 34. An authority to commence a suit for another has been decided to be sufficient authority to indorse the name of the plaintiff upon the writ; and such indorsement binds the party and not the attorney. It is usually done in this manner:

JOHN ROGERS,

6 *N. H. R.* 219, *Miner v. Smith.*] By his attorney, G. S.

§ 35. When the goods or estate of any person shall be attached, a summons, in the form prescribed by law, shall be delivered to the defendant, or left at his usual place of abode, with the name and office of the officer serving the same indorsed by him thereon. *R. S.* 365, § 3.

§ 36. Every such summons shall set forth the sum in the note or obligation declared upon, with the indorsements and dates thereof, the amount of the account in covenant, what sum is demanded in damages, and for what; and in all cases shall briefly give to the defendant the same information which the declaration gives more at large, and shall contain the substance thereof. *R. S.* 366, § 4.

§ 37. In filling the summons where goods are attached, attention is to be paid to the same points as in case of writs of attachments, and the blanks are to be filled in the same manner. Any substantial disagreement of the summons with the writ might be cause of abatement.

§ 38. The declaration may be abridged as far as can be done consistently with its giving "to the defendant the same information which the declaration gives more at large."

On the common counts a usual form is—

*In a plea of the case for not paying the plaintiff — dollars, due him, (according to the account annexed to the writ of attachment.)*

—— due him for goods sold and delivered you.

—— for money lent you.

—— for money paid and laid out for you.

—— for labor and services performed for you.

On notes :

—— in a plea of the case for not paying the plaintiff your note dated —, 18—, for — dollars, payable to him or order, on demand, with interest.

—— payable to one C., or order, on demand, with interest, and by him indorsed to the plaintiff.

§ 39. Indorsements are usually stated in this form :

*On said note are the following indorsements :*

*Jan. 16, 1840. Received three dollars.*

*April 12, 1841. Received two dollars.*

§ 40. In actions of covenant, and probably in actions for wrongs unconnected with contract, the summons must state the amount of the damages claimed in the action.— 5 N. H. R. 174, *Putney v. Cram* ; 6 N. H. R. 268, *Bishop v. Lyman*.

## DECLARATIONS IN ASSUMPSIT.

### COMMON COUNTS.

1. *General Form.*] In a plea of the case, for that the defendant, at Amherst, in said county, on the — day of —, 1840, being indebted to the pl. in the sum of — dollars, — cents,

[for so much money paid, laid out and expended by the pl. for the def. at his request.]

promised to pay him that sum ; yet, though requested, has not paid the same.

*Note.* *Pl.* is inserted for plaintiff ; *Def.* for defendant. The names may be inserted, if preferred.

*Note.* Instead of the clause in brackets, any other ground of indebtedness may be stated. Several forms in common cases are here inserted.

1. *Account annexed.*] according to the account annexed.

2. *Money had and received.*] for so much money had and received by the def. to the pl.'s use.

3. *Money lent.*] for so much money lent by the pl. to the def., at his request.

4. *Labor and materials.*] for labor performed and materials provided by the pl. for the def., at his request.

5. *Labor.*] for labor and care performed and bestowed by the pl. and his servants, and with his horses and carriages in and about the business of the def., at his request.

6. *Services as school mistress.*] for labor and care performed and bestowed by the pl. as a school-mistress, in teaching and instructing the child of the def. at his request, in reading, &c.

7. *Services as factor.*] for labor and care performed and bestowed by the pl. as a factor, in selling and disposing of divers goods, wares and merchandize of the def., and transacting other business of the def., at his request.

8. *Services as physician.*] for labor, advice, attendance, travel and medicines, performed, bestowed and furnished by the pl. as a physician for the def. and his family, at his request.

9. *Services as attorney.*] for labor and care performed and bestowed by the pl. as an attorney, in prosecuting and defending divers suits at law; in writing sundry deeds and other instruments; in making sundry journeys, and attending to the business of said def., at his request.

10. *Services as surveyor.*] for labor and care performed and bestowed by the pl. in drawing plans and elevations of dwelling houses, and in surveying and superintending the erection of certain dwelling-houses for the def., at his request.

11. *Services as mate of a vessel.*] for labor and services performed by the pl. as mate of a vessel called —, of the def., at his request.

12. *Services by a servant.*] for labor and services performed by the servant and apprentice of the pl. by his permission as a seaman on board a vessel of the def., at his request.

13. *Goods sold and delivered.*] for divers goods, wares and merchandize sold and delivered by the pl. to the def., at his request.

14. *Goods bargained and sold.*] for divers goods, wares and merchandize bargained and sold by the pl. to the def., at his request.

15. *Lands conveyed.*] for certain lands, tenements and hereditaments, with the appurtenances, bargained, sold and conveyed by the pl. to the def., at his request.

16. *Hire of goods.*] for the use and hire of divers goods and chattels (or divers horses and carriages, or certain lighters and other vessels) of the pl. by him let to hire to the def., at his request.

17. *Use and occupation.*] for the use and occupation of a certain dwelling-house of the pl., situate in M., with the appurtenances, for a long time used and occupied by the def., at his request, by permission of the pl.

18. *Freight.*] for the freight, carriage and transportation of divers goods, wares and merchandize of the def., conveyed and transported by the pl. (in his ship called —,) from — to —, for the def., at his request.

19. *Wharfage.*] for wharfage, housing, tending and weighing divers goods of the def., landed, housed, tended and weighed on the pl's. wharf, and in his stores in M., (out of the ship called —,) of the def., at his request.

20. *Board.*] for food, drink, washing and lodging, and other necessities found and provided by the pl. for the def., at his request.

21. *Board.*] for board and lodging, furnished by the pl. to the def., his wife and children, at his request.

22. *Horsekeeping.*] for horsemeat, stabling and attendance provided by the pl. for divers horses of the def., at his request.

23. *Pasturing.*] for pasturing and feeding divers cows of the def., at his request, in a certain close of the pl.

24. *Stagefare.*] for the fare and carriage of the def., carried and conveyed at his request from — to —, by the pl. in his stage-coach.

25. *Tolls.*] for divers tolls due and of right payable for the passage of divers waggons, carriages and cattle, of the def., drawn and driven over a certain bridge of the pl. called the A. F. B.

26. *Assessments.*] for an assessment duly made by the C. R. R. Co., upon ten shares of the stock of said corporation owned by the def.

27. *Upon award* ] for so much money by E. F. awarded and adjudged to be paid by said def. to the pl. upon and by virtue of a submission by them made of all matters in difference between them to the award and determination of said E. F.

28. *Interest.*] for interest upon certain sums of money due and owing from the def. to the pl.

*Note.* The form of the count is varied when the action is in favor or against any person in a representative character, and when the position of the parties is changed by marriage, dissolution of partnership, &c. The following forms are inserted as examples.

29. *Against husband and wife.*] for that said A., while sole, at —, on —, being indebted to the pl. in the sum of — dollars, for goods sold and delivered by the pl. to said A. at her request, promised to pay him the same sum: Yet, though requested, neither said A., while sole, nor said def'ts since their intermarriage, have ever paid the same.

30. *By husband and wife.*] for that said def., at —, on —, being indebted to the said A. while sole, in the sum of — dollars, for labor and services performed by said A., for said def., at his request, promised to pay her the same sum: Yet, though requested, has never paid the same to said A. while sole, nor to said plf's since their intermarriage.

31. *Against surviving partner.*] for that the def. and one A. P., whom the def. has survived, late partners under the firm of D. & P., at —, on — in the lifetime of said A. P., being indebted to the pl. in the sum of — dollars for so much money by said D. & P. had and received to the plf's use, promised to pay him the same sum. Yet, though requested, neither D. & P. in the lifetime of said P., nor the def. since his decease, have ever paid the same.

32. *By surviving partner.*] for that the def., on —, at —, being indebted to the pl. and one R. P., whom the pl. has survived, late partners in trade under the firm of A. & P., in the sum of— dollars, for the use and hire of certain goods and furniture of said A. & P., by them let to hire to the def. at his request, promised to pay them the same sum. Yet, though requested, has never paid the same to the said A. & P., during the lifetime of said P., nor to the pl. since his decease.

33. *Against executor.*] for that said deceased, in his lifetime, at—, on —, being indebted to the pl. in the sum of —, for so much money lent by the pl. to said deceased, at his request, promised to pay the pl. the same sum. Yet, though requested, neither said deceased in his lifetime, nor the said executor since his decease, have ever paid the same.

34. *By administrator.*] for that the def., at —, on —, being indebted to said deceased in his lifetime in the sum of — dollars, for goods bargained and sold by said deceased to the def. at his request, promised to pay said deceased the same sum. Yet, though requested, has never paid the same to said deceased in his lifetime, nor to said administrator since his decease.

*Note.* The foregoing forms may be readily changed by a slight transposition to what are called the quantum meruit and quantum valebant counts—of which the following are examples:

35. *Quantum meruit.*] for that the def., at —, on —, in consideration that the pl. at his request had done and performed certain labor and services for the def., promised to pay him so much money as he reasonably deserved to have therefor; and the pl. avers that he reasonably deserved to have therefor the sum of — dollars, of which the def. then and there had notice. Yet, though requested, has never paid the same.

36. *Quantum valebant.*] for that the def. at —, on —, in consideration that the pl. had sold and delivered divers goods and merchandize to the def. at his request, promised to pay the pl. so much money as the said goods and merchandize were reasonably worth; and the pl. avers that they were reasonably worth the sum of— dollars, of which the def. had notice. Yet, though requested, has never paid the same.

37. *Account stated.*] for that the said pl. and def. at —, on —, accounted together concerning their mutual dealings, and concerning divers sums of money then due from said def. to the pl., and thereupon said def. was found indebted to the pl. in the sum of — dollars; and in consideration thereof promised to pay him that sum.

Yet, though requested, has never paid the same.

## ON PROMISSORY NOTES.

38. *Against maker.*] In a plea of the case for that the def. at —, on —, by his note of that date, for value received, promised to pay the pl., or order, — dollars, on demand, with interest.

Yet, though requested, has never paid the same.

39. *Against maker, on note payable by instalments.*] for that the def., at —, on —, by his note of that date, for value received promised the pl., to pay him, or his order — dollars, with interest annually, payable — dollars in six months; — dollars in one year; and — dollars in two years from date, now past.

Yet, though requested, has never paid the same.

40. *By husband and wife.*] for that the def., at —, on —, by his note of that date, for value received, promised the said C., then sole, to pay her or her order — dollars, in sixty days, now past, with interest.

Yet, though requested, has never paid the same to said C., while sole, nor to said pl's since their intermarriage.

41. *Against husband and wife.*] for that said A., while sole, at —, on —, by her note of that date, for value received, promised the pl. to pay him or his order — dollars on demand, with interest.

Yet, though requested, neither said A. while sole, nor said def. since their intermarriage, have ever paid the same.

42. *By husband and wife.*] for that the def. at —, on —, by his note of that date, for value received, promised C., then and still the wife of the pl., to pay her or her order, — dollars, on demand with interest, which note the pl. then and there accepted.

Yet the def., though requested, has never paid the same to said C., nor to the pl.

43. *Against surviving signer.*] for that said def. and one B., then living, but since deceased, at —, on —, by their note of that date, for value received promised the pl. to pay him, or his order, — dollars, on demand with interest.

Yet, though requested, neither said def., nor said B. in the lifetime of said B., nor said def. since his decease, have ever paid the same.

44. *By surviving payee.*] for that the def. at —, on —, by his note of that date, for value received, promised the pl. and one C. B., then living, but since deceased, to pay them or order — dollars on demand with interest. Yet, though requested, has never paid the same to said pl. and said C. B., in the lifetime of said C. B., nor to the pl. since his decease.

45. *By administrator.*] for that the def., at —, on —, by his note of that date, for value received, promised to pay said deceased, or his order, — dollars and interest, on demand. Yet, though requested, has never paid the same to said deceased in his lifetime, nor to said administrator since his decease.

46. *Against executor.*] for that the said deceased, at —, on —, by his note of that date, for value received, promised the pl. to pay him or his order, — dollars, in — months, now past, with interest.

Yet, though requested, neither said deceased in his lifetime, nor said executor since his decease, have ever paid the same.

47. *Indorsee v. maker.*] for that the def. at —, on —, by his note of that date, for value received promised one C., to pay him, or order, — dollars on demand with interest; and the said C. having indorsed and delivered said note to the pl., the def. then and there promised to pay him the same sum according to the tenor of said note.

Yet, though requested, has never paid the same.

48. *Bearer v. maker.*] for that the def. at —, on —, by his note of that date for value received, promised one C., to pay him or bearer, — dollars on demand with interest; and said C. then and there assigned and delivered said note to the pl., who thereby became and still is the bearer thereof; and the def., in consideration thereof, promised to pay the same to the pl.

Yet, though requested, has never paid the same.

49. *Indorsee v. indorser.*] for that one G., at —, on —, by his note of that date, for value received promised the said def. to pay him or his order, — dollars, in sixty days, with interest; and the said def. then and there indorsed and delivered said note to the pl., and the said pl. at —, on —, presented the said note, then due and payable, to the said G., for payment; who then and there neglected and refused to pay the same, whereof the def. then and there had notice; and in consideration thereof promised to pay the pl. the same sum and interest.

Yet, though requested, has never paid the same.

50. *Same, on note not presented for payment.*] instead of "*presented the same,*" say, if the case be so — "*made diligent search for the said G., to demand payment of him, but could not find him, whereof,*" &c.

*Note.* In declarations on promissory notes and other written contracts, the place alleged should be that of the date of the note, if in the county; if the place of date is out of the county, it should be inserted in this manner: "At Boston, to wit., at Amherst aforesaid"—Boston being the place of date in the note, and Amherst the place of trial. The time alleged should be the date of the note.

## ON BILLS OF EXCHANGE, &c.

*Note.* Bills of exchange, orders and checks on banks are substantially alike, and the forms inserted will be readily varied to adapt them to the other kinds of securities.

51. *Payee v. acceptor.*] for that one C., at —, on —, by his bill of exchange (or order in writing) of that date for value received, ordered the def. to pay to the pl. or his order, the sum of — dollars in —



days after date, and the def. at —, on —, accepted, and thereby promised to pay the same.

Yet, though requested, has never paid the same.

52. *Indorsee v. acceptor.*] for that one C., at —, on —, by his bill of exchange of that date, for value received, requested the def. to pay to C. & K. or order, the sum of — dollars; and the said C. & K. having indorsed and delivered said bill to the pl., the said def. then and there accepted and thereby promised to pay the same to the pl.

Yet, though requested, has never paid the same.

53. *Bearer v. drawer, for non-acceptance.*] for that the def., at —, on —, by his bill of exchange of that date for value received, requested one D., — days after date of said bill, to pay to the bearer thereof the sum of — dollars; and then and there delivered said bill to the pl., and said bill being presented for acceptance, said D. then and there refused to accept the same, of which said def. had due notice, and in consideration thereof promised to pay said sum to the pl.

Yet, though requested, has never paid the same.

54. *Indorsee v. drawer, for non-acceptance.*] for that the def., at —, on —, by his bill of exchange of that date, for value received requested one E. S., three months after sight, to pay one R. S. or his order, the sum of — dollars; and said R. S. having indorsed and delivered said bill to the pl. the said pl. on —, at —, presented the same to said E. S. for acceptance; and the said E. S. then and there refused to accept the same, of which the said def. then and there had due notice, and in consideration thereof promised to pay the said sum to the pl.

Yet, though requested, has never paid the same.

55. *Indorsee v. drawer, for non-payment.*] for that the def. at —, on —, by his bill of exchange of that date for value received, requested one E. S., ten days after date, to pay one R. S., or his order, the sum of — dollars; and said R. S. having indorsed and delivered said bill to the pl., the pl. on —, at —, presented the same to said E. S. for payment; but the said E. S. then and there refused to pay the same, (whereupon the said bill was then and there duly protested therefor,) of which the said def. then and there had notice, and in consideration thereof promised to pay the said sum to the pl.

Yet, though requested, has never paid the same.

56. *Indorsee v. drawer, for non-payment.*] for that one F., at —, on —, by his bill of exchange of that date, for value received requested one S., in — days after sight thereof, to pay the said def. or his order, the sum of — dollars; and the said S., on —, at —, on presentment of said bill, accepted the same, and the said def. then and there indorsed and delivered the same to the pl., and the pl. on —, at —, presented the said bill to said S. for payment; and said S. then and there refused to pay the same, of which the said def. had notice; and in consideration thereof promised to pay said sum to the pl. Yet though requested, has never paid the same.

57. *Indorsee v. indorser.*] for that one F., at —, on —, by his bill of exchange of that date, for value received requested one S., in —

days after sight thereof, to pay the said def. or his order, the sum of — dollars, and the said S. on —, at —, on presentment of said bill accepted the same, and the said defendant then and there indorsed and delivered said bill to the pl., and the pl. then and there indorsed and delivered said bill to one G.; and the said G., on —, at —, presented the same to said S. for payment; who then and there refused to pay the same. Whereupon the said bill was duly protested therefor, and returned by said G. to the pl., who thereupon became liable to pay, and did pay to said G. the contents of said bill, together with interest, damages and costs, amounting in the whole to — dollars; of all which the def. then and there had due notice, and in consideration thereof promised to pay the pl. the sum last mentioned.

Yet, though requested, has never paid the same.

58. *On mutual insurance policy.*] for that the said F. 1. Co., at —, on —, by their policy of insurance of that date, signed by the president, and countersigned by the secretary thereof, reciting that the pl. had become a member of said company, and had bound and obliged himself to pay all such sums of money as should be assessed by the directors thereof, pursuant to the act incorporating said company, and also secured to said company the sum of — dollars, being the amount of the deposit or premium for insuring the sum of — dollars to the pl. on the following property, to wit.: — dollars on his dwelling house, situate in A., during the term of six years, commencing at noon, on the — day of —, and ending at noon on the — day of —, in consideration of the premises did insure the said pl. in the sum of — upon the property aforesaid, and promised to pay or satisfy to said pl. the sum aforesaid within three months after the said property should be burnt, demolished or destroyed by, or by reason or means of fire, (upon due notice thereof being given to said company) during the time said policy should remain in force, unless in either of said cases the directors of said company should determine to rebuild the building destroyed; and did further promise, that when and so often as the property aforesaid, or any part thereof, or any other of equal value, built or supplied in the room thereof, should happen to be injured by means of fire, such damages should be made good according to the estimate thereof, and put in as good condition as the same was before such fire happened. *Provided*, that if it should happen that the whole stock and contribution of the said company should be insufficient to pay and satisfy all the losses sustained by the members of said company, a just average should be made, and the payment to be demanded by virtue of such policy should be a dividend of the stock and contribution, in proportion to the sum insured, agreeably to the act aforesaid.

And the pl. avers, that on said — day of —, —, and always thereafter until the — day of — —, and long after, he was the lawful owner and had a title in fee simple and unincumbered to the said dwelling-house and land covered by the same; and that within the said term of six years, in said policy mentioned, to wit., on the — day of —, the said dwelling-house was burnt, destroyed and demolished by fire, which did not happen from design in him, the insured, nor by the invasion of an enemy, nor by insurrection of the citizens of this state or of any of the United States, whereby the pl. sustained damage to the amount of — dollars; and notice in writing of said loss and damage by fire was given by him to the secretary of said company within thirty days from the time said loss and damage hap-

pened, to wit., on the — day of —; and on the — day of — the directors of said company did determine that the amount of said loss was not chargeable to said company, and the secretary of said company gave notice to the pl. that said company would not pay the loss and damages so sustained by him by reason of such fire; with which determination of said directors the pl. is in no respect satisfied. And the said company, though the stock and contribution of said company are fully sufficient to pay all losses sustained by the members of said company, have not, though requested, paid or satisfied the pl. the said sum of — dollars, nor any part thereof, nor determined to rebuild the said dwelling-house, nor made good the damages aforesaid sustained by said pl. by means of said fire, nor repaired the said dwelling-house, nor put the same in as good condition as the same was before said fire happened, but refuse to do so.

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### SPECIAL CONTRACTS.

59. *Upon award.*] for that the pl. and the def. on —, at —, having appointed one D. to hear and determine all controversies existing between them concerning their mutual accounts and debts [all demands existing between them] mutually promised each other to stand to and perform the award of said D. thereupon; and said D. afterwards, at —, on —, heard the said pl. and def., and awarded that the said def. should pay to the pl. the sum of — dollars, and notified said pl. and def. thereof.

Yet the def., though requested, has never paid the same, nor performed said award.

60. *For legacy v. devisee.*] for that one N., at —, on —, being seized of sixty acres of land in —, called —, by his will duly executed, devised the same to the def. and his heirs, he paying the sum of — dollars to the pl. in one year after the decease of said N.; and on —, at —, the said N. died, and his said will was, on —, at —, duly proved, approved and allowed by the court of probate for said county of —; and said def. accepted said devise, and entered into possession of said devised premises, and in consideration of the premises, promised to pay the pl. the aforesaid sum in one year now past, after the decease of said N. Yet, though requested, has never paid the same.

61. *For legacy v. executor.*] for that one N., at —, on —, by his will bequeathed to the pl. the sum of — dollars, payable in one year after his decease, and appointed said def. executor of said will; and on —, at —, died; and his said will was, on —, at —, duly proved, approved and allowed by the court of probate for the said county of —; and said def. then and there accepted the said trust of executor, and assented to said legacy; and at —, on —, in consideration of the premises, and that the pl. at his request would forbear to proceed for the recovery thereof for six months next following, promised to pay the same; and the pl. did forbear and give time for the payment thereof for said six months; yet the def., though requested, has never paid the same.

63. *To pay debt of another.*] for that, on —, at —, one C. was indebted to the pl. in the sum of — dollars, (in a large sum, to wit.,

the sum of — dollars;) and said def. at —, on —, in consideration that the pl., at his request, would forbear and give time to said C., for the payment thereof, till the — day of —, promised to pay him the same sum; and the pl. avers that he did forbear and give time of payment to said C., till said — day of —, and that said C. has not paid the same, of which the def. had notice. Yet the def., though requested on —, at —, has never paid the same.

64. *On promise of reward.*] for that at —, on —, the def. gave public notice that one R., a prisoner in his custody, in the county jail at Amherst, in said county, had made his escape from said jail, and then and there offered and promised to pay to any person who should arrest and return said R. to said jail the reward of — dollars; and the pl. says that, confiding in said promises, he did, on —, at —, arrest said R., and return him to said jail, of which the def. had notice; and in consideration thereof promised to pay the pl. said sum: yet, though requested on —, at —, has never paid the same.

65. *On agreement of sale or return.*] for that the def. on —, at —, in consideration that the pl., at his request, did then and there deliver to him two pieces of flowered velvet on sale, or to return the same in three days next ensuing, promised the pl. to return the same in three days next ensuing, or otherwise that he would pay the pl. therefor the sum of — dollars, on request. And the pl. avers that said def. did not return to him said two pieces of velvet within said three days next ensuing. Yet, though requested on —, at —, has never paid said sum of — dollars.

66. *On agreement to sell or return.*] for that the def. at —, on —, in consideration that the pl. at his request would deliver to him one roan gelding, on the terms that he, the said def., should purchase the same at a reasonable price or return the same to said pl., — promised the plaintiff to purchase said gelding at a reasonable price, or return the same in a reasonable time; and the pl. avers that he did then and there deliver said gelding to the def. on the terms aforesaid, and was ready to sell the same at a reasonable price, to wit., for the price of — dollars; of which the def. then and there had notice; and though a reasonable time has since elapsed, yet the def., though requested, has never paid the reasonable price of said gelding, nor returned the same.

67. *For not accepting goods bought.*] for that the def., on —, at —, in consideration that the pl., at his request, had then and there bargained and sold to him 100 lbs. of cotton, at the price of — dollars, and promised to deliver him the same, promised to accept the said cotton and to pay the pl. therefor at the price aforesaid; and the pl. avers that within a reasonable time, to wit., on —, at —, he offered to deliver the said cotton to the def., and requested him to accept the same, and to pay the pl. therefor at the price aforesaid; yet the def., though requested, did not accept nor pay for the same.

68. *For not delivering cow sold.*] for that the def., on —, at —, in consideration that the pl., at his request, bought of him one cow, for the price of — dollars; whereof the pl. then and there paid him one dollar, promised to deliver said cow to the pl. on the then next day, for

the price aforesaid; and the pl. avers that on the next day, to wit., the — day of —, he was ready to accept and receive said cow, and was ready and offered to pay the def. the residue of the price aforesaid, and requested the def. to deliver to him said cow; yet the def., though requested, did not deliver the same.

69. *For boot on exchange.*] for that the def., on —, at —, in consideration that said pl., at his request, would deliver to said def. a certain horse of the pl., in exchange for a certain horse of said def., promised the pl. to deliver to him the said horse of the def., and to pay him the sum of — dollars, in exchange for the said horse of the pl. And the pl. avers that he did then and there deliver his said horse to the def., and the def. delivered to him his, the said def.'s., horse in exchange as aforesaid; yet the def., though then and there requested, has not paid to the pl. the said sum of — dollars.

70. *On warranty of a horse.*] for that the def., at —, on —, in consideration that the pl., at his request, had then and there bought of him a certain horse, for the price of — dollars, paid by the pl. therefor, promised the pl. that the said horse was then sound: yet the def. did not regard his said promise, but deceived the pl. in this, that the said horse was not sound, but was then and there unsound.

71. *On promise to take back a horse, if unsound.*] for that the def., at —, on —, in consideration that the pl. had then and there, at his request, bought of him a certain horse for the price of — dollars, then and there paid by the pl. therefor, promised the pl. that if said horse should prove unsound, he would take back said horse and return to the pl. the price aforesaid. And the pl. avers that though said horse did prove to be unsound in the eyes at the time of said sale, of which the def. at —, on —, had notice, and was requested to take back said horse and return said price; yet the def. has not taken back said horse, or returned the price aforesaid.

72. *Against vendor of land.*] for that the def., on —, at —, by a certain note and memorandum in writing, by him signed, in consideration that the def. did then and there agree to purchase of him — acres of land, situate in —, bounded, &c., and to pay him therefor the sum of — dollars, — promised the pl. that upon payment of the sum aforesaid he would convey the land aforesaid to the pl. by a good and sufficient deed of warranty, in common form; and the pl. avers that on —, at —, he offered to pay the said def. the said sum of — dollars, and requested him to convey to him the said land in manner aforesaid: yet the def., though requested, has never conveyed the same to the pl.

73. *Against a tenant for not managing land in a husbandlike manner, &c.*] for that the def., on —, at —, in consideration that the pl., at his request, had promised the def. to permit him to occupy a certain farm in —, bounded, &c., with the appurtenances, for the term of one year, then next ensuing, at the yearly rent of — dollars, to be therefor paid by said def., — promised the pl. that he would use and occupy said farm in a husbandlike manner, and keep the same in good repair during said term, and to pay to the pl. the rent aforesaid. And the pl. avers that he has permitted the def. to occupy and he has occupied said premises during said term. Yet the def., though re-

quested, has not occupied the said farm, with the appurtenances, in a husbandlike manner, but took and carried away from and spent off said farm — loads of hay and — loads of manure, which had grown and been made on said premises; ploughed and converted into tillage one acre of natural mowing, part of said premises; cropped and sowed two acres of land, part of said premises, without manuring or dressing the same; suffered the fences on the said premises to become ruinous and broken down, and the glass windows of the dwelling-house, parcel of said premises, to be broken and destroyed; and, though requested, has not paid the rent aforesaid.

74. *On contract to pay in money and goods.*] for that the def., at —, on —, being indebted to the pl. in the sum of — dollars, for work and labor done and performed by the pl. for the def., at his request, promised the pl. to pay him that sum, half in money and the other half in goods, on demand; yet the said def., though requested on —, at —, has never paid the said sum in manner aforesaid, nor otherwise.

75. *On guarantee.*] for that the def. at —, on —, in consideration that the pl. at his request would sell and deliver to one A. P., on credit, all such goods as the said A. P. should wish to purchase of him, promised the pl. to be accountable to him for the price of said goods. And the pl. avers that he did afterwards, to wit., on —, at —, sell to said A. P. on credit sundry goods which said A. P. wished to purchase of him, amounting to the sum of — dollars: and said A. P. though requested on —, at —, after the said time of credit had expired, has not paid for said goods, of which said def. had notice. Yet the def., though requested on —, at —, has never accounted to the pl., nor paid him for said goods, or any part thereof.

76. *Not indemnifying security.*] for that the def. on —, at —, in consideration that the pl., at his request, and for his debt, had with said def. by their note of that date, promised to pay one C. — dollars, in six months, with interest, promised the pl. to pay the said note to said C. and to save harmless and indemnify the said pl. against said note. And the pl. avers that the said def. has never paid said C. the said sum of — dollars, nor the interest thereof; and that the said pl., on —, at —, was compelled to pay and did pay to said C. the sum of — dollars, being the amount due on said note, of which the said def. had notice. Yet the def., though requested, has not indemnified nor saved him harmless.

77. *On note for specific articles.*] for that the def. at —, on —, by his note of that date, for value received, promised the pl. to pay and deliver him one barrel of flour at his dwelling-house in M., on the — day of —, then next, now past. Yet, though requested, did not pay or deliver said barrel of flour to the pl. at his dwelling house nor elsewhere.

78. *On note for articles on demand.*] for that the said def., at —, on —, by his note of that date, for value received, promised the pl. to pay him three pairs of morocco shoes, on demand. Yet the def., though requested on —, at —, has not paid the same.

79. *For freight.*] for that the def., at —, on —, in consideration that the said pl., at his request, had carried and transported for said def. certain goods, to wit., — bales of cotton, in a certain vessel called

the —, from — to —, and had there delivered the same to said def., promised to pay him as freight therefor, on demand, at the rate of — cents for each pound weight of said cotton; and the pl. avers that the weight of said cotton was — pounds, and the freight thereof amounted to — dollars; whereof the said def. had notice. Yet the def., though requested on —, at —, has never paid the same.

80. *For not delivering goods freighted.*] for that the def., on —, at B., to wit., at P., in said county, received of the pl. on board the vessel called —, whereof one G. was master, one bureau of the value of ten dol.s., in good order and condition, to be transported from said B. to said P., the danger of the seas only excepted, and there to be delivered in like good order and condition to the pl. or his assigns, they paying freight therefor, &c.; and in consideration thereof promised to transport and deliver said goods accordingly. And the pl. avers that the said vessel afterwards, on —, did arrive at said P., and that they did then and there pay the freight thereof.

Yet the def., though then and there requested, has not delivered the said goods.

81. *For not taking care of goods.*] for that the def., at —, on —, in consideration that the pl. had, at his request, delivered to said def. one silver teapot, of the value of — dollars, to be safely kept for the pl., which said def. accepted and received, promised to take proper care thereof, and safely keep and re-deliver the same to the pl. upon request. Yet the def. did not take proper care thereof; nor safely keep the same; nor, though requested on —, at —, re-deliver the same to the pl., but so negligently conducted himself with regard to the same, and took so little care thereof, that through the carelessness and neglect of the def. the said teapot was wholly lost to the pl.

82. *For not delivering money to a third person.*] for that the def., on —, at —, in consideration that the pl. delivered to him — dollars, to be paid to one C., promised the pl. to deliver the same to said C. at B. Yet, though requested, has never delivered the same.

83. *Against carrier, for not carrying a parcel.*] for that the def., being a common carrier of goods for hire, on —, at —, in consideration that the pl. at his request, delivered to him one parcel, containing — pairs of silk gloves, of the value of — dollars, for that purpose promised to take care of, safely carry from — to —, and then deliver to one A. B. the said parcel, for a reasonable reward. Yet the def., having accepted said parcel, did not safely carry the same to said —, nor, though requested on —, at —, deliver the same to said A. B.

If the case be so, add: "But so negligently conducted himself with regard to the same, that through the carelessness and neglect of the def., the said parcel and its contents were lost."

84. *For riding improperly.*] for that the def., on —, at —, in consideration that the pl. at his request did let to hire, and deliver to him, a certain horse, of the value of — dollars, to be ridden and used by the def. on a journey from — to —, and thence back again, promised the pl. to ride and use said horse in a moderate and careful manner. Yet the defendant, having hired and received said horse for the purpose aforesaid, did not ride and use said horse in a moderate and care-

ful manner, but so carelessly and improperly rode and used said horse that by means thereof he became and was greatly lamed and hurt, and so remained for the space of — weeks; during which time the pl. lost and was deprived of the use of the same, and the said horse was greatly damaged and lessened in value.

85. *Against a farrier, for bad shoeing.*] for that the def., at —, on —, in consideration that the pl., at his request, employed him, then being a farrier, to shoe a certain horse of the pl., of the value of — dollars, for a reasonable reward, promised to shoe said horse in a skilful and careful manner. Yet the def., though he received said horse for the purpose aforesaid, and shod the same, yet did not shoe the same in a skilful and careful manner, but so unskillfully and carelessly shod the said horse, that by the unskillfulness and carelessness of the def., the said horse was lamed and hurt, and so remained for the space of three weeks, during which the pl. was deprived of the use of said horse; was obliged to, and did expend the sum of — in endeavoring to cure the same; and the said horse was greatly injured and lessened in value.

86. *Against factor, for selling on credit.*] for that the def., at —, on —, in consideration that the pl. at his request had employed him to sell for cash six pairs of calf skin boots, of the value of — dollars, for a certain commission therefor, promised to sell said boots for cash.

Yet the def. did not sell said boots for cash, but afterwards, to wit., on —, at —, sold said boots for the sum of — dollars, for a bad note, of no use or value.

87. *Against factor, for not accounting.*] for that the def., on —, at —, in consideration that the pl., at his request, had delivered to him certain goods, of the value of — dollars, to be sold for the pl. for a certain reward, to be paid therefor, promised to sell the said goods, and to render a just account of the sale thereof, and of the moneys received therefor, upon request. Yet the def., although he received and sold said goods, and received therefor the sum of — dollars; and though requested on —, at —, has never rendered to the pl. a just account of said sale, or of the moneys arising therefrom.

88. *Against attorney, for not accounting.*] for that the def., at —, on —, in consideration that the pl. at his request had authorized the def. to settle a certain debt then due and owing from C. F. to the pl., and to obtain payment and satisfaction of said debt, promised the pl. to render to him a just account of all money, and securities for money, which he should receive on account of said debt, and to pay and deliver the same to the pl. upon request; and although said def. did afterwards, to wit., on —, at —, receive divers sums of money and divers securities for money, on account of said debt; yet the defendant, though requested on —, at —, has not rendered a just account of the moneys and securities for money so by him received, or paid or delivered the same to the pl.

89. *For not returning horse and chaise hired.*] for that the def. on —, at —, in consideration that the pl. at his request had let to him to hire one horse, chaise and harness, of the value of — dollars, for a journey from — to —, and back again, promised to return said horse, chaise and harness to the pl., on his return the same day, in good order. Yet, though requested, has never returned the same.



90. *For support of a pauper.\**] to answer to the town of P., in said county, in a plea of the case, for that one R. was resident in said town of P., from — to —, and during all that time was poor and unable to support herself, and had no relations in the line of father or grandfather, mother or grandmother, children or grandchildren, of sufficient ability to relieve her; and the legal settlement of said R. was, during all the time aforesaid, in said town of L., and said town of L. was by law chargeable with her support and maintenance during said time; and the overseers of the poor of said town of P. relieved and maintained the said R. during all the time aforesaid, and furnished her with suitable medicine, medical advice, care, attendance and nursing, according to the account hereunto annexed, and therein expended the sum of — dollars in the support and maintenance of said R.; and notice in writing, signed by a majority of the selectmen and overseers of the poor of the said town of P., stating the sums expended by them as aforesaid for the relief of said R., was served on said town of L. by a deputy sheriff of said county, by leaving an attested copy of such notice, with his return thereon, with the town-clerk and one of the selectmen of said town of L., on —, at —; and said deputy sheriff, within twenty days from the time of said service, made due return of the original notice aforesaid, with his doings thereon, to the clerk of the court of common pleas for said county.

By reason of all which the said town of L. became liable; and in consideration thereof at —, on —, promised the plaintiffs to pay them said sum of — dollars. Yet, though requested, have never paid the same.

## DEBT ON SIMPLE CONTRACT.

### COMMON COUNTS.

91. In a plea of debt, for that the def., at —, on —, was indebted to the pl. in the sum of — dollars, for so much money by the def. before that time had and received to the pl.'s use, whereby and by reason of the same being unpaid, an action has accrued to the pl. to demand and recover of the def. the same sum. Yet the def., though often requested, has never paid the same.

*Note.* Any of the common counts in assumpsit may, in the same manner, be changed to counts in debt.

92. *On note.*] for that the def., at —, on —, by his note of that date, for value received promised the pl. to pay him, or order, — dollars, on demand with interest; whereby an action has accrued to the pl. to have and recover said sum. Yet the def., though requested, has never paid the same.

*Note.* The counts in assumpsit on notes and bills of exchange may be changed to counts in debt, in like manner.

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\* See form of notice and officer's return, in forms appended to chap. VI.

## DEBT ON BONDS.

93. *On bond.*] In a plea of debt, for that the said def., on —, at —, by his writing obligatory of that date, sealed with his seal, and here in court to be produced, bound and acknowledged himself to be indebted to the pl. in the sum of — dollars, to be paid the pl. Yet, though requested, has never paid the same.

94. *On bond without date.*] for that the def., on —, at —, by his writing obligatory without date, sealed with his seal, then and there delivered to the pl., and here in court to be produced, bound and acknowledged himself to be indebted to the pl. in the sum of — dollars, to be paid to the pl. Yet, though requested, has never paid the same.

95. *On bond by surviving obligee.*] for that the def., on —, at —, by his writing obligatory of that date, sealed with his seal, and here in court to be produced, bound and acknowledged himself to be indebted to the pl. and one M., now deceased, whom the pl. has survived, in the sum of — dollars, to be paid to the pl. and the said M., or either of them. Yet the said def., though requested, never paid the same to pl., or to said M. in the lifetime of said M., nor to the pl. since the decease of said M.

96. *On bond to wife while sole.*] for that the def., on —, at —, by his bond of that date, sealed with his seal, and in court to be produced, bound himself to the said E., then sole by the name of E. F., in the sum of — dollars, to be paid to said E. Yet, though requested, never paid the same to said E., while sole, nor to the pls., since their intermarriage.

97. *On bond against administrator.*] for that the def., on —, at —, by his writing obligatory of that date, sealed with his seal, and in court to be produced, bound himself to the said B., then living, in the sum of — dollars, to be paid to the pl. Yet, though requested, never paid the same to said B. in his lifetime, nor to the pl. since his decease.

98. *On bond by executor against administrator.*] for that said E. in his lifetime, at —, on —, by his bond of that date, sealed with his seal, and here in court to be produced, bound himself to said R., then living, in the sum of — dollars, to be paid to said R.

Yet the said E., though requested in his lifetime, never paid the same to the said R., in his lifetime, nor to the pl. since the decease of said R.; nor has the def., though requested since the decease of said E., ever paid the same to said R. or to the pl.

In actions on probate bonds it is sufficient to say—"a copy whereof, duly authenticated, is here in court to be produced." 6 N. H. R. 261, *Judge v. Merrill*.

99. *If the bond is lost.*] instead—"here in court to be produced," say—"which writing obligatory having been lost, the said pl. cannot produce the same to the court here."

100. *If the bond is destroyed.*] say—"which writing obligatory having been destroyed by accident, (or by fire) (or by the said def.,) the said pl. cannot produce the same to the court here."

*If the bond is in possession of def.]* say—"which writing obligatory being in the possession of the def., the pl. cannot produce the same to the court here."

*Note.* If a bond is lost, destroyed or in possession of the defendant so that an offer to produce it cannot be made, the condition of the bond and the breach must be stated in the declaration. *Rand v. Rand*; 4 N. H. R. 267.

101. *On bond setting forth condition and breach.]* for that the def., at —, on —, by his writing obligatory of that date, sealed with his seal and here in court to be produced, acknowledged himself to be held and firmly bound to the pl., to pay him the sum of — dollars. Which said writing obligatory is subject to a certain condition, that if the def. should perform and abide the award of A., B. and C., arbitrators, mutually chosen to judge and determine of and concerning all matters in difference between said pl. and said def., so as their award should be made on or before the — day of — next, the said obligation should be void. And the said A., B. and C., having duly notified and heard the parties and their evidence, did make their award on the — day of —, and did thereby award that the def. should pay to the pl. the sum of — dollars, and costs of reference, taxed at — dollars; of which said def. then and there had due notice. Yet the def., though then and there requested, hath not paid the pl. the sums aforesaid, nor either of them.

## DEBT ON JUDGMENTS.

102. *On judgment of court of common pleas.]* for that the pl., by the consideration of the justices of the court of common pleas, holden at —, on —, recovered judgment against said def. for — dollars damages, and — dollars costs of suit, as by the record thereof now remaining in said court appears; which judgment is in full force and not annulled, reversed or satisfied; whereby an action has accrued to the pl., to have and recover the said sums of — dollars, &c., amounting in the whole to — dollars. Yet the def., though requested, has not paid the same.

103. *On justice's judgment.]* for that the pl., on —, at —, before J. B., a justice of the peace for the county of R., by the consideration of said justice recovered judgment against the said def. for the sum of — dollars debt or damage, and — dollars cost of suit, as by the record thereof remaining appears; which judgment is in full force and not reversed, annulled or satisfied; whereby an action has accrued to the pl. to have and recover of said def. the aforesaid sums of — dollars, and — dollars, amounting in the whole to — dollars; yet the def., though requested, has never paid the same.

104. *On judgment rendered in another state.]* after—"as by the record thereof remaining appears"; add—"a copy whereof, duly authenticated, the pl. produces here in court."

105. *On judgment satisfied in part.]* say—"which judgment remains in full force and unsatisfied in part, to wit., for the sum of — dollars, although a writ of execution was issued thereon, which is

returned to said court satisfied in part only, to wit., for the sum of —; whereby an action has accrued to the pl. to have and recover of the def. the sum of — dollars, with — cents more for the writ aforesaid. Yet the def., though requested, has not paid either of said two last mentioned sums.

106. *For rent by deed.*] for that the pl., on —, at —, leased his dwelling house and garden, situate at —, to the def., to hold and occupy for one year from that time; and the said def., by his deed dated on —, at —, in court to be produced, agreed to pay the pl. the sum of — rent therefor, and entered into possession of said premises, whereby the said def., on —, at —, became indebted to the pl. in the aforesaid sum for rent as aforesaid for the year then ending. Yet, though requested, has never paid the same.

107. *For rent by parole.*] for that the pl., on —, at —, demised to the def. a house and shop, situate in —, for one month then next ensuing, and so from month to month so long as both parties should agree, yielding and paying therefor the sum of — dollars for every month he should hold the premises aforesaid. By force thereof the def. entered upon and held the said premises till —, whereby the def. became indebted to the pl. in the sum of — dollars. Yet the def., though requested, has never paid the same.

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## COVENANT.

108. *On note under seal.*] in a plea of covenant broken, for that the def., on —, at —, by his deed of that date, in court to be produced, covenanted with the pl. to pay him, or his order, — dollars, on demand, with interest. Yet, though requested, has not paid the same. And so the said def. has not kept his covenant aforesaid, but has broken the same.

109. *On indenture of apprenticeship.*] for that, by a certain deed indented, made at —, on —, between the pl. and the def., one part whereof, sealed with the seal of the def., is in court to be produced. The said def. did covenant and promise to instruct the pl. in the art and calling of a saddler; to find him good and sufficient meat, drink, apparel, washing and lodging, and all other necessities, both in sickness and in health, from — until the pl. should arrive at the age of twenty-one years, and at the expiration of said term to give him two good suits of apparel, and to cause him to be taught to write and cipher. Yet the def., though requested, has not instructed the pl. in the art and calling of a saddler, nor given to him two good suits of apparel, although the pl. did attain to the age of twenty-one years at —, on —, nor caused the pl. to be taught to write and cipher. And so the def. his covenant aforesaid has not kept, but has broken the same.

110. *On the covenants in a deed.*] for that the def., on —, at —, by his deed of that date, duly executed, acknowledged and registered, and in court to be produced, for the sum of — dollars, bargained and

sold to the pl. a certain ; (here insert the description in the deed) to hold to the pl., his heirs and assigns forever ; and thereby covenanted and agreed with the pl. that until the delivery of said deed he was the lawful owner of said premises, and was seized thereof in his own right in fee simple, and had full power and lawful authority to grant and convey the same in manner aforesaid ; that the said premises were free and clear from all and every incumbrance whatever, and that he would warrant and defend the same to the pl., his heirs and assigns, against the lawful claims and demands of any person or persons whomsoever. And the pl. avers, that at the time of making and executing said deed the said def. was not the lawful owner of said premises ; that he was not seized thereof in his own right in fee simple, and had not full power and lawful authority to grant and convey the same in manner aforesaid ; that the said premises were not free and clear from every incumbrance whatever, but one W., then and ever since being lawfully entitled to dower therein, recovered judgment therefor, and for — dollars, cost of suit against the pl., at the court of common pleas holden at —, on —, and by force of our writ of execution issued thereon, entered into the premises, and holds one third part thereof, legally assigned to her for her dower ; nor has the def. warranted and defended the said premises to the pl. against the lawful claims and demands of all other persons whatsoever ; but one J. M., who then and still had and has lawful right to (or was the lawful owner of) the premises, entered into said premises and turned the pl. out of the possession thereof, and still withholds the same ; and so the def. his covenants aforesaid has not kept, but has broken the same.

111. *On covenant against incumbrances on a mortgage.*] say that the said premises were not free from all and every incumbrance whatsoever ; but the said def., before that time, viz. : on —, at —, by his deed of that date, duly executed, acknowledged and registered, had mortgaged the said premises to one C., to secure to him the payment of — dollars and interest, by means whereof and that the sum of — was unpaid, the pl. was compelled to pay and did pay the sum of — dollars for the removal of said incumbrance. And so the said def. his covenants aforesaid has not kept, but has broken the same.

112. *On covenant against incumbrances on an attachment.*] say that the said premises were not free and clear from all and every incumbrance whatsoever, but that the said premises were then under an attachment, made in due form at the suit of B. B., brought by him to recover a just debt due to him from said def., and that said B. B., by the consideration of the justices of the court of common pleas, holden at —, on —, recovered judgment against said def. in the action aforesaid, for the sum of — damages, and — costs, and caused a writ of execution issued upon said judgment to be duly extended upon said premises within thirty days after said judgment was rendered ; and by force thereof entered into said premises, dispossessed the pl. thereof, and still withholds the same ; and so the said def. has not kept his covenant aforesaid, but has broken the same.

*Note.* The action of covenant may be brought by assignees, in cases where the covenant is said to run with the land. The statement of the assignment should be intro-

duced immediately after the statement of the covenant, and before the breach.

113. *On covenants in a deed by heir of purchaser.*] and the said E., on —, at —, died seized of said premises; wherefore the said premises descended to the pl. as son and heir of the said E., who thereby then and there became seized of the same in his demesne as of fee.

114. *By husband and wife.*] and the said C., being so seized, on —, at —, was married to the said P., by virtue whereof the said P. & C. became seized of the said premises in their demesne as of fee in right of said C.

115. *By purchaser under a deed.*] and the said E., being so seized, on —, at —, by his deed of that date duly executed, acknowledged and registered, and in court to be produced, bargained, sold and conveyed to the pl., his heirs and assigns forever, the said premises, who thereby became and was seized of the same in his demesne as of fee.

116. *By devisee.*] and the said E., being so seized, at —, on —, made his last will in writing, duly executed, and thereby devised the said premises to the pl., to hold to him and his heirs and assigns forever; and the said E. afterward, to wit., on —, at —, died seized as aforesaid, and his said will was duly proved, approved and allowed by the court of probate for said county of —; whereby the pl. became and was seized of the said premises in his demesne as of fee.

117. *Against lessee, for rent.*] for that whereas on —, at —, by a certain indenture then and there made between said pl. and said def., one part whereof, sealed with the seal of said def., is here in court to be produced, the pl. demised to the def. a certain dwelling-house situate, &c., (describe premises as in the lease) for the term of five years next following, at the yearly rent of twelve dollars; payable on the — day of — annually. And the said def. did thereby covenant with the pl., to pay him the rent aforesaid at the times aforesaid. And the def. afterwards, to wit., on —, at —, entered into the demised premises and became possessed thereof for the term aforesaid; and on —, at —, the sum of — dollars, being the rent of said premises for one year next preceding, became due and in arrear: yet the def., though requested, has never paid the same. And so the said def. has not kept his covenant aforesaid, but has broken the same.

118. *Against assignee, for rent.*] and the pl. avers that after the making of said indenture, and during said term, to wit., on —, at —, all the estate and interest of the said E. then to come in the said demised premises by assignment thereof legally made, came to and vested in the def., who thereupon then and there entered into and became possessed thereof, and so continued from thence till the — day of —, on which day the sum of —, being the rent of said premises for one year next preceding, became due and payable. Yet the def., though requested, has not paid the same. And so the said def. has not kept the said covenants so made by said E. for himself and his assigns, but has broken the same.

## CASE.

## FOR INJURIES TO REAL ESTATE.

119. *Diverting water from a mill.*] for that the pl., on —, at —, was and ever since has been seized, in his demesne as of fee, of a grist-mill situate at said M., and he, and all those whose estate he has therein, were used and now ought to have a certain water-course running to said mill. And the def., not being ignorant thereof, did, on —, and on divers days between that day and the — day of —, dig up and remove the banks of said water-course and direct the water thereof from said mill, whereby the pl. has ever since lost the profits of said mill.

120. *Flowing meadow.*] for that the pl., on —, at —, was, and ever since has been, seized of a tract of meadow in —, containing, &c. and bounded, &c. And the def., not ignorant thereof, has, ever since the — day of —, maintained, kept up and continued a mill-dam in said —, across a brook then called, &c.; and by means thereof caused the water of the brook aforesaid to overflow and drown the pl's said meadow, whereby the pl's grass there growing has been damaged and destroyed, and the said meadow greatly injured and lessened in value.

121. *Stopping up a drain.*] for that the pl., on —, at —, was and ever since has been seized of a certain dwelling-house situate in M., to which there is and of right ought to be appurtenant a certain drain, for carrying the water from the cellar of said house through and across the land of the def. to a certain ditch therein, which the said def. well knew. Yet the def., on —, at —, dug into, stopped up and obstructed said drain, and thereby, from that time hitherto, flowed and filled with water the cellar of said dwelling-house, and rendered the same useless, and greatly injured said house.

122. *Flowing a mill.*] for that the pl., on —, at —, was and ever since has been seized of a certain saw-mill in S., and he whose estate he has therein from time immemorial have had till obstructed by def., and still ought to have the use and free course of a certain stream of water running to and from said mill. And the def., knowing the same, on —, at —, erected and has ever since continued a certain dam across said stream below said mill, and thereby obstructed the flowing of the water from said mill, and caused the water of said stream to flow back upon the mill aforesaid, and thereby obstructed and prevented the pl. from using said mill, whereby he has during the time aforesaid lost the profits thereof.

123. *Stopping a way.*] for that the pl., on —, at —, was and ever since has been seized of four acres of meadow in —, bounded, &c., and had and still has a way from the public highway to said meadow over and across the said def's homestead, for himself, his horses, cattle and carriages, to pass and repass thence, as they had occasion. Yet the def. knowing the same, on —, locked up the gate across the way aforesaid, and so stopped up and obstructed the said way, and deprived the pl. of the use thereof.

124. *Negligently keeping a fire.*] for that the pl. on —, at —, was

and still is seized of a certain tract of land in said S., containing, &c. And the def. then and there knowingly kindled a fire on his, said def.'s land, adjoining said land of the pl., and then so negligently and carelessly kept his said fire, that the same came into the pl.'s said land, and there consumed the pl.'s barn standing thereon, and five tons of hay therein, and burnt over and destroyed the grass, wood and timber standing on ten acres of his said land, and greatly injured said land, and lessened the value thereof.

125. *For not repairing fence.*] for that the pl. — on —, at —, was and ever since has been seized of a certain tract of land, situate in said M.; and the said def. was, during the time aforesaid, possessed of, and in the occupation of a certain other tract of land, situate in said M., next adjoining the said tract of land of the pl., and by reason of the possession thereof during all the time aforesaid of right ought to repair a certain fence between the said close of the pl. and the close of the def. Yet the def., well knowing the premises, on the day or year aforesaid, and from thence hitherto wrongfully suffered said fence to be ruinous, fallen down and out of repair, so that divers cattle of the def. feeding in his said land escaped therefrom into the said tract of land of the pl., and ate up and trod down and injured the pl.'s corn there growing, and consumed and injured the pl.'s grass there growing, of the value of — dollars.

126. *For waste by a tenant.*] for that the def., on —, and from thence hitherto, held and enjoyed a certain dwelling-house and land, situate in M., as tenant thereof to the pl., for the term of five years, which is not yet expired. Yet the def. on —, and on divers days between that day and the date of this writ, wrongfully felled and cut down — oak trees, — pine trees and other trees, of the pl.'s, then growing, of the value of — dollars, and took and carried away and converted the same to his own use, whereby the pl. is greatly injured in his reversionary estate and interest in said land.

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## INJURIES TO PERSONAL PROPERTY.

127. *For injuring a hired horse.*] for that the def., on —, at —, hired of the pl. a certain horse, to ride from — to —, for a certain price, and the pl. delivered to him said horse for that purpose. Yet the def. so carelessly and immoderately rode said horse, that by means thereof the said horse on —, at —, died.

128. *For upsetting a stage coach.*] for that the pl., on —, at —, at the def's. request, became a passenger in the def's. stage-coach, to be safely carried for a certain sum from — to —. Yet the def. so negligently and carelessly managed and drove said coach that the same was overturned, whereby one of the pls. legs was broken, and he was otherwise severely bruised and injured, and thereby became and has been hitherto sick and lame; has been unable to attend to his business, and has incurred great expense for board, medicine and attendance, amounting to — dollars.

129. *For running against a chaise.*] for that the pl., on —, at —, was riding in the highway there in his chaise. And the def., then and there so negligently and carelessly managed his team which he



was then and there driving along said highway, that his cattle which were drawing said team drew the same against the chaise aforesaid, whereby said chaise was overturned and greatly broken and injured.

130. *Against a carrier, for losing goods.*] for that the pl., on —, at —, delivered to the def., then being a common carrier of goods for hire, from —, to —, at his request, certain goods of said pl., to wit., —, to be safely carried from said — to said —, and there delivered to one J. D. Yet the def. then and there by his negligence and want of care, lost said goods, and has never delivered the same to said J. D.

131. *For selling property of another.*] for that the pl., on —, at —, bargained with the def. to buy of him a cow; and the def., knowing the same to be the cow of one B., then and there sold the same to the pl., warranting the same as his, the defs., own cow, for the sum of —, to be paid by the plaintiff; and afterwards the said B. took and carried away said cow from the pl., and so the said def. has deceived and defrauded the pl.

132. *For false warranty of soundness of a horse.*] for that the pl., on —, at —, bargained with the def. to buy of him a certain horse, for the price of — dollars; and the def., by falsely and fraudulently warranting said horse to be sound and quiet in harness, then and there sold said horse to the pl., for the price aforesaid: whereas the said horse was then and there, and has ever since been, unsound, restive and ungovernable in harness, whereby the pl. was deceived and defrauded.

133. *For deceit on exchange of horses.*] for that the pl., on —, at —, at the defs. request, bargained with the def. to exchange with him a certain horse of the pl., for a certain mare of the def. and the sum of —, to be therefor paid and delivered by the def.; and the def. then and there, knowing said mare to be unsound, by then and there warranting said mare to be sound, falsely and fraudulently exchanged said mare and said sum of — for said horse of the pl., whereas the said mare was then and there unsound, and of no value, whereby the def. deceived and defrauded the pl.

134. *For falsely representing a third person to be responsible.*] for that one E. F. was desirous to purchase of the pl. one yoke of oxen, on credit; and the def., on —, at —, to induce the pl. to sell the said oxen to the said E. F., falsely and fraudulently represented to the pl. that the said E. F. was a man of good property, and worthy to be trusted: whereby the pl., not knowing the circumstances of the said E. F., was induced to sell, and did sell said oxen to said E. F. on credit for the price of — dollars; whereas the def. then and there well knew that said E. F. was not a man of property, nor worthy to be trusted; but was wholly irresponsible. And the said E. F. has never paid for said oxen, and is wholly unable to pay for the same.

135. *For keeping a dog accustomed to bite.*] for that the def., at —, on —, knowingly kept a certain dog accustomed to bite sheep; and the said dog so kept by the def., thereafterwards, on the same day, so grievously bit said sheep of the pl. then and there being, of the value of — dollars, that four of said sheep died, and the others were greatly injured.

## SLANDER.

136. *Calling pl. a thief.*] for that the def. on —, at —, in presence and hearing of divers persons, did speak and publish of and concerning the pl., the false, scandalous and malicious words following, to wit.: “He (meaning the pl.) is a thief”—by means whereof the pl. is greatly injured in his good name, and exposed to a prosecution for stealing.

137. *For a libel, accusing pl. of forgery.*] for that the def., on —, at —, did maliciously write, compose and publish, in the sight and hearing of divers persons, a false and scandalous libel, wherein the said def. falsely and scandalously affirmed and declared of and concerning the pl., the following false and scandalous words, to wit.: “A. B. (meaning the pl.) was guilty of forgery;” by means whereof the pl. is greatly injured in his good name, and exposed to a prosecution for forgery.

138. *For malicious prosecution.*] for that the def., on —, at —, maliciously, and without probable cause, on oath complained before C. D., a justice of the peace for the county of S., against the said pl., that the said pl. feloniously stole, took and carried away one gold ring of the def., of the value of —; and thereupon the said pl., being brought before said justice by virtue of a warrant issued on said complaint, was by said justice committed to the jail in A., in said county of H., there to be safely kept till discharged by due course of law; and remained imprisoned till the court of common pleas, holden at —, on —, when, by reason that said def. did not appear to prosecute said complaint, the pl. was discharged by said court. And the pl. says that he is entirely innocent of the crime charged in said complaint, and that by reason of said false and malicious complaint he has suffered much disgrace and reproach, and is greatly injured.

139. *Rescuing cattle taking damage feasant.*] for that whereas the pl., on —, at —, had taken in his close, situate at —, six sheep doing damage there, and was then and there about to impound the said sheep for the cause aforesaid: Yet the def., well knowing the premises, afterwards, on —, at —, unlawfully and against the will of the pl., with force and arms rescued said sheep, and prevented the pl. from impounding the same; by means whereof the pl. is injured and deprived of the means of obtaining compensation for the damage done by said sheep as aforesaid.

## CASE AGAINST OFFICERS.

140. *Against constable, for an escape.*] for that the pl., on —, at —, by the consideration of J. R., a justice of the peace for the county of H., recovered judgment against one E. F. for the sum of — dollars, and costs of suit, taxed at — dollars, in a plea of trespass, as by the record thereof appears, and sued out a writ of execution thereon, directed to the sheriff of said county of H., or his deputy, or to any constable of any town in said county; and on —, at —, delivered the same writ to the def., then, and ever since a constable of the town of P., in said county, to be executed by arresting said debtor and com-

mitting him to jail by force ; whereof the def. afterwards, and before the return thereof, to wit., on —, at —, for want of goods, &c., took the body of E. F., and ought to have committed him to the jail in said county : Yet the def. suffered the said E. F. to escape out of his custody and go at large, without the consent of the pl., whereby the pl. is still unsatisfied for the damages and costs aforesaid.

141. *For a false return.*] follows the preceding form to the words "to be executed :". Yet the said def. did not execute said writ nor make return thereof, as he was therein commanded, but on — returned said writ to said justice, with this false return endorsed thereon. *H. ss.*, (date.) I return this execution in no part satisfied by order of the creditor. — *Constable of P.* And the pl. says that he never gave such order, and that by means thereof said judgment is still unsatisfied, and the pl. wholly lost the same.

142. *For releasing goods attached.*] for that one B. C. was indebted to the pl. in the sum of —, for certain goods by him sold and delivered to said B. C. at his request ; and on — the pl., for the recovery thereof, sued out a writ of attachment against the said B. C., returnable before —, a justice of the peace, &c., on, &c., at, &c., directed to the sheriff of said county of —, or his deputy, or to any constable of any town in said county ; and delivered the same to the def., then and ever since a constable of the town of C. ; who, by virtue thereof attached one dozen of axes, of the value of —, the property of said B. C., and served and returned said writ to said justice ; and on —, at —, the pl. entered his said action ; and by the consideration of said justice recovered judgment against said B. C. for said sum of —, and costs of suit taxed at —, as by the record thereof appears.

Yet the said def. did not retain said goods for the space of thirty days after said judgment was rendered, that the pl. might take them in execution to satisfy said judgment ; but within said thirty days released and discharged said goods ; whereby the said judgment is still unsatisfied, and the pl. has lost his debt and costs aforesaid.

## TROVER.

143. In a plea of the case for that the pl., on —, at —, being possessed, as of his own proper goods, of two tables, of the value of — dollars, afterwards, on the same day, casually lost the same, which thereafterwards, on —, at —, came to the possession of the def. by finding. Yet the def., knowing the same to be the property of the pl., though requested, has not delivered the same to the pl., but then and there converted the same to his own use.

If the goods are numerous, say : "Sundry goods and chattels, in the schedule hereto annexed particularly mentioned, all of the value of — dollars."

144. *For a promissory note.*] say—"a certain promissory note, signed by one E. F., dated —, —, whereby said E. F. promised to pay the pl. or his order — dollars, on demand with interest."

145. *By an executor.*] for that the said deceased in his life time, to.

wit., on —, at —, being possessed, as of his proper goods, of twenty pieces of lawful money called half dollars, of the value of ten dollars, afterwards casually lost the same, which thereafterwards, on —, at —, in the lifetime of said deceased, came to the possession of the def., by finding. Yet the def., knowing the same to be the proper goods of said deceased, though requested, has never delivered the same to said deceased in his life time, nor to the pl. since his decease, but then and there converted the same to his own use.

### TRESPASS.

146. *For assault and battery.*] in a plea of trespass, for that the def., on —, at —, with force and arms made an assault upon the pl., and beat, bruised and ill treated him, against the peace and — (to the damage, &c.)

147. *For an aggravated assault and battery.*] for that said defs. on —, at —, with force and arms made an assault upon the pl., and beat, bruised and ill treated him, and violently threw him upon the ground, and cruelly bruised and wounded him, then lying, by striking him with their fists, and kicking him, and with a violent blow upon his side broke one of his ribs, and other injuries then and there did, against the peace, &c.

148. *Assault and battery and false imprisonment.*] for that the said def., at —, on —, with force and arms, made an assault upon the pl., and beat, bruised, wounded and imprisoned, and detained him in prison for the space of — days, from said — to —, against the peace, &c.

149. *For injuring cattle.*] for that the said def., at —, on —, with force and arms chased and worried the pls. cow, threw stones and clubs at said cow, and thereby broke one of the legs of said cow, against the peace, &c.

150. *For taking a waggon.*] for that the def., at —, on —, with force and arms took and carried away the pls. waggon, of the value of — dollars, and converted the same to his own use, against the peace, &c.

151. *Trespass to land.*] for that the said def., on —, with force and arms broke and entered the pls. close in G., containing — acres, bounded, &c., and cut down and carried away, and converted to his own use, ten loads of the pls. corn, of the value of —, and two loads of the pls. oats, of the value of —, there growing, and trod down and destroyed the pls. grass, of the value of —, against the peace, &c.

152. *Cutting trees, &c.*] for that the def., on —, at —, with force and arms broke and entered the pls. close, situate in B., and cut down and carried away ten pine trees of the pls., of the value of —, threw down and destroyed ten rods of the pls. wall, and six rods of the pls. post and rail fence, there standing, of the value of —; cut down and carried away twenty cords of the pls. wood, of the value of —, against the peace, &c.

*Note.* Various forms of declarations for penalties will be found in the chapter on FORFEITURES.

## CHAPTER 3.

### WHO MAY SERVE WRITS.

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| <p>1. Sheriffs and deputies to serve writs.</p> <p>2. Penalty for neglect.</p> <p>3. Coroners to serve writs, when</p> <p>4. Constables to serve writs issued by justices.</p> | <p>5. No officer to act out of his precinct.</p> <p>6. No civil process to be served on Sunday.</p> |
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§ 1. The sheriff of every county, by himself or his deputy, shall serve and execute within his county all writs and precepts to him directed, issuing from lawful authority; and shall perform all the duties pertaining to the office of crier of the courts. *R. S. 353, § 9.*

§ 2. If any sheriff, deputy sheriff or constable shall refuse or neglect to serve any legal precept to him directed and delivered for service, his legal fees therefor being first tendered, except in criminal cases, when the precept shall be endorsed by the attorney general or solicitor, or by the clerk by order of court, he shall forfeit the sum of fifty dollars to any person aggrieved thereby, who shall sue therefor within three months after such neglect or refusal. *R. S. 353, § 10.*

§ 3. The coroner shall serve and execute all writs and processes directed to him, when the sheriff is a party; and in all cases where the sheriff is a party interested, or related to either party, he shall return talesmen and attend the jury, and in all such cases he shall have the same powers and authority as is by law vested in sheriffs in similar cases. *R. S. 357, § 3.*

§ 4. Any constable to whom any writ or other legal precept may be directed by a justice of the peace, is empowered and required to serve and return the same according to law, and is vested with the same powers and subject to the same liabilities in relation thereto as sheriffs are in like cases. *R. S. 357, § 5.*

§ 5. It is to be observed, that *no civil process* can be served by any sheriff, deputy sheriff or coroner, *out of his county*, nor by any constable out of his town.

§ 6. No civil process can be served on Sunday,—that is, from midnight preceding to the midnight following; but a prisoner who has escaped may be retaken on Sunday. 2 *Salk. R.* 626; 12 *Pick. R.* 275, *Ilsey v. Nichols*.

## CHAPTER 4.

### OF THE SERVICE OF WRITS.

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| <ol style="list-style-type: none"> <li>1. Time of service.</li> <li>2. Summons, &amp;c., how served.</li> <li>3. Summons when property is attached.</li> <li>4. What inserted in such summons.</li> <li>5. Service when defendant is not an inhabitant.</li> </ol> | <ol style="list-style-type: none"> <li>6. Evidence of such service.</li> <li>7. Writs of review and scire facias served on the attorney.</li> <li>8. Service on towns.</li> <li>9. Service on corporations.</li> <li>10. Service on counties.</li> </ol> |
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§ 1. All original writs and writs of mesne process shall be served upon individuals fourteen days before the sitting of the court to which the same are returnable, and upon corporations thirty days before the sitting of such court.—*R. S.* 365, *ch.* 183, § 1.

§ 2. Writs of summons, scire facias and review shall be served by reading the same to the defendant, or by giving to him an attested copy thereof, or leaving such copy at his usual place of abode; and if the writ is brought for dower, a like copy shall be left with the tenant or occupant of the land whereof the dower is demanded, if there is any.—*R. S.* 365, § 2.

§ 3. When the goods or estate of any person shall be attached, a summons in the form prescribed by law shall be delivered to the defendant, or left at his usual place of abode, with the name and office of the officer serving the same endorsed by him thereon. *R. S.* 365, § 3.

§ 4. Every such summons shall set forth the sum in the note or obligation declared upon, with the endorsements and dates thereof, the amount of the account, in covenant what sum is demanded in damages, and for what; and in

all cases shall briefly give to the defendant the same information which the declaration gives more at large, and shall contain the substance thereof. *R. S. 366, § 4.*

§ 5. If any defendant is not an inhabitant of this state, and the writ is not served on him in person, but his goods or estate within this state are attached, an attested copy of the writ, with an attested copy of the return, may be given to the defendant, or left at his usual place of abode, or left with his agent lawfully authorized to appear for him, or with his tenant on or near the land attached. *R. S. 366, § 5.*

§ 6. The giving or leaving such copy with the defendant or at his place of abode, shall be proved by the certificate under oath of the officer who made the attachment, or of some proper officer in the state where the defendant lives, or of some other person. *R. S. 366, § 6.*

§ 7. Writs of review and of scire facias may be served, in case the defendant therein is not an inhabitant of this state, on the attorney who appeared for such defendant in the original action, or by giving to such defendant a copy of such writ, and affidavit made thereof. *R. S. 366, § 7.*

§ 8. Any writ or mesne process against any town may be served by giving to the town clerk, if any there be, or leaving at his usual place of abode, an attested copy of the writ; and by giving to one of the selectmen, if any there be, or leaving at his usual place of abode a like copy; or if there be no town clerk or selectman, by giving such copy to one of the principal inhabitants, or leaving the same at his usual place of abode. *R. S. 366, § 8.*

§ 9. Any writ or process against any other corporation or body politic, may be served by leaving an attested copy thereof with the clerk, treasurer or one of the directors, and in case of their absence from the state, with any principal member thereof, or with the agent, overseer or person having the care and control of the corporate property or part thereof, or leaving the same at the usual place of abode of either of them. *R. S. 366, § 9.*

§ 10. Any writ against a county shall be served by leaving an attested copy thereof with the clerk of the court of common pleas, thirty days before the sitting of the court to which such writ is returnable. *R. S. 366, § 10.*

## CHAPTER 5.

### OF ATTACHMENTS.

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| <ol style="list-style-type: none"> <li>1. What property may be attached.</li> <li>2. Property exempt from attachment.</li> <li>3. Contracts, &amp;c., and perishable goods.</li> <li>4. Fixtures, except removable by tenant.</li> <li>5. Articles in actual use.</li> <li>6. Goods already attached not by another officer.</li> <li>7. Subsequent attachments.</li> <li>8. Real estate, how attached.</li> <li>9. Return, evidence of time; town-clerk to minute time.</li> <li>10. What interest held by attachment of real estate.</li> <li>11. Mortgaged property, creditor may tender.</li> <li>12. May demand account of sum due.</li> <li>13. Creditor entitled to conveyance.</li> <li>14. Rights of creditor and debtor, what.</li> <li>15. Attachment not defeated by change of title.</li> <li>16. Shares in corporations, how attached.</li> <li>17. Pews, how attached.</li> <li>18. Franchises, how attached.</li> <li>19. Hay and other bulky articles, how attached.</li> <li>20. Personal property mortgaged, how attached.</li> <li>21. Mortgagee to give account of debt.</li> <li>22. Property sold by consent of parties.</li> </ol> | <ol style="list-style-type: none"> <li>23. Perishable or expensive property to be examined.</li> <li>24. Examiners, how appointed.</li> <li>25. Property sold on their certificate.</li> <li>26. Appraiser, when and how appointed.</li> <li>27. Schedule to be made, and appraisal certified.</li> <li>28. Property restored to debtor on bond.</li> <li>29. Property still liable to attachment.</li> <li>30. Officer to return his doings and bond.</li> <li>31. Bond for benefit of all attaching.</li> <li>32. Bond, how sued.</li> <li>33. Writ to be endorsed.</li> <li>34. Endorsers to be plaintiffs.</li> <li>35. Attachments, how dissolved.</li> <li>36. Not by death, unless estate insolvent.</li> <li>37. Property restored to debtor, when.</li> <li>38. Property, how long holden, and to whom.</li> <li>39. Proceeds, how holden.</li> <li>40. Property, how long holden after judgment in vacation.</li> <li>41. What constitutes an attachment.</li> <li>42. Attachment lost by abandonment.</li> <li>43. Receipters for property attached.</li> <li>44. Liability.</li> </ol> |
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§ 1. All property, real and personal, which is liable to be taken in execution, may be attached and held as security for the judgment the plaintiff may recover. *R. S. ch. 184, p. 367, § 1.*



§ 2. The following goods and property shall be exempted from attachment and execution :

1. The wearing apparel necessary for the use of the debtor and his family ;

2. Comfortable beds, bedsteads and bedding necessary for the debtor, his wife and children ;

3. Household furniture to the value of twenty dollars ;

4. The bibles and school books in use in the family ;

5. One cow and one and a half tons of hay ;

6. One hog and one pig, and the pork of the same when slaughtered ;

7. Tools of his occupation to the value of twenty dollars ;

8. Six sheep and the fleeces of the same ;

9. One cooking stove and the necessary furniture belonging to the same ;

10. Provisions and fuel to the value of twenty dollars ;

11. The uniform, arms and equipments of every officer and private in the militia ;

12. The debtor's interest in one pew in any meeting-house in which he or his family usually worship ;

13. The debtor's interest in one lot or right of burial in any cemetery. *R. S.* 367-8, § 2.

§ 3. Contracts, as promissory notes, bonds, &c., account books and private papers, are not liable to attachment. 12 *Mass. R.* 506, *Oystead v. Shed* ; 15 *Mass. R.* 534, *Bowman v. Wood*.

§ 4. Fixtures which cannot be removed without injury to real estate, except such as have been made by a tenant and which he has a right to remove ; and growing crops before they are fit for harvesting, cannot be attached. 12 *Mass.* 352, *Gale v. Ward*.

§ 5. Chattels in actual use, as wearing apparel when worn, or a horse while the owner is riding him, cannot be attached. *Co. Litt.* 47 ; 3 *Pick.* 368, *Pattee v. Hall* ; 3 *Mass.* 193, *Cooke v. Gibbs*.

§ 6. Goods in actual or constructive possession of an officer cannot be attached by any other officer ; but the second officer is bound to deliver his writ to the first officer, and require him to attach them, except where the attachments are made by leaving a copy with the town clerk. 12 *Mass.* 269, *Thompson v. March* ; 8 *Pick.* 402, *Ashmun v. Williams*.

§ 7. While goods are in the actual possession of the offi-

cer, or his keeper or receiptor, he may make subsequent attachments without retaking the goods; but the liability of the receiptor will not be affected unless he is notified. —16 *Mass.* 181, *Turner v. Austin*.

§ 8. Real estate shall be attached on any writ or mesne process, by the officer leaving an attested copy of such writ and of his return of such attachment thereon, at the dwelling house of the town clerk of the town in which such real estate is situate, or if there is no town clerk, with the clerk of the court of common pleas of the county, without any other act or ceremony. *R. S.* 368, § 3.

§ 9. The officer's return shall always be sufficient evidence that such copy has been so left, and of the time thereof; but the town clerk or clerk of the court shall certify thereon the time when such copy was received, and keep the same on file, and shall receive of the officer therefor seventeen cents. *R. S.* 368, § 4.

§ 10. By an attachment of real estate all the debtor's interest therein shall be held to satisfy the judgment, though such interest be a right of redeeming the same upon a mortgage, or levy, or sale on execution, or for taxes, or a right to receive a conveyance thereof by any contract. *R. S.* 368, § 5.

§ 11. Any creditor attaching such right of redeeming, may at any time while such right exists, as well before as after sale thereof on his execution, pay or tender to the person entitled to the redemption money, the full sum due to him; and, upon such payment or tender, the interest in such real estate derived from such mortgage, levy or sale, shall, as against such attachment and the rights acquired under it, cease. *R. S.* 368, § 6.

§ 12. Such creditor, or the officer serving the writ, may demand of the person entitled to the redemption money, an account under oath of the amount due him; and if such account be not rendered within fifteen days after, or a false account shall be rendered, his said interest in such real estate shall, as against such attachment and the rights acquired under it, cease. *R. S.* 368, § 7.

§ 13. If such creditor, after payment of the redemption money, shall suffer his attachment or levy to be dissolved, or the same shall in any way be defeated, he shall be entitled to receive from the person to whom the payment was made, a good and valid conveyance of his right to such real estate. *R. S.* 368, § 8.

§ 14. If any such person, being requested to make such conveyance and having his reasonable charges therefor paid or tendered to him, shall unreasonably neglect or refuse to make and execute the same, such creditor may maintain an action of assumpsit against such person, to recover the money paid as aforesaid, with interest. The debtor in such case shall be entitled to notice in writing of such conveyance, neglect or refusal; and, after such notice, shall have the same time for redeeming such real estate that he had at the time of attachment. *R. S. 368, § 9.*

§ 15. No attachment of any interest in real estate shall be defeated by any change of the nature of the debtor's right thereto; as by redemption of any mortgage or other incumbrance, or the execution to him of any conveyance pursuant to a contract; but the whole interest of the debtor upon such change shall be held by the attachment. *R. S. 369, § 10.*

§ 16. The share or interest of any person in any corporation may be attached by the officer, by leaving an attested copy of the writ and of his return thereon with the clerk, treasurer, cashier, agent or person having the care of the property of such corporation, or at his usual place of abode; and the dividends becoming due afterwards shall be holden by such attachment. *R. S. 369, § 11.*

§ 17. Pews or seats in meeting houses or places of public worship shall be deemed personal property, and may be attached by leaving an attested copy of the writ and of the officer's return thereon, with the town clerk of the town in which such meeting house is. *R. S. 369, § 12.*

§ 18. The franchise of any corporation authorized to receive tolls, so far as relates to the rights to receive tolls, with all the privileges and immunities belonging thereto, may be attached by leaving an attested copy of the writ and of the officer's return thereon with the clerk, treasurer or a director of such corporation. *R. S. 369, § 13.*

§ 19. The officer attaching grain unthreshed, hay or potatoes, any lumber or fuel, bricks, stone, lime, gypsum or ore, manufacturing or other machinery, bark, or hides in the process of tanning, may leave an attested copy of the writ and of his return of such attachment thereon, as in the attachment of real estate; and in such case the attachment shall not be dissolved or defeated by any neglect of the officer to retain actual possession of the property. *R. S. 369, § 14.*

§ 20. Any personal property not exempt from attachment, subject to any mortgage, pledge or lien, may be attached as the property of a mortgager, pledger or general owner, the attaching creditor or officer paying or tendering to the mortgagee, pledgee or holder the amount for which said property is holden, as ascertained in the mode provided by the following section. *R. S. 369, § 15.*

§ 21. Such creditor or officer may demand of the mortgagee, pledgee or holder, an account on oath of the amount due upon the debt or demand secured by such mortgage, pledge or lien; and the officer may retain such property in his custody until the same is given, without tender or payment; and if such account shall not be given within fifteen days after such demand, or if a false account is given, such property may be holden discharged from such mortgage, pledge or lien. *R. S. 369, § 16.*

§ 22. Personal property attached shall be sold by the officer before judgment, if the parties consent thereto in writing; and such sale shall be made in the same manner as sales of property taken on execution, unless a different mode shall be agreed on by the parties. *R. S. 369, § 17.*

§ 23. When living animals, or goods liable to perish or waste, or to be greatly reduced in value by keeping, or which cannot be kept without great expense, are attached, and the parties do not consent to a sale, the officer, on application of either of the parties, may cause the same to be examined in the manner following:—*R. S. 370, § 18.*

§ 24. Three disinterested persons, conversant with the nature and value of such property, shall be appointed—one by the officer, one by the creditor and one by the debtor. The officer shall appoint an examiner for the creditor or debtor, in any case where he might appoint an appraiser for the debtor upon the levy of an execution on real estate.—*R. S. 370, § 19.*

§ 25. The persons so appointed being sworn to the faithful discharge of their duties, shall examine the property and decide what part of the property is such as is described in the second preceding section, and certify the same to the officer, and he shall thereupon advertise and sell the property so certified, in the same manner as if the parties consented thereto. *R. S. 370, § 20.*

§ 26. If the debtor shall, before such notice of sale, request any personal property attached to be restored to him,

and the officer shall not agree with him as to the value thereof, the officer shall cause three disinterested persons to be appointed to appraise the same, who shall be appointed and sworn in the manner provided in the two preceding sections. *R. S. 370, § 21.*

§ 27. The officer shall cause a schedule of such property to be prepared, and the persons so appointed shall appraise the same at their cash value at that time, and make a certificate of their doings on such schedule. *R. S. 370, § 22.*

§ 28. The property so appraised, or the value of which has been agreed on by the officer and debtor, shall be restored to the debtor upon his giving a bond to the sheriff, if the attachment is made by him or his deputy, otherwise to the coroner or constable making the same, in sufficient penalty, with sufficient sureties, conditioned to pay the appraised or agreed value thereof, or so much as may be necessary towards the satisfaction of any executions for the payment of which the property or its proceeds are by law holden. *R. S. 370, § 23.*

§ 29. Property attached shall be deemed to remain in the custody of the officer, so far as to be liable to attachment in the same manner it would have been if it had remained in his hands specifically, notwithstanding the same may have been sold or restored to the debtor, or taken from the officer by any writ of replevin. *R. S. 370, § 24.*

§ 30. The officer shall make return of his doings upon every writ where property is sold by consent, or upon such certificate as aforesaid, or restored to the debtor; and in those cases the bond taken shall be returned with the writ on which the first attachment is made, and shall be deemed a record of the court to which such writ is returnable.—*R. S. 370, § 25.*

§ 31. Every bond given by the debtor, and every replevin bond in the cases aforesaid, shall be deemed to be given for the benefit of all persons who have attached or may attach the same, to the full value of the property. *R. S. 371, § 26.*

§ 32. In case such bond shall be forfeited, any attaching creditor or his representative may bring a writ of scire facias thereon, within two years after the cause of such action shall accrue, and not afterwards. Two or more creditors may join in such action, and separate executions shall be awarded to each for the amount due to them respectively. *R. S. 371, § 27.*

§ 33. Any party interested may maintain an action of debt on such bond, in the name of the officer to whom the same is payable, within the period above limited. The name of such party shall be endorsed on the writ; and any other party may cause his name to be so endorsed at any time by leave of the court. *R. S. 371, § 28.*

§ 34. The persons whose names are so endorsed shall be deemed the plaintiffs for every purpose, and execution shall issue in favor of each for the amount due to them respectively, and against them for costs, if judgment should be rendered for the defendants in such action. *R. S. 371, § 29.*

§ 35. When any judgment shall be rendered for the defendant, upon which execution may issue, or when the action shall be compromised or dismissed, the attachment made in such action shall be dissolved thereby. *R. S. 371, § 30.*

§ 36. Attachments shall be dissolved by the death of the defendant, in case his estate shall be decreed to be administered as an insolvent estate; but not otherwise, if the cause of action by law survives. *R. S. 371, § 31.*

§ 37. In case the attachments on any property are dissolved, or if the same has been sold, the money arising from the sale thereof, deducting the charges and expenses of sale, shall be restored to the debtor or his personal representative upon request; or if the same has been restored to the debtor on his bond, the said bond shall be void. *R. S. 371, § 32.*

§ 38. Property attached shall be holden until the expiration of thirty days from the time of rendering such judgment in the action, in favor of the plaintiff, that execution may issue thereon; and if there are several attachments the property shall be holden to the creditors in the order in which their attachments were made. *R. S. 371, § 33.*

§ 39. The proceeds of property sold on any writ, and the amount secured by bond when property attached is restored to the debtor, shall be holden to pay the executions issuing in the actions in which the attachments were made, in the order in which they were made, if demanded by the officer to whom such execution may be committed, within thirty days after judgment is rendered. *R. S. 371, § 34.*

§ 40. If judgment shall be rendered in vacation by direction of the court as of a previous term, the clerk shall enter of record the day on which the order of court is dated, and all property attached shall be holden until the expiration of thirty days from that date. *R. S. 372, § 35.*

§ 41. To constitute an attachment, it is not necessary that the officer should touch or move the articles; as, if an officer enters a store or house, and declares his intention of attaching all the goods, this is a sufficient attachment of all that are in his power, if he proceeds to take an account of them and secure them without unreasonable delay. 12 *Mass.* 495, *Train v. Wellington*; 2 *N. H. R.* 317, *Huntington v. Blaisdell*.

§ 42. An attachment is lost, if the officer or receiptor permit the property to remain with the debtor, or to return into his possession; but the use by the debtor or his family of such articles as will not be injured by the use, will not vacate the attachment if done by permission of the officer, and while he retains the control of them. 5 *N. H. R.* 527, *Dunklee v. Fales*; 14 *Mass.* 190, *Bridge v. Wyman*; 12 *Mass.* 495, *as above*; 13 *Pick.* 139, *Robinson v. Mansfield*.

§ 43. The officer is not bound to deliver the goods to the debtor or his friends upon a receipt; but he will be discharged from liability if he so delivers them to persons then responsible, though they fail afterwards; and he will be responsible if he so conducts with the property as unnecessarily to enhance the expense. 11 *Mass.* 247, *Phillips v. Bridge*; 3 *N. H. R.* 210, *Barrett v. White*; 5 *N. H. R.* 433, *Runlett v. Bell*.

§ 44. The receiptor remains liable upon his receipt, for the amount of the property, if he has not re-delivered it to the debtor, though the action may be at an end, or the attachment is discharged; but if he has re-delivered the property to the debtor he is not liable beyond the amount of the judgment recovered against the debtor.

## CHAPTER 6.

### OF ARRESTS AND BAIL.

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| <ol style="list-style-type: none"> <li>1. Females not to be arrested for debt.</li> <li>2. Nor voters, on days of election.</li> <li>3. Nor officers and soldiers on duty.</li> <li>4. Nor administrators for causes of action against deceased.</li> <li>5. Nor sheriffs while in office.</li> <li>6. Nor defendants in real actions.</li> <li>7. Nor members of the legislature.</li> <li>8. Nor ambassadors nor members of congress.</li> <li>9. Nor parties, &amp;c., attending court.</li> <li>10. Nor upon a contract, where damages under \$13.33.</li> <li>11. Nor on contract since March 1, 1841, unless on affidavit.</li> <li>12. Persons arrested discharged by justices, how.</li> </ol> | <ol style="list-style-type: none"> <li>13. Court may discharge debtor, how.</li> <li>14. Discharge does not affect debt</li> <li>15. Court may permit arrest and bail pending a suit.</li> <li>16. Arrests, how made.</li> <li>17. By assistant of officer.</li> <li>18. On what writs.</li> <li>19. Bail, how taken on writ.</li> <li>20. Sufficiency of bail.</li> <li>21. Bail, how after commitment.</li> <li>22. Names and residence of bail to be returned.</li> <li>23. Persons imprisoned held thirty days after judgment.</li> <li>24. When officer may break buildings.</li> <li>25. To take a stranger or his property.</li> <li>26. To retake a prisoner escaped.</li> <li>27. To demand entrance.</li> <li>28. What deemed a breaking.</li> <li>29. What a dwelling-house.</li> </ol> |
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#### *Forms of Returns.*

§ 1. No female shall be arrested or imprisoned upon any writ in any action founded on contract. *R. S. p. 372, ch. 185, § 1.*

§ 2. No person entitled to vote at any town meeting shall be liable to arrest upon any civil process on the day on which such meeting is held. *R. S. 372, § 2.*

§ 3. No officer or soldier shall be liable to arrest upon any civil process while going to, returning from, or attending at any military exercise or parade, or any court martial or court of inquiry which it shall be his duty to attend.—*R. S. 372, § 3.*

§ 4. No executor or administrator shall be liable to arrest for any cause of action against any person deceased. *R. S. 372, § 4.*

§ 5. No sheriff shall be liable to arrest upon any civil process while he remains in office. *R. S. 372, § 5.*

§ 6. No person shall be liable to arrest on mesne pro-



cess in any real action or action of ejectment. *R. S. 372, § 6.*

§ 7. No member of the house of representatives or senate shall be arrested or held to bail on mesne process during his going to, returning from or attending upon the court.—*Cons., Pt. 2, § 21 ; Laws, 26.*

§ 8. Ambassadors, and other foreign ministers and their servants, and members of congress, while attending a session, and while going and returning, are exempt from arrest by the laws of the United States. *U. S. Cons., Art. 1, § 6 ; Laws, 4.*

§ 9. Parties to a suit, witnesses, counsel, jurors and others who are required to attend, are exempt from arrest while bona fide attending any court or arbitration, and while going and returning. The officer in such case is not a trespasser, but the party or his bail will be discharged by the court upon motion, if made at the earliest opportunity ; otherwise the objection will be considered waived. *19 Pick. 267, Chaffin v. Jones ; 6 Mass. 245, ex parte McNeil.*

§ 10. No person shall be arrested or imprisoned on any writ in any action founded on a contract, unless the debt or damage for the recovery of which such action may be brought, exclusive of all the costs, shall exceed the sum of thirteen dollars and thirty-three cents. *R. S. 372, § 7.*

§ 11. No person shall be arrested upon any writ or execution founded on a contract made after the first day of March, one thousand eight hundred and forty-one, unless the plaintiff or some person in his behalf shall make an affidavit before a justice, on the back of such writ, that in his belief the defendant is justly indebted to him in a certain sum exceeding thirteen dollars and thirty-three cents, and that he conceals his property so that no attachment or levy can be made, and that there is good reason to believe he is about to leave the state to avoid the payment of his debts. *R. S. 372, § 8.*

§ 12. The defendant in such case, when arrested, may require the officer making the arrest to carry him before two justices, one of whom shall be of the quorum ; and such justices, upon considering his affidavit and such evidence as may be laid before them, if they believe he does not so conceal his property and has no intention to leave the state, may make an order for his discharge upon the writ or execution, and he shall be released. *R. S. 372, § 9.*

§ 13. At the return term of such writ the defendant may move the court to be discharged, or that his bail or sureties may be discharged; and the court, upon satisfactory evidence that the defendant does not conceal his estate and does not intend to leave the state, may order such discharge. *R. S. 373, § 10.*

§ 14. No such discharge nor any discharge of any person arrested or imprisoned on execution, shall discharge the debt or judgment upon which the execution issued. *R. S. 373, § 11.*

§ 15. In any case when no sufficient attachment has been made, and there is no sufficient bail, the court or any justice thereof, upon motion, and satisfactory evidence that the defendant intends to leave the state, may order a *capias* to issue, on which the defendant may be arrested and held to bail as on an original writ. *R. S. 373, § 12.*

§ 16. Arrests are usually made by seizing or putting the hand on the person; and any touch, however slight, even through a window, is sufficient. If the officer has the party in his power, or if he submits himself to the officer, actual touch is not necessary; but mere words—as, “I arrest you”—do not make an arrest. 1 *Wend. R. 210, Bissell v. Gould*; 1 *Salk. 79, Genner v. Sparks*; 9 *N. H. R. 491, Pike v. Hanson.*

§ 17. An arrest may be made by any assistant of an officer, though out of his sight, if the officer is near and acting in the arrest. 13 *Mass. 321, Com'th v. Field.*

§ 18. A party will be deemed under arrest on all the writs in the officer's hands, or which may be delivered to him for that purpose before his discharge.

§ 19. When any person shall be arrested on mesne process he shall be committed to jail, unless he shall procure one or more persons of sufficient ability, to the satisfaction of the officer, to become his bail, by endorsing their names or signatures, as bail, on the back of the writ. *R. S. 373, § 13.*

§ 20. If bail are sufficient at the time they are taken, the officer is not responsible if they afterwards become insufficient. 12 *Mass. 127, Rice v. Hosmer.*

§ 21. Any person committed to jail before judgment by any officer, or by his bail, or upon a surrender by his bail in court, shall be discharged upon procuring one or more persons of sufficient ability, to the satisfaction of the keeper

of the jail, to become his bail by endorsing their names or signatures, as bail, on the back of the copy or order of court on which such person shall be detained in jail; and the jailer shall make return of such copy or order, and his doings thereon, into the court; and such endorsement and return shall be of the same force and effect as if made on the original writ. *R. S. 373, § 14.*

§ 22. The officer taking any person as bail shall return his name and place of abode, upon the writ, copy or order of court on which such person shall be arrested or detained in prison. *R. S. 373, § 15.*

§ 23. If any person shall be committed to prison by the officer or his bail, or upon surrender by his bail, he shall, unless he shall be bailed before the judgment, be held in prison until the expiration of thirty days after the rendition of such judgment for the plaintiff as execution may issue upon, unless sooner legally discharged. *R. S. 373, § 16.*

§ 24. Upon civil process an officer cannot break the outer door or window of a dwelling house for the purpose of arresting the owner, or his children, or boarders who have made his house their home, or attaching their property; but he may break any other building. *1 Cowper 1, Lee v. Gansel; 13 Mass. 523, Oystead v. Shed; 16 Johns. 287, Haggerty v. Wilber.*

§ 25. He may break a dwelling house for the purpose of arresting any other person, who has taken refuge there, or attaching his property therein, if he actually find them there. If he breaks in such case upon mere suspicion, and does not find them, he is a trespasser. *3 B. & P. 223, Ratcliffe v. Burton; 16 Pick. 553, Platt v. Brown.*

§ 26. An officer may break open a dwelling house for the purpose of arresting the owner, or any person who has been lawfully arrested and has escaped there. And an officer, when once lawfully in a house, may break open inner doors, trunks, closets, &c. *17 Johns. 127, Hubbard v. Mack; Fas. C. L. 320; 5 Johns. 352, Williams v. Spencer.*

§ 27. In most cases it is necessary, and is always prudent, for the officer to state his business and character, and demand that the doors, &c., should be opened, before resorting to force. A person not generally known as an officer is bound to show his precept, if requested; but a known officer is not. And if a party immediately resists, he, and all

who aid him, do it at their peril; and the officer is not bound to show his authority. 13 *Mass.* 321, *Com'th v. Field*.

§ 28. Raising the latch of the door, lifting a window, passing down the chimney, &c., is deemed a breaking. Entering under any false pretence—as, of having a search warrant—or by any fraud, has the same effect as a breaking of the house, the arrest would be set aside, and the officer liable as a trespasser. 3 *Sel. N. P.* 1123; *Metcalf's Yel.* 29, a; 12 *Pick.* 270, *Ilsey v. Nichols*.

§ 29. A part of a building in which the occupant has a distinct property, is deemed a separate dwelling, if occupied as such. No building is deemed a dwelling until it is inhabited, though a temporary absence of its inhabitants will not take away its privilege: nor will a mere use of a building for lodging on a particular occasion make it a dwelling. *Cowper* 1, *Lee v. Gansel*; *Russ.* 926.

## FORMS OF RETURNS,

AND OTHER PROCEEDINGS RELATING TO THE SERVICE OF WRITS.

### WRIT OF SUMMONS, &c.

#### 1. By reading.

MERRIMACK ss., May 1, 1843. I have summoned the within named Samuel Jones, as within commanded, by reading to him this writ.  
J. P., Deputy Sheriff.

|       |                   |            |
|-------|-------------------|------------|
| Fees. | Service,          | ·23 cents. |
|       | Travel, one mile, | ·5         |
|       |                   | —          |
|       |                   | 28 cents.  |

#### 2. By giving a copy.

M — ss., — 184—. I have summoned the within named J. D., as within commanded, by giving to him an attested copy of this writ.  
J. P., Deputy Sheriff.

|       |                    |             |
|-------|--------------------|-------------|
| Fees. | Service,           | ·23 cents.  |
|       | Travel, six miles, | ·30         |
|       | Copy,              | ·50         |
|       |                    | —           |
|       |                    | 1·03 cents. |

#### 3. By leaving a copy.

M — ss., —, 184—. I have summoned the within named J. D., as

within commanded, by leaving at his usual place of abode an attested copy of this writ.

J. P., *Deputy Sheriff*.

**FEEs.** Service, .23 cents.  
Travel, seven miles, .35  
Copy, .50

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\$1.08

The same forms are to be used in the service of writs of scire facias and review.

The copy should be attested in this form:

A true copy: Attest—

J. P., *Deputy Sheriff*.

The indorsement of the writ should be attested in the same form.

### SERVICE ON ATTORNEY,

#### IN ACTIONS OF REVIEW AND SCIRE FACIAS.

##### 4. *By giving a copy.*

M — ss., — 184—. I have summoned the within named J. D., as within commanded, by giving to G. R., Esq., the attorney who appeared for said J. D. in the original action, an attested copy of this writ.

J. P., *Deputy Sheriff*.

**FEEs.** Service, .23 cents.  
Travel, three miles, .15  
Copy, .50

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\$0.88

##### 5. *By reading.*

M — ss., — 184—. I have summoned the within named J. D., as within commanded, by reading this writ to G. R., Esq., the attorney who appeared for said J. D. in the original action.

J. P., *Deputy Sheriff*.

**FEEs.** Service, .23  
Travel, eleven miles, .55

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\$0.78

##### 6. *By leaving a copy.*

M — ss., — 184—. I have summoned the within named J. D., as within commanded, by leaving at the usual place of abode of G. R., Esq., the attorney who appeared for the said J. D. in the original action, an attested copy of this writ.

J. P., *Deputy Sheriff*.

**FEEs.** Service, .23  
Travel, nine miles, .45  
Copy, .50

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\$1.18

ON A TOWN.

7. *On town clerk and a selectman.*

H — ss., — 184—. I have summoned the town of M., within named, as within commanded, by giving to J. M. N., town clerk of said town, an attested copy of this writ, and by leaving at the usual place of abode of M. F., one of the selectmen of said town, a like copy.

M. M., *Sheriff.*

|              |                    |            |
|--------------|--------------------|------------|
| <b>FEES.</b> | Two services,      | .46 cents. |
|              | Travel, six miles, | .30        |
|              | Two copies,        | 1.00       |
|              |                    | <hr/>      |
|              |                    | \$1.76     |

8. *Upon one selectman.*

H — ss., — 184—. I have summoned the said town of M., as within commanded, by giving to M. F., one of the selectmen of said town, an attested copy of this writ, there being no town clerk of said town.

M. M., *Sheriff.*

|              |                    |        |
|--------------|--------------------|--------|
| <b>FEES.</b> | Service,           | .23    |
|              | Travel, six miles, | .30    |
|              | Copy,              | .50    |
|              |                    | <hr/>  |
|              |                    | \$1.03 |

9. *Upon a principal inhabitant.*

H — ss., — 184—. I have summoned the said town of M., as within commanded, by leaving at the usual place of abode of (or giving to) B. M. F., Esq., one of the principal inhabitants of said town, an attested copy of this writ, there being no town clerk nor selectman of said town.

M. M., *Sheriff.*

|              |                    |        |
|--------------|--------------------|--------|
| <b>FEES.</b> | Service,           | .23    |
|              | Travel, two miles, | .10    |
|              | Copy,              | 1.00   |
|              |                    | <hr/>  |
|              |                    | \$1.33 |

ON CORPORATIONS.

10. *On the clerk, treasurer, or one of the directors.*

M — ss., — 1843. I have summoned the president, directors and company of the — Bank, within named, as within commanded, by leaving at the usual place of abode of (or giving to) A. F., Esq., clerk of said corporation, (treasurer, or one of the directors of said corporation) an attested copy of this writ.

R. P., *Sheriff.*

|              |                      |            |
|--------------|----------------------|------------|
| <b>FEES.</b> | Service,             | .23 cents. |
|              | Travel, three miles, | .15        |
|              | Copy,                | .50        |
|              |                      | <hr/>      |
|              |                      | \$0.88     |

11. *On a principal member.*

M — ss., — 184—. I have summoned the — Manufacturing Company, within named, as within commanded, by leaving at the usual place of abode of (or giving to) A. B., one of the principal members of said corporation, an attested copy of this writ; the clerk, treasurer and directors of said corporation being absent from the state.

R. P., *Sheriff.*

|              |                             |        |
|--------------|-----------------------------|--------|
| <b>FEES.</b> | Service,                    | .23    |
|              | Travel, twenty-three miles, | 1.15   |
|              | Copy,                       | .50    |
|              |                             | <hr/>  |
|              |                             | \$1.88 |

12. If the service be made on the agent, &c., say, *instead of* "one of the principal members of said corporation;" "the overseer of the corporate property of said corporation;" "the agent of said corporation;" "the person having the care and control of a part of the corporate property of said corporation." It would be sufficient to say: I have summoned the *within named corporation, &c.*

13. *On the county.*

R — ss., — 184—. I have summoned the said county of R., as within commanded, by leaving with I. B. H., Esq., clerk of the court of common pleas for said county, an attested copy of this writ.

S. W. D., *Deputy Sheriff.*

|              |                      |        |
|--------------|----------------------|--------|
| <b>FEES.</b> | Service,             | .23    |
|              | Travel, three miles, | .15    |
|              | Copy,                | .50    |
|              |                      | <hr/>  |
|              |                      | \$0.88 |

## WRITS OF ATTACHMENT.

14. *Return of attachment and summons.*

C — ss., May 10, 1843. I attached one horse, two oxen and ten sheep, the property of the within named J. D., and left at his usual place of abode (or gave to him) a summons in the form prescribed by law, with my name and office indorsed by me thereon.

J. W., *Constable of K.*

|              |                     |        |
|--------------|---------------------|--------|
| <b>FEES.</b> | Service,            | .23    |
|              | Travel, four miles, | .20    |
|              |                     | <hr/>  |
|              |                     | \$0.43 |

If the property attached consists of many articles, it may be convenient to annex a schedule of them, and say: "I have attached the goods and chattels enumerated in the schedule hereto annexed," as, &c.

15. *On several defendants.*

O — ss., — 184—. I attached one waggon, the property of the within named A. B.; one horse, the property of the within named C. D., &c., and left at the usual place of abode of said A. B., and gave to said C. D., each a summons in the form prescribed by law, with my name and office indorsed by me thereon.

|              |                     |   |                               |
|--------------|---------------------|---|-------------------------------|
| <b>FEES.</b> | Two services,       | — | E. M., <i>Deputy Sheriff.</i> |
|              | Travel, nine miles, | — |                               |

16. *Return of subsequent attachment.*

H — ss., — — 184—. I attached, as the property of the within named J. D., four oxen, six cows, three yearling steers, twelve sheep, one swine and three tons of hay, the same being subject to former attachments on writs against said J. D. in favor of C. D., E. F. and G. H., and left, &c.

M. M., Sheriff.

Fees. Service, —  
Travel, —

*Receipt for property attached.*

June 5th, 1843. Received of M. M., sheriff of the county of Hillsborough, for safe keeping, the goods and chattels following, attached by him as the property of J. D., in an action in favor of N. S., returnable at the court of common pleas for said county, October term, 1843, to wit.:

all of the value of — dollars; and I hereby agree to deliver the same to said M. M., or order, upon demand, in good order and condition as the same are now in, free from all charge and expense to said M. M.

J. S.

*Acknowledgment of demand.*

I hereby acknowledge that the goods and chattels mentioned in the within receipt, were this day demanded of me by said M. M., and that the same were not delivered to him.

Oct. 31, 1843.

J. S.

17. *When the defendant is not an inhabitant of the state.*

C — ss., — 184—. I attached one cow, the property of the within named J. D.; and the defendant not being an inhabitant of this state, I have made no further service of this writ.

J. W., Constable of K.

Fees. Service, —  
Travel, —

In this case, if the officer, or any other person, gives or leaves a copy to or for the defendant, a certificate may be made in the following form:

I certify, that on the — day of —, 184—, I gave to the within named J. D.; or, I left at the usual place of abode of the within named J. D., a true copy of this writ, with a true copy of the return thereon, attested by me, [or by J. W., constable of K.]

Signed: — —.

C — ss., — — 184—. Personally appeared — —, and made oath that the foregoing certificate, by him subscribed, is true.

Before me, — —, Justice of the Peace.

18. *When the defendant's residence is unknown.*

C — ss., — —, 184—. I attached one ton of plaster of Paris, property of the within named J. D.; and the place of residence of the said J. D. being unknown to me, I have made no farther service of this writ.

J. W., Constable of K.

Fees. Service, —  
Travel, —



19. *On corporations, towns, &c.*

H — ss., — 184—. I attached one power loom, the property of the within named — Manufacturing Company, and summoned the said — Manufacturing Company, as within commanded, by leaving at the usual place of abode of (or giving to) R. S., clerk of said corporation, an attested copy of this writ.

M. M., Sheriff.

|       |                    |        |
|-------|--------------------|--------|
| Fees. | Service,           | .23    |
|       | Travel, six miles, | .30    |
|       | Copy,              | 1.00   |
|       |                    | <hr/>  |
|       |                    | \$1.53 |

The form of the last clause, commencing, "and summoned," may be varied where the service is made on the treasurer, a director, agent, &c., in the same manner as the return on a writ of summons.

20. *If the summons is served after the attachment.*

H — ss., —, 184—. I attached a table, the property of the within named J. D., and on the — day of —, 184—, I left at the usual place of abode of said J. D., a summons in the form prescribed by law, with my name and office indorsed by me thereon.

M. M., Sheriff.

|       |                      |        |
|-------|----------------------|--------|
| Fees. | Service,             | .23    |
|       | Travel, seven miles, | .35    |
|       |                      | <hr/>  |
|       |                      | \$0.58 |

21. *Separate returns.*

H — ss., —, 184—. I attached one box stove, the property of the within named J. D.

M. M., Sheriff.

H — ss., —, 184—. I gave to the within named J. D. a summons in the form prescribed by law, with my name and office indorsed by me thereon.

M. M., Sheriff.

|       |                       |        |
|-------|-----------------------|--------|
| Fees. | Service,              | .23    |
|       | Travel, twelve miles, | .60    |
|       |                       | <hr/>  |
|       |                       | \$0.83 |

22. *Of real estate.*

H — ss., A —, 184—. I attached, as the estate of the within named J. D., a certain tract of land, situate in B., in said county, containing — acres; bounded northerly on land of A. B.; easterly on the highway; southerly on the highway and on land of C. D., and westerly on land of E. F., by leaving an attested copy of this writ and of this my return thereon, at the dwelling house of P. C., town clerk of said town of B., at ten minutes after one o'clock, in the afternoon of said day.

M. M., Sheriff.

H — ss., — 184—. I left at the usual place of abode of the within

named J. D. a summons in the form prescribed by law, with my name and office indorsed by me thereon. M. M., Sheriff.

|       |                    |        |
|-------|--------------------|--------|
| FEES. | Service,           | .23    |
|       | Travel, six miles, | .30    |
|       | Copy,              | .75    |
|       | Travel to T. C.,   | .25    |
|       | Paid T. C.,        | .17    |
|       |                    | <hr/>  |
|       |                    | \$1.70 |

23. H — ss., — 184—. “I attached, as the estate of the within named J. D., a certain lot of land, with the buildings thereon, situate on L. street, in said M., known as Lot No. — on said street, by leaving,” &c.; or,

“The homestead farm whereon the within named J. D. now dwells, situate in said —, containing — acres, more or less, by leaving,” &c.

*Note.* In the case of *Howard v. Daniels*, 2 N. H. R. 137, it was decided that any description of real estate attached, which would pass the same in a deed, would be sufficient in the officer's return. It may be prudent for an officer who has instructions to attach all a debtor's real estate—after describing every tract he can ascertain to be the debtor's, as accurately as practicable, to insert a general clause—“and all other real estate owned by said (def.) in the town of M.”

24. *All real estate in a town.*

H — ss., — 184—. I attached, as the estate of the within named J. D., six acres of meadow in M., bounded south on C. Brook; west on the highway; north and east by land of J. W. Also, 37 acres of wood land in said M., being the south part of lot No. 34, in the 4th division of lots in C.; also, a dwelling house and lot on — street in said M., now occupied by said J. D.; and all other real estate owned by said J. D. in said town of M., by leaving an attested copy of this writ and of this my return thereon, at the dwelling house of J. M. N., town clerk of said M., at — minutes after — o'clock in the — noon of said day. J. M. R., Deputy Sheriff.

25. *Where a copy is left with a tenant.*

H — ss., — 184—. I attached, as the estate of the within named J. D., one fourth of the sawmill situate in —, in said county, known by the name of the Runnells Sawmill, with the privileges appurtenant thereto; and the said defendant not being an inhabitant of this state, I left with P. Q., his tenant upon the land attached, an attested copy of the writ, with an attested copy of the return indorsed thereon.

J. M. R., Deputy Sheriff.

|       |             |   |
|-------|-------------|---|
| FEES. | Service,    | — |
|       | Travel,     | — |
|       | Two copies, | — |

26. *Of shares in corporations.*

H — ss., — 184-. I attached, as the property of the within named J. D., five shares in the capital stock of the Granite Bridge, numbered — to —, inclusive, by leaving with D. M., treasurer of said corporation, an attested copy of this writ, with an attested copy of this my return thereon, at — minutes past — o'clock in the — noon of said day; and delivered to said J. D. a summons in the form prescribed by law, with my name and office indorsed by me thereon.

M. M., Sheriff.

|       |                   |        |
|-------|-------------------|--------|
| Fees. | Service,          | .23    |
|       | Travel, one mile, | .5     |
|       | Copy,             | .75    |
|       |                   | ---    |
|       |                   | \$1-03 |

The corporation should be described in the return by the corporate name: as, "The President, Directors and Company of the N. Bank;" "The Ashuelot Manufacturing Company;" "The Londonderry Turnpike Corporation," &c.

The person with whom the copy is left may be described as "the clerk," "the cashier," "the agent" of said corporation;" or, as "the person having the care of the property of such corporation," as the case may be.

27. *Of Pews.*

S — ss., — 184-. I attached, as the property of the within named J. D., one pew, numbered —, on the lower floor of the Meeting-house of the First Baptist Society in D., by leaving an attested copy of this writ, and of this my return indorsed thereon, at the dwelling-house of P. M., town clerk of said D., at — o'clock in the — noon of said day, and at the usual place of abode of said J. D. a summons in the form by law prescribed, with my name and office by me indorsed thereon.

B. W. J., Sheriff.

|       |                       |        |
|-------|-----------------------|--------|
| Fees. | Service,              | .23    |
|       | Travel, twelve miles, | .60    |
|       | Copy,                 | .75    |
|       |                       | ---    |
|       |                       | \$1-58 |

28. *Of Franchise of Tolls.*

R — ss., — 184-. I attached, as the property of the within named Chester Turnpike Corporation, the franchise of said corporation so far as relates to the right to take tolls, with all the privileges and immunities belonging thereto, and summoned said corporation as within commanded by leaving an attested copy of this writ, and of this my return indorsed thereon, with J. E., clerk of said corporation.

B. J., Sheriff.

|       |                         |        |
|-------|-------------------------|--------|
| Fees. | Service,                | .23    |
|       | Travel, fourteen miles, | .70    |
|       | Copy,                   | .75    |
|       |                         | ---    |
|       |                         | \$1-68 |

29. *Of bulky articles, see § 14, R. S. 369.*

H — ss., — 184—. I attached, as the property of the within named J. D., six tons of hay, all the grain unthreshed, estimated at —, &c., situate in the barn of the said J. D., in G., and left an attested copy of this writ and of this my return indorsed thereon, at the dwelling-house of P. Y., town clerk of said G., at — o'clock in the — noon of said day.

M. M., *Sheriff.*

30. *Of personal property mortgaged.*

G — ss., — 184—. I attached, as the property of the within named J. D., one two horse waggon, subject to a mortgage to one J. S.; and on the same day I demanded of said J. S. an account on oath of the amount due upon the debt or demand secured by said mortgage; and such account not being given to me, I retained said property in my custody until the — day of —, 1843, on which day the said J. S. gave to me an account on oath as follows:

To W. D. M., *Deputy Sheriff*: Sir: The amount due upon the debt secured by the mortgage made to me by J. D., of the waggon now attached by you, is fifteen dollars sixty-three cents.

J. S.

G — ss., — 184—. Personally appeared J. S., and made oath that the above account by him subscribed is true.

Before me: J. P., *Justice of the Peace.*

Whereupon I paid said sum of fifteen dollars sixty three cents to said J. S.

W. D. M., *Deputy Sheriff.*

Fees. Service, .23  
Travel, two miles, .10

G — ss., — 184—. I left at the usual place of abode of said J. D. a summons in the form prescribed by law, with my name and office indorsed by me thereon.

W. D. M., *Deputy Sheriff.*

31. *Form of demand.*

G — ss., A — 184—. Mr. J. S.: Sir—I have this day attached a two horse waggon, as the property of J. D., said to be subject to a mortgage to you. I now demand of you an account under oath of the amount of the debt or demand secured by said mortgage.

W. D. M., *Deputy Sheriff.*

32. *If no account is given.*

G — ss., —, 1843. I attached one black horse, as the property of the within named J. D., subject to a lien to one J. S. for his keeping; and on the same day I demanded of said J. S. an account on oath of the amount of the debt or demand secured by the lien aforesaid, and such account not being given to me by said J. S. within fifteen days, nor at any time afterwards, I still retain the said horse under said attachment; and on the — day of — I gave to said J. D. a summons in the form prescribed by law, with my name and office indorsed by me thereon.

W. D. M., *Deputy Sheriff.*

Fees. Service, .23  
Travel, six miles, .30

As in these cases, and many others where a dispute may arise as to property attached, the form is here inserted of

33. *A bond of indemnity.*

KNOW ALL MEN BY THESE PRESENTS, that we, A. B., C. D. and E. F., all of C., in the county of G., and state of New-Hampshire, are held and firmly bound to W. D. M., of W., in said county, in the sum of — dollars, to the payment whereof we jointly and severally bind ourselves and our heirs firmly by these presents. Sealed with our seals, and dated the — day of —, 184--.

THE CONDITION OF THIS OBLIGATION IS, that whereas the said A. B. has requested the said W. D. M., a deputy sheriff for the said county of G., to attach certain goods and chattels, to wit. — as the property of J. D. upon a writ in favor of said A. B. against said J. D., returnable at — on —, and disputes may arise in relation to the same: Now if said A. B. shall indemnify and save harmless said W. D. M. from all loss, cost, damage and expense to which he may be subjected by reason of attaching said goods and chattels, or of any suit or action which may be brought therefor, then this obligation shall be void.

A. B. (L. S.)  
C. D. (L. S.)  
E. F. (L. S.)

34. *Condition in different form.*

The condition of this obligation is such, that whereas said W. D. M., a deputy sheriff of said county of G., has, at the request of A. B., attached certain goods and chattels as the property of J. D. upon a writ in favor of said A. B. against said J. D., returnable at — on —, enumerated in the return upon said writ, and disputes have arisen in regard to the same, Now, &c., as in the last form.

35. *Condition for abandoning goods attached.*

THE CONDITION OF THIS OBLIGATION IS, that whereas said W. D. M., a deputy sheriff of said county of G., has attached certain goods and chattels as the property of J. D., upon a writ in favor of A. B. against said J. D., enumerated in the return upon said writ, and the said goods and chattels are claimed by said A. M. as his property: Now if said A. M. shall indemnify and save harmless said W. D. M. from all loss, cost, damage and expense to which he may be subjected by reason of abandoning said attachment and delivering said goods and chattels to said A. M., or of any suit or action which may be brought against him therefor, then this obligation shall be void.

Instead of a bond, an agreement, under seal or without, may be used.

36. I hereby agree to indemnify and save harmless W. D. M., deputy sheriff for the county of G., from all loss, cost, damage and expense to which he may be subjected by reason of his attaching, at my request, certain goods and chattels as the property of J. D. on a writ in my favor against said J. D., returnable at — on —, enumerated in the return upon said writ, or by reason of any suit or action which may be brought against him therefor.

—, 184--.

37. I hereby agree to indemnify and save harmless W. D. M., deputy sheriff for the county of G., from all loss, cost, damage and expense to which he may be subjected by reason of returning to me, at my request, certain goods and chattels by him attached as the property of J. D., on a writ in favor of J. S. against said J. D., returnable at — on —, the same being claimed by me as my property; or by reason of any suit or action which may be brought against him therefor.

— —, 184--.

38. *Consent to a sale, § 17.*

To M. M., Sheriff of the County of H —. We consent and agree that the property attached by you on writs in favor of A. B. and C. D. against J. D. be sold by you at public auction, and the proceeds retained to satisfy the judgment that may be rendered in said suits.

— — 184--.

A. B.  
C. D.

The consent may be written on the writ or schedule.

39. *To M. M., Sheriff of the County of Hillsborough.*

We hereby consent and agree that the property by you attached on this writ (or, mentioned in this schedule) be sold at public auction, and the proceeds retained to satisfy the judgment that may be rendered in said suit.

A. B.  
C. D.

40. *Consent to a sale on credit.*

To M. M., Sheriff of the County of H —. We consent and agree that the property attached by you on writs in favor of A. B., C. D. and E. F., against J. D. be sold by you at public auction, on a credit of thirty days on good security, or such security as may be approved by J. M'K. W., Esq.; the sale to commence on the — day of — next, and the proceeds retained to satisfy the judgments which may be rendered in said suits.

— — 184--.

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

41. *Return of sale by consent.*

M — ss., — — 184--. I attached the goods mentioned in the schedule hereto annexed, as the property of the within named J. D., and gave to said J. D. a summons in the form prescribed by law, with my name and office by me indorsed thereon.

N. D., Deputy Sheriff.

Fees. Service, —  
Travel, —

M — ss., — —. The said A. B. (creditor) and J. D. (debtor) having consented and agreed that the goods attached in the above action should be sold at public auction, and the proceeds retained to satisfy the judgment that may be rendered in said suit, I advertised the said goods for sale on —, the — day of —, 184--., at one of the clock in the afternoon, at the inn of — —, in Concord, by posting up notifications of the time and place of sale at the inn of — and at the inn of —, being two of the most public places in said Concord; and on the

said — day of —, —, I sold the same goods at the hour and place above mentioned, at public vendue, to the highest bidders, for the prices set forth in the schedule hereto annexed, in the whole amounting to — dollars — cents, from which sum I have deducted my fees and charges, being \$—, and hold the net proceeds, being \$—, in my hands, to satisfy any execution that may issue in said suit. Charges of sale, —.

A. D., Deputy Sheriff.

*Schedule of goods attached on the annexed writ, with the names of the purchasers, and the prices at which the same were sold, to wit.:*

143 lbs. sugar, to J. H., at \$11.44

28 yds. calico, to A. Y., at 2.36

&c., &c.

N. D., Deputy Sheriff.

*42. Application for an examination and sale.*

To M. M., Sheriff of the County of H—. The property attached by you on writs in favor of A. B., C. D. and E. F., being living animals, and goods liable to perish or waste, or to be greatly reduced in value by keeping, and which cannot be kept without great expense, and the parties not consenting to a sale, you are requested to cause the same to be examined and sold, (agreeably to the 184th chapter of the Revised Statutes.) And I hereby appoint X. Y. an examiner on my part.

— —, 184--.

J. D.

*43. To M. M., Sheriff of the County of Hillsborough.*

You are requested to cause the goods by you attached on a writ in favor of C. D. against J. D. to be examined, and the whole or a part to be sold, as directed in the 184th chapter of the Revised Statutes; and I hereby appoint X. Y. an examiner on my part.

— —, 184--.

J. D.

*44. Notice to appoint an examiner.*

To A. B., C. D. and E. F.: Application being made to me by J. D. to cause the property attached by me on writs in your favor respectively, against him, to be examined and sold agreeably to the 184th chapter of the Revised Statutes: You are notified and requested to appoint a disinterested person, conversant with the nature and value of such property, an examiner on your part.

M. M., Sheriff.

— — 184--.

*45. Appointment of examiner by creditors.*

To M. M., Sheriff of the County of H—. We hereby appoint B. A. an examiner of the property attached on writs in our favor respectively against J. D.

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

— —, 184--.

*46. Certificate of the examiner's oath.*

H—, — —, 184--. Personally appeared X. Y., B. A. and D. C., and made oath that they would faithfully and impartially discharge

their duties as examiners of the property attached on writs in favor of A. B., C. D. and E. F. against J. D.

Before me : J. P., *Justice of the Peace.*

47. *Certificate of the examiners.*

To M. M., Sheriff of the County of H—. We have carefully examined the goods and chattels attached by you on writs in favor of A. B., C. D. and E. F., against J. D., and do on our oaths decide and certify that the following articles are liable to perish, waste, and to be greatly reduced in value by keeping, to wit. :

1 box of lemons :

40 bushels potatoes, &c.

And that the following articles cannot be kept without great expense, to wit. :

One horse ;

Two swine, &c.

And that the residue of the articles in said return named, are not liable to perish, waste, or to be greatly reduced in value by keeping, and that they can be kept without great expense.

X. Y.

B. A.

D. C.

—, 184--.

In all these proceedings the goods may be described as, "the goods and chattels mentioned in the annexed return," or, "attached on this writ."

48. *Return of attachment.*

H— ss., —, 184--. I attached, as the property of said J. D., the goods and chattels enumerated in the schedule hereto annexed.

M. M., *Sheriff.*

49. *Return of sale upon examination.*] H — ss., —, 184-. The within named debtor having made application to me in writing to have the goods and chattels, named in the above return, examined and sold, pursuant to the Revised Statutes, chapter 184, I caused three disinterested persons, conversant with the nature and value of such property, to be appointed to examine the same, to wit. : X. Y., by myself ; B. A., by the creditor ; and D. C. by the debtor, who being duly sworn before a justice of the peace to the faithful discharge of their duties as examiners, made their certificate hereunto annexed, which certificate is made a part of this return. Whereupon the said examiners, having made their certificate as aforesaid, on the — day of — I advertised the said goods and chattels, so examined, for sale at the inn of W. S., in M., in said county, on —, the — day of —, at — o'clock in the afternoon, by posting up notices of said time and place of sale at the inn of W. S. and at the inn of E. H. M., being two of the most public places in said M., and on the said — day of — I sold the said goods and chattels at the time and place appointed as aforesaid, at public auction, to the highest bidders, as follows :

50 bushels potatoes to J. H., at \$12.50

1 ton hay, to M. R., at \$10.00, &c.

or—To the highest bidders, for the prices mentioned in the schedule hereto annexed : the whole amount of the proceeds of said sale being \$142.50 ; from which sum I have deducted the lawful charges of



sale, being \$5.00, and the residue thereof, being \$137.50, I hold in my hands to satisfy any execution that may issue in said suit.

M. M., Sheriff.

*Fees and charges of sale.* Service, —  
Travel, —

50. If the creditor neglects to appoint, say: I caused three disinterested persons, conversant with the nature and value of such property, to be appointed to examine the same, to wit: X. Y., by myself; D. C., by the debtor; and B. A., appointed by me for the creditor; the said creditor having been duly notified by me of said application, and requested to appoint an examiner; and having neglected to appoint any, who, &c.

51. If the creditor resides out of the county and more than twenty miles from the property, say—"And B. A., appointed by me for the creditor, the said creditor not residing within this county nor within twenty miles of the property to be examined."

52. If the creditors do not agree in appointing, say—"And B. A., appointed by me for the creditors, the said property being attached on sundry writs in favor of K. L., M. N. and O. P., and the said creditors having been duly notified of said application, and requested to appoint an examiner, and not agreeing in the appointment, and neglecting to appoint an examiner."

If the creditors are part out of the county, say—"And B. A., appointed by me for the creditors, the said property being attached on sundry writs in favor of K. L., M. N. and O. P., and the said K. L. not residing within this county, nor within twenty miles of the property to be examined; and the said M. N. and O. P. having been duly notified of said application, and requested to appoint an examiner, and not agreeing in the appointment, and neglecting to appoint an examiner."

53. If the creditors are a corporation, say—"And B. A., appointed by me for the creditors, the said creditors having been duly notified of said application, and requested to choose an appraiser, by a written notice given to the clerk, (treasurer, &c.) of said corporation, and neglecting to appoint."

If the application is by a creditor, the same forms may be adopted, transposing *debtor for creditor*.

54. *Return that goods were restored, the value being agreed upon.*

H—ss., —, 184—. The said J. D. having, before notice of sale, requested the property in said schedule mentioned to be restored to him, and having given to me a bond in sufficient penalty with sufficient sureties, conditioned to pay the sum of — hundred dollars, being the value of said property, as agreed upon by the said debtor and myself, agreeably to the 184th chapter of the Revised Statutes, I restored the said property to said J. D., and herewith return said bond.

M. M., Sheriff.

55. *Request that property should be appraised and restored.*

To M. M., Sheriff of the County of H.

You are hereby requested to cause the property by you attached on writs in favor of A. B., C. D. and E. F. against me, to be appraised

and restored to me, as we do not agree as to the value thereof, agreeably to the 184th chapter of the Revised Statutes; and I hereby appoint X. Y. an appraiser on my part.

J. D.

— —, 184--.

56. *Notice to appoint an appraiser.*

To A. B., C. D. and E. F. Application being made to me by J. D. to cause the property attached by me on writs in your favor respectively against him, to be appraised and restored to him, agreeably to the 184th chapter of the Revised Statutes, and not being able to agree with him as to the value thereof, you are notified and requested to appoint a disinterested person, conversant with the nature and value of such property, an appraiser on your part.

M. M., Sheriff.

— —, 184--.

57. *Appointment of appraiser.*

To M. M., Sheriff of the County of H—. We hereby appoint B. A. an appraiser of the property by you attached on writs in our favor respectively against J. D.

A. B.

C. D.

E. F.

— —, 184--.

58. *Certificate of appraiser's oath.*

H— ss., — —, 184-. Personally appeared X. Y., B. A. and D. C., and made oath that they would faithfully discharge their duties as appraisers of the property attached upon writs in favor of A. B., C. D. and E. F. against J. D., mentioned in the annexed schedule.

Before me— J. P., Justice of the Peace.

59. *Certificate of the appraisers.*

To M. M., Sheriff of the County of H—. We have carefully examined and appraised the property enumerated in the within schedule, and upon our oaths certify that in our judgment, estimating the same at their cash value at this time, the several articles mentioned in said schedule are worth the prices affixed to them in said schedule respectively, and no more, in the whole amounting to — dollars.

X. Y.

B. A.

D. C.

— —, 184--.

60. *Return of appraisal and restoration to the debtor.*

H— ss., — —, 184--. And the said debtor, before notice of the sale thereof, having requested me to cause said property to be appraised, and to restore the same to him, the value thereof not being agreed upon by said debtor and myself, agreeably to the 184th chapter of the Revised Statutes, I caused a schedule of said property to be prepared, and three disinterested persons, conversant with the nature and value of such property, to be appointed to appraise said property, to wit: X. Y. by myself, B. A. by the debtor, and D. C. by the creditor, who being duly sworn before a justice of the peace to the faithful discharge of their duties, made their certificate upon said schedule, which schedule and certificate are made a

part of this return: Whereupon, on the said — day of —, 184--., I restored to the said debtor the said goods and chattels so appraised by the said appraisers, he having given a bond to me (or to the sheriff of the county of H.,) dated the said — day of —, 184--., in the sum of — dollars, which is herewith returned.

M. M., Sheriff.

*Fees.* —

The form of the return may be varied when the officer appoints more than one of the appraisers, in the same manner as the return of the appointment of examiners. Form 49 to 53.

**61. Bond when property is restored.**

KNOW ALL MEN BY THESE PRESENTS, that we, J. D., of —, as principal, and E. F. and G. H., both of —, as sureties, are held and firmly bound to M. M., sheriff of the county of H—, in the sum of — dollars, to the payment whereof we jointly and severally bind ourselves and our heirs firmly by these presents. Sealed with our seals, and dated the — day of —, 184--.

*The condition of this obligation is such, that whereas sundry goods and chattels which were attached by J. M. R., a deputy sheriff for said county of Hillsborough, on the — day of —, 184--., upon a writ in favor of A. B. against said J. D., as the property of said J. D., have been appraised and restored to said J. D., at his request, in pursuance of the 184th chapter of the Revised Statutes: Now if the said J. D. shall well and truly pay to the said sheriff the sum of — dollars, being the appraised value of said goods and chattels, or so much thereof as may be necessary to pay and satisfy any executions for the payment of which the said property or its proceeds is or may be by law holden, then this obligation to be void.*

The bond is of course to be made “*To —, Coroner of the County of —;*” or “*To —, Constable of the town of M—;*” when the property is attached by those officers.

**62. Return on second writ, referring to first writ.**

H— ss., —, 184--. I have attached the several articles mentioned in the schedule annexed to (or in the return upon) an original writ in favor of C. D. against J. D., returnable at the court of common pleas in and for the county of H. aforesaid, on the — Tuesday of October next, and by me returned to and now of record in said court, and have caused the same to be appraised and restored to the said debtor, (or have caused the same to be examined and sold) as set forth in the return upon the writ aforesaid, to which reference is made, and which is made part of my return hereon, and left, &c.

M. M., Sheriff.

*Fees.* Service, —  
Travel, —

**63. Return of attachment of money in officer's hands.**

H— ss., —, 184--. I attached — dollars, — cents, money in my hands, the property of the within named J. D., being the proceeds of the sale of certain goods which I attached as the property of said

debtor in the suit of A. B., and which were sold by consent of parties; or which were sold in pursuance of the 184th chapter of the Revised Statutes, subject to said attachment of said A. B., and to an attachment in an action in favor of C. D. against said J. D., and gave to said J. D. a summons in the form prescribed by law, with my name and office by me indorsed thereon. *M. M., Sheriff.*

*Fees.* Service, —  
Travel, —

**64. Return of an attachment of goods, after being restored on bond.**

H— ss., —, 184--. I attached, as the property of the within named J. D., the goods and chattels mentioned in a schedule annexed to a writ in favor of C. D. against said J. D., returnable to the court of common pleas for said county, on the — day of —, and which have been appraised and restored to said debtor pursuant to the 184th chapter of the Revised Statutes, as set forth in the return upon said writ by me made to said court, which is referred to and made part of this return, subject to said attachment and to an attachment in favor of E. F. against J. D., and left, &c.

**65. Return of an attachment when goods have been taken from the officer by a writ of replevin.**

H— ss., —, 184-. I attached one horse, and a one horse wagon and harness, as the property of the within named J. D., heretofore attached by me in an action in favor of C. D. against said J. D., and which have been heretofore taken from my possession by —, a deputy sheriff for said county, by virtue of a writ of replevin in favor of one J. S. against me, returnable at the court of common pleas for said county, on —, and left at the usual place of abode of said J. D. a summons in the form prescribed by law, with my name and office indorsed by me thereon. *J. M. R., Deputy Sheriff.*

*Fees.* Service, —  
Travel, —

**25. Return of an attachment of real estate where a copy is left with a tenant.**

H— ss., —, 184--. I attached, as the estate of the within named J. D., one fourth part of the sawmill, situate in —, in said county, known by the name of the Runnells Sawmill, with the privileges appurtenant thereto, by leaving an attested copy of this writ and of this my return thereon, at the dwelling-house of J. M. N., town clerk of said M., at — minutes after — o'clock in the —noon of said day; and the said defendant not being an inhabitant of this state, I left with P. Q., his tenant upon the land attached, an attested copy of this writ, with an attested copy of the return indorsed thereon.

*Fees, &c.*

*J. M. R., Deputy Sheriff.*

**66. Return of non est inventus on a writ.**

R— ss., —, 184--. I have made diligent search, and have not found said J. D. nor any of his property within this county.

*J. B., Deputy Sheriff.*

**67. Return that defendant is sick.**

R— ss., —, 184--. I found the within named J. D.; but the said J. D. then was and ever since has been, so sick, weak and in-

firm, that without great peril and danger of his life I could not remove him nor commit him to the jail in said county, and I therefore did not arrest him.

J. B., *Deputy Sheriff*.

*Return of sick in the Asylum.*

M— ss., — —, 184--. In pursuance of this writ I proceeded to the New Hampshire Asylum for the Insane, where the said J. D. then was, in order to arrest him, and there found the said J. D. insane, and in a raving state, so that he could not be taken or removed without danger. And the said J. D. then was, and still remains, so sick, weak and infirm, or insane and raving, that without peril and danger of his (or my) life I could not remove him, nor commit him to the jail in said county, and I therefore did not arrest him.

J. B., *Deputy Sheriff*.

*68. Return of an arrest and bail.*

H— ss., — —, 184--. I arrested the body of the within named J. D.; and C. D. and E. F., both of M—, in said county, became his bail by indorsing their names as bail upon the back of this writ.

*Fees.* Service, —  
Travel, —

J. M. R., *Deputy Sheriff*.

The debtor and bail sign in this manner on the back of the writ :

J. D.  
C. D., }  
E. F., } *Bail.*

*69. Return of an arrest and commitment.*

H— ss., — —, 184--. I have arrested the body of the within named J. D., and have committed him to the jail in Amherst, in said county, and have delivered to the keeper thereof an attested copy of this writ, with a copy of this my return indorsed thereon.

*Fees.* Service, — J. M. R., *Deputy Sheriff*.  
Travel, —

Necessary expenses, — [9 N. H. R. 185, *Atherton v. Gilmore*.

*70. Return of the jailer.*

H— ss., — —, 184--. (Return day.) I safely kept the said J. D. in my custody in the said jail until the — day of —, when C. D. and E. F., both of said M., became his bail, by indorsing their names as bail (upon the back of the within copy of the writ left with me by J. M. R., *Deputy Sheriff*.

N. D., *Jailer*.

*Fees,* —

*71. Return of a rescue.*

H— ss., — —, 184--. (Return day.)

I arrested the body of the within named J. D., and safely kept him in custody, until afterward, on the same day, at M., in said county of H—, G. H., of said M., laborer, and divers other persons, to me unknown, with force and arms assaulted me, and the said J. D. out of my custody then and there rescued; and the said J. D. then and there, with force and arms, rescued himself and escaped out of my custody, against the peace and dignity of the state. And afterwards the said J. D. is not found in my precinct.

J. M. R., *Deputy Sheriff*.

*72. Return defendant's privilege as representative.*

M— ss., — —, 184--. I certify that the within named J. D. at

the time of the delivery of this writ to me, and from thence till the — day of —, continually was a representative, duly elected in the town of C. to serve in the General Court of this state; and during all the time aforesaid attended as such representative, the said General Court being in session, and after the said — day of — the said J. D. is not found in my precinct.

R. P., Sheriff.

As no person can be arrested on any contract where the debt or damage is less than \$13.33, the above forms can be used on justice writs in actions of trespass, case for wrongs, and debt for penalties only.

73. *Affidavit to procure an arrest on debts contracted since March 1, 1841.*

I, A. P., within named, make oath and say that J. D. within named in my belief is justly indebted to me in the sum of — dollars, and upwards, upon the cause of action stated in the within writ; that said J. D. conceals his property so that no attachment or levy can be made, and that there is good reason to believe he is about to leave the state, to avoid the payment of his debts.

A. P.

HILLSBOROUGH ss., —, 184--. Personally appeared A. P., and made oath that the above affidavit by him subscribed is true.

Before me: — —, *Justice of the Peace.*

74. *By a partner.*

I, A. P., within named, make oath and say, that J. D., within named, in my belief is justly indebted to me and S. P. in the sum, &c.

75. *By a clerk, &c.*

I, A. B., clerk, (agent, servant, wife, or as the case may be) of the within named A. P., make oath and say that the within named J. D. in my belief is justly indebted to the said A. P. in the sum of, &c.

76. *By an executor or administrator.*

I, A. P., within named, make oath and say that the within named J. D. in my belief is justly indebted to me, as executor of the will (or as administrator of the estate) of M. P., deceased, in the sum of, &c.

*Note.* Without the affidavit required by law, the officer will be careful not to arrest unless the debt is stated in the writ to be contracted prior to March 1, 1841.

77. *Request by a person arrested to be carried before two justices.*

To M. M., Sheriff of the County of H—. You are hereby required to carry me, being now arrested by you and in your custody upon a writ in favor of A. B., before two justices of the peace, one of whom to be of the quorum, in order to my being released from said arrest.

May 11, 1843.

J. D.

78. *Application to the justices.*

To I. S. and J. C., justices of the peace for the county of Hillsborough, one of the quorum. J. D. complains that he is now arrested by M. M., sheriff of the county of H—, (J. M. R., deputy sheriff of the county of H.) at the suit of A. B., upon a cause of action arising on a contract made after the first day of March, 1841; that he does not conceal his property so that no attachment or levy can be made,

and that he has no intention to leave the state ; wherefore he prays to be discharged from said arrest. J. D.

May 11, 1843.

79. *Order of notice and affidavit of service.*

Upon the foregoing petition it is ordered that a hearing be had thereon at —, on —, at 2 o'clock, P. M., and that notice thereof be given to the said A. B., by giving to him or to his attorney a copy of said petition and this order.

J. S., } *Justices of the Peace ;*  
J. C., } *one of the Quorum.*

*Affidavit of service.*

I certify that I this — day of —, 184—, at — o'clock in the — noon, gave to said A. B. (or to E. F., attorney of said A. B.,) a copy of the within notice. J. N.

HILLSBOROUGH ss., — —, 184—. Personally appeared J. N., and made oath that the above affidavit by him subscribed is true.

Before me : — —, *Justice of the Peace.*

80. *Order of discharge.*

H— ss., — —, 184—. Upon the petition of J. D., a prisoner at the suit of A. B., upon the within writ, brought before us by the officer at his request, after due notice to the pl., (or to the pls. attorney,) we have considered the affidavit of said J. D. and the other evidence laid before us, and we believe that said J. D. does not conceal his property, so that an attachment or levy cannot be made, and that he has no intention to leave the state. It is, therefore, ordered that said J. D. be discharged from his arrest.

J. S., } *Justices of the Peace ;*  
J. C., } *one of the Quorum.*

81. *Return of discharge.*

H— ss., — —, 184—. I arrested the body of the within named J. D., who thereupon required me to carry him before two justices of the peace, one of whom to be of the quorum ; and the said J. D. being thereupon carried by me before J. S. and J. C., two justices of the peace as aforesaid, such proceedings were thereupon had that said justices made upon said writ an order for his discharge, to which order reference is made, and the same is made part of this return ; and I therefore discharged the said J. D.

FEEs. Service, —  
Travel, —

M. M., *Sheriff.*

82. *Motion to the court for a discharge.*

H— ss., Court of Common Pleas, }  
April Term, 1843. }

A. B. *vs.* J. D.

Upon motion of said J. D.,—It is ordered by the court that said A. B. shew cause, on the — day of —, why the said J. D., upon satisfactory evidence that he does not conceal his estate, and does not intend to leave the state, should not be discharged from his imprisonment, and that a copy of this order be served on said A. B. or his attorney, this day.

P. D., *Clerk.*

83. *Rule absolute for a discharge.*

H— ss., Court of Common Pleas, }  
 April Term, 1843. }

A. B. *vs.* J. D.

Upon motion of said J. D., It is ordered by the court, satisfactory evidence being produced that said J. D. does not conceal his estate, and does not intend to leave the state, that said J. D. be discharged from his imprisonment in said action.

P. D., Clerk.

84. *Return of discharge by order of court.*

H— ss., —, 184—. I safely kept the said J. D. in my custody in the jail in Amherst until the — day of —, when an order of court, in the following words, being presented to me :

(Here insert the order.)

I discharged the said J. D. from said jail.

N. D., Jailer.

85. *Motion in court for a capias.*

H— ss., Court of Common Pleas, }  
 April Term, 1843. }

A. B. *vs.* J. D.

Satisfactory evidence being produced to the court that no sufficient attachment has been made, and that there is not sufficient bail in this action, and that the defendant intends to leave the state ; upon motion of said A. B., it is ordered by the court that a writ of capias issue against the said J. D. in said action.

P. D., Clerk.

86. *Capias in such case.*

### The State of New-Hampshire.

HILLSBOROUGH ss. To the Sheriff of any County in this State, or his deputy.

[L. S.] Whereas in a certain action now pending in the court of common pleas for said county between A. B., of —, pl., and J. D., of —, def., in a plea of the case :

(Here insert the declaration.)

to the damage of the said A. B., as he says, the sum of — dollars.

Satisfactory evidence being produced to the court that no sufficient attachment has been made, and that there is no sufficient bail in this action, and that the def. intends to leave the state, it was ordered that a writ of capias issue against said J. D. in said action.

Now, therefore, we command you to arrest the body of said J. D., if to be found in your precinct, so that you have him before the justices of the court of common pleas, to be holden at A—, on the third Tuesday of October next, to answer to said A. B. in the plea aforesaid. And make return of this writ, with your doings therein.

Witness J. P., Esquire, the — day of —, A. D. 1843.

P. D., Clerk.



*Note.* The returns on this writ will be the same as on a writ of *capias* and attachment.

**87. Rule of Court, August term, 1840.**

In taxing bills of cost, no charges are to be allowed for attaching property, unless an actual attachment is made; nor in any case more than one dollar for extra services or sums paid out by sheriffs, unless the return is accompanied by an affidavit stating the particulars of such extra services or expenditures, and that the sums charged are no more than a fair compensation for such extra services; or, if charged or paid to third persons, that they are *bona fide* payments for matters deemed to be of that value. The several clerks are required to revise the taxation of all bills of cost accruing subsequent to this time, according to these rules.

**88. Form of affidavit.**

I hereby certify that the property specified in the foregoing return was actually attached by me upon this writ; that in attaching, removing, securing and inventorying the same, I was necessarily employed — days, and that — — was employed by me as keeper of the same — days; that said goods were removed — miles, and stored in the store of —, — days; that I actually and *bona fide* paid to said — for his services — dollars; to — —, for removing said property, — dollars; to — —, for storing the same, — dollars; the said services being severally deemed by me of that value, and that the sums charged are in my judgment no more than a fair compensation for those services.

J. M. R., Deputy Sheriff.

H— ss., — —, 184—. Personally appeared J. M. R. and made oath that the foregoing affidavit by him subscribed is in his belief true.

Before me : — —, Justice of the Peace.

**88. Form of return of pauper notice.**

R— ss., — —, 1840. I served the within notice upon the town of D. within named, by leaving an attested copy of the same, and of this my return indorsed thereon, at the usual place of abode of A. B., town-clerk of said town, and by leaving like copies at the usual place of abode of C. D., one of the selectmen of said town.

S. M., Sheriff.

R— ss., — —, 184—. I this day made return of this original notice, with my doings thereon, to the clerk of the court of common pleas for said county of R.

S. M., Sheriff.

*Fees.* Service, —  
Copy, —

*Note.* The law regulating the form and manner of service of notices of the support of paupers, is found in the *Revised Statutes, Chapter 66*, as follows :

§ 10. No action shall be sustained against any town or

person chargeable as aforesaid, (for the support of any poor person,) unless a notice in writing, signed by the overseers of the poor, stating the sums so expended, shall first have been given to such town or person.

§ 11. Such notice shall be served upon such town by the sheriff or his deputy, by leaving an attested copy thereof, and of his return thereon, with one at least of the selectmen or overseers of the poor, and with the clerk of such town; and upon any person chargeable as aforesaid, by giving him in hand, or leaving at his usual place of abode, a like copy.

§ 12. The officer making such service, shall, within twenty days thereafter, make a return of the original notice, with his doings therein, to the clerk of the court of common pleas in the county in which the town or person chargeable may be, and shall receive the same fees for his travel and service as by law are allowed for serving writs. *R. S. 138.*

The form of the notice is as follows:

*89. Form of a pauper notice.*

*To the town of Lancaster, in the county of Coos:*

You are hereby notified that on the tenth day of September, 1843, John Smith, Jane Smith, wife of said John, and James Smith, Peter Smith and Sally Smith, minor children of said John Smith, then and ever since persons poor and unable to support themselves, and having their settlement in said town of Lancaster, were relieved and have ever since been supported by the town of Peterborough, in the county of Hillsborough; and the sums expended by said Peterborough for the relief and maintenance of the said John Smith, his wife and children, above named, since said tenth day of September up to December third, 1843, are as follows:

|                                                        |         |
|--------------------------------------------------------|---------|
| For board of family, 12 weeks, at \$4.50 per week,     | \$54.00 |
| Paid Dr. W. C., for attending Jane Smith,              | 8.00    |
| Paid Nancy Morse, for nursing Mrs. Smith two weeks,    | 2.00    |
| Paid board of Nancy Morse while nursing,               | 3.00    |
| For 10 yards of calico for Mrs. Smith and Sally Smith, | 1.25    |
| For 4 pairs of feetings for the family,                | 1.00    |
| For one coat for John Smith,                           | 5.00    |

---

\$74.25

A. B., }  
C. D., } *Overseers of Poor*  
E. F., } *in Peterborough.*

December 3, 1843.

*Note.* When the return of the officer is by mistake erroneous, it may be amended by leave of the court. *2 N. H. R. 79, Whiting v. Bradley.*

## CHAPTER 7.

## OF PROCEEDINGS IN COURT BEFORE PLEA.

- |                                              |                                                          |
|----------------------------------------------|----------------------------------------------------------|
| 1. Neglect to enter action, penalty.         | 19. Administrator neglecting, judgment against.          |
| 2. Time of filing complaint.                 | 20. Administrator de bonis non may prosecute and defend. |
| 3. Notice of complaint.                      | 21. Surviving party may proceed, when.                   |
| 4. Nonsuit, costs for defendant.             | 22. Marriage of female defendant not to abate.           |
| 5. Rule to return writ.                      | 23. Marriage of female plaintiff not to abate.           |
| 6. Default to be entered, when.              | 24. Nonjoinder of any party not to abate.                |
| 7. Default, when struck off.                 | 25. Names of defendants struck out.                      |
| 8. Notice by advertisement before justices.  | 26. Names of attorneys to be entered.                    |
| 9. Bond to respond on review, when.          | 27. Notice of change of attorney.                        |
| 10. Review, when to be brought.              | 28. Entry, if neither party appears.                     |
| 11. Plea to the jurisdiction of the justice. | 29. Affidavits in support of motions.                    |
| 12. No amendment, if damages over \$13.33.   | 30. Special motions to be in writing.                    |
| 13. Want of form, not to abate.              |                                                          |
| 14. Forms of amendments.                     |                                                          |
| 15. Notice of motion to amend.               |                                                          |
| 16. Amendments in substance made.            |                                                          |
| 17. Survivor of actions, when.               |                                                          |
| 18. Administrators may prosecute and defend. |                                                          |

§ 1. If any person shall neglect to enter in court any action by him commenced, in which any process shall have been served on the defendant, judgment shall be rendered against him, on complaint, for costs. *R. S. 374, ch. 186, § 1.*

§ 2. The complaint may usually be filed, if the action is not entered within one hour from the time appointed, but the hour is not final. The action may be entered afterwards, if the delay is not unreasonable and the defendant has had ground to suppose the plaintiff intended to proceed with his action. *Banks v. Johnson, Hills.*

§ 3. By the rule of the court of common pleas, "judgment shall not be rendered upon a complaint for not entering an action until notice in writing that such complaint has been entered shall have been given to the opposite party, or his

counsel, and the evidence of such notice filed with the clerk." 6 *N. H. R.* 583.

§ 4. If the plaintiff, after entry of any action, shall become nonsuit, judgment shall be rendered against him in favor of the defendant for costs. *R. S.* 374, § 2.

§ 5. If the writ is not returned to the justice, a rule may be made upon the officer to return it; and upon his neglect a *capias* may issue against him for contempt.

§ 6. If any defendant on whom process has been duly served, shall neglect to appear at the court to which the same is returned, his default shall be recorded, and judgment shall be rendered against him for such damages as, upon inquiry, the plaintiff shall appear to have sustained. *R. S.* 375, § 3.

§ 7. The defendant may be permitted to enter an appearance after a default, at the discretion of the court or justice, upon the payment of reasonable costs. *R. S.* 375, § 4.

§ 8. In actions before a justice commenced by attachment, if no personal service is made upon the defendant by reason that he resides out of the state, or that his residence is unknown to the officer serving the writ, the action shall be continued not less than sixty nor more than ninety days; and the justice shall order notice of the pendency of such suit to be given, by posting up a copy of such order in two or more public places in the town where the defendant was last known to be an inhabitant in this state, forty days at least before the day to which said action shall be continued. —*R. S.* 375, § 7.

§ 9. If the defendant shall not appear at the time and place to which said action was continued, judgment shall be rendered, on satisfactory evidence that notice has been posted up as aforesaid, and execution shall issue thereon, upon the plaintiff filing with the justice a bond, with sufficient sureties to the defendant, to respond the judgment which the defendant may recover upon a review of said action. —*R. S.* 375, § 8.

§ 10. Such review may be brought before the justice at any time within two years after the rendition of the judgment, and the plaintiff in such review may have the benefit of all pleas and advantages which he might have had in the original action. *R. S.* 375, § 9.

§ 11. If the justice has no jurisdiction of the action; as, if the damages demanded exceed thirteen dollars thirty-three

cents ; or, if the declaration necessarily involves any question relating to the title of real estate, a plea to the jurisdiction should be filed, or motion should be made to dismiss the action.

§ 12. If the damages alleged exceed \$13.33 the justice has no jurisdiction to order an amendment of the error. 2 *N. H. R. 322, Hoit v. Molony.*

§ 13. No writ, declaration, return, process, judgment or other proceeding in the courts or course of justice, shall be abated, quashed or reversed for any error or mistake, where the person or case may be rightly understood by the court, nor through defect or want of form or addition only ; and courts and justices may, on motion, order amendment in any such case. *R. S. 375, § 10.*

§ 14. The rule of the court of common pleas is, that "amendments in matters of form will be allowed, as of course, on motion ; but if the defect or want of form be shown as cause of demurrer, leave to amend will be granted upon terms." 6 *N. H. R. 578.*

§ 15. The rule of the court is, that "no plaintiff shall have leave to amend after a default, until a rule upon the defendant to show cause why the amendment should not be made, has been duly served." 6 *N. H. R. 578.*

§ 16. Amendments in matter of substance may be permitted in any action, in any stage of the proceedings, upon such terms as the court shall deem just and reasonable, but the rights of third persons shall not be affected thereby. —*R. S. 376, § 11.*

§ 17. Actions of trespass for breaking and entering on any real property ; actions on the case for trover and conversion ; actions against any sheriff or his deputy for any faults and misdoings in office ; real actions, actions of ejectment, and actions of trespass for taking and carrying away any goods and chattels, shall not abate by reason of the death of either party, but may be prosecuted to judgment, and reviewed in the same manner as other actions, the cause of which by law survives. *R. S. 376, § 14.*

§ 18. Every administrator may prosecute or defend any action pending in any court against the deceased, in case the cause of action does by law survive ; and in such case, any appeal or writ of review, to which such deceased person was entitled, or which might be prosecuted against him at the time of his decease, may be prosecuted by or against such administrator. *R. S. 321, § 16.*

§ 19. If such administrator, having been duly served with a scire facias, shall neglect or refuse to become a party to the suit, judgment may be rendered against the estate of the deceased, in the same manner as if the administrator had voluntarily become a party to the suit. *R. S. 321, § 17.*

§ 20. Suits in which an administrator is a party shall not be abated by reason of his death, or of the extinguishment or revocation of his trust, but may be prosecuted or defended by the administrator who may succeed to the trust ; who may be called into court by scire facias, in the same manner and with the like effect as in cases of the death of other parties. *R. S. 320, § 11.*

§ 21. If there are two or more plaintiffs or defendants, and either of them shall die, the action shall not be abated if the right of action shall survive, but may be prosecuted by or against the surviving parties, such death being suggested on the record. *R. S. 376, § 15.*

§ 22. If any female defendant shall marry pending any action, the court, upon suggestion, may order notice of such suit to the husband ; and upon evidence that such order has been complied with, the action shall proceed against the husband and wife, in the same manner as if it had been originally commenced against them. *R. S. 376, § 16.*

§ 23. No action shall be abated by the marriage of any female plaintiff, if the husband, after due notice, to be directed by the court, shall become party to the suit ; in which case the action shall be prosecuted in the same manner as if the same had been originally commenced by the husband and wife. *R. S. 376, § 17.*

§ 24. No action shall be abated by the plea that there are other plaintiffs or defendants, who ought to be joined therein ; but such persons may be made parties to the action upon such terms as the court shall order, and may be summoned by writ of scire facias, or notified by publication in some newspaper, as the court may order ; and the action shall thereafter proceed as if their names were inserted in the original writ. *R. S. 376, § 18.*

§ 25. In all actions where there are two or more defendants, the plaintiff may amend the writ before the evidence is closed, by striking out the names of one or more of the defendants, on paying them their costs up to that time.—*R. S. 376, § 19.*

§ 26. By the rules of the court of common pleas, “ the

names of the attorneys or parties who conduct each cause, shall be entered upon the docket." 6 *N. H. R.* 577.

§ 27. "When either party shall change his attorney pending the suit, the name of the new attorney shall be substituted on the docket for that of the former attorney, and notice thereof be given to the adverse party or his attorney." —6 *N. H. R.* 577.

§ 28. "If there be no appearance entered for either party during the term, the action shall be struck from the docket." —6 *N. H. R.* 577.

§ 29. No motion founded *on facts* will be heard unless the facts are verified by affidavit, or appear from the record or from papers filed in the case, or are agreed and stated in writing, and signed by the parties or their attorneys; and the same rule will be applied as to all facts relied on in opposing any motion.

§ 30. All motions of a special nature should be in writing, and filed; and if the adverse party is not present to take notice, he should be notified by giving him a copy.

## CHAPTER 8.

### OF PLEADING AND SET-OFF, &c.

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|-----------------------------------------------------------------------|-----------------------------------------------|
| 1. Special pleas not required; brief statements.                      | 10. Payment of money into court.              |
| 2. Pleas and motions in abatement.                                    | 11. Payment with special plea.                |
| 3. Abatement of void writs.                                           | 12. Tender to the attorney, how made.         |
| 4. Special pleas admissible.                                          | 13. Set-off of mutual debts, when.            |
| 5. No evidence of title under general issue allowed to be introduced. | 14. Set-off by and against administrators.    |
| 6. Proceedings on plea of title.                                      | 15. Set-off of bonds, when allowed.           |
| 7. Action to be entered at court of common pleas.                     | 16. No set-off unless right of action exists. |
| 8. On neglect, costs to be awarded.                                   | 17. Plea or notice of set-off given.          |
| 9. Confession of damages, when.                                       | 18. Continuance, if no notice before court.   |

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|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>19. Judgment for balance for either party.</p> <p>20. Justice may adjourn trial.</p> <p>21. If justice absent, another may act.</p> <p>22. Continuance for absence of witness.</p> <p>23. Not if party admits testimony.</p> | <p>24. Continuance for want of other evidence.</p> <p>25. Continuance when upon terms.</p> <p>26. Defendant, when entitled to a continuance.</p> <p>27. Plaintiff, when.</p> <p>28. Administrators entitled to a continuance.</p> <p style="text-align: center;"><i>Forms of Proceedings.</i></p> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

§ 1. No special plea shall ever be required in any civil action, except a plea of title to real estate before justices of the peace. Either party may give in evidence any matter in support or defence of the action, under the general issue, upon filing in court a brief statement thereof within such time as the court may order. *R. S. 377, § 3.*

§ 2. Pleas are denominated special in distinction from general issues, and not from pleas in abatement. It is, therefore, supposed that matters in abatement must be taken advantage of plea in abatement or by motion. If a different construction should be adopted, it is supposed all courts will require that brief statements of matters in abatement should be as particular as the pleas would be, and filed with in the same time.

§ 3. If the defect in any writ or return is apparent on its face, and is such as to render it void, the court will quash the writ at any time, either on motion of the party or without. If the writ is not void, the motion must be made or plea in abatement filed before any continuance, except in those cases where the court shall order or the parties consent to a continuance. "Saving the rights of the plaintiff," Matters in abatement will not be decided upon a case stated. *9 N. H. R. 394, Libbey v. Hodgdon.*

§ 4. Any party may plead specially, if he chooses, even before a justice; and in many cases there is a manifest advantage in this course, as the party who holds the affirmative always opens and closes the case. Upon the general issue, the plaintiff has always this advantage.

§ 5. When any action of trespass shall be brought before a justice, and the defendant shall plead the general issue, he shall not be allowed to offer any evidence that may bring the title to real estate in question. *R. S. 346, § 2.*

§ 6. If, in any such action, the defendant shall plead any special plea by which the title to real estate may be drawn in



question, the justice shall record such plea, and no further proceedings shall be had in such action before him, except that the plaintiff, if he so choose, may become nonsuit. *R. S. 346, § 3.*

§ 7. In case such special plea shall be filed, the plaintiff may enter his action in the next court of common pleas, and file there attested copies of the writ, plea, and all other papers used in said cause, and there prosecute the same as in actions originally commenced in said court. *R. S. 346, § 4.*

§ 8. If such plaintiff shall not enter his action in the court of common pleas, the said court, upon complaint of the defendant, shall allow him his costs both before the justice and at said court. *R. S. 346, § 5.*

§ 9. In any action the defendant may confess the plaintiff's action, or any part thereof, and that the plaintiff is entitled to recover certain real estate, or a certain amount of debt or damages, and plead to the residue of his claim; and if the plaintiff shall afterwards prosecute his action, and shall not recover more than is so confessed, the defendant shall recover his costs from the date of such confession. —*R. S. 377, § 2.*

§ 10. By the rule of the court of common pleas, "In all proper cases any sum of money may be paid into court upon the common rule, accompanied with the general issue as of course; and if the plaintiff shall refuse to receive the sum paid into court, with his costs, in full satisfaction of his claim, the sum so paid into court shall be struck out of the declaration; and, unless the plaintiff shall shew that a greater sum than the sum so paid into court was due to him, he shall have no costs, but the defendant shall be allowed his costs from the beginning." *6 N. H. R. 582.*

§ 11. "But when a sum of money shall be paid into court, accompanied with a special plea; or when a set-off shall be filed, and a sum of money be paid into court as the balance due to the plaintiff; in these cases the costs of the plaintiff up to the time of obtaining the rule shall also be paid into court; and the defendant, if he prevail, shall be allowed only his subsequent costs." *6 N. H. R. 582.*

§ 12. At any time before the sitting of the court to which any writ may be returnable, the defendant may tender to the plaintiff's attorney who brought the action, the amount of the debt and costs, and such tender shall be a bar to any further proceedings in such case. *R. S. 377, § 1.*

§ 13. If there are mutual debts or demands between the plaintiff and defendant at the time of the commencement of the plaintiff's action, one debt or demand may be set off against the other. *R. S. 377, § 4.*

§ 14. Mutual debts or demands existing between any person deceased, at the time of his death, and any other person, may be set off in actions by or against the executor or administrator. *R. S. 377, § 5.*

§ 15. If the defendant's debt or demand is founded on any bond or specialty with a penalty, the amount equitably due only shall be set off. *R. S. 377, § 6.*

§ 16. No debt or demand shall be set off as aforesaid, unless a right of action existed thereon at the commencement of the plaintiff's action. *R. S. 378, § 10.*

§ 17. The defendant may plead such set-off, or give notice thereof, with a plea of the general issue, describing such debt or demand with the same certainty as is required in a declaration. *R. S. 378, § 7.*

§ 18. The plaintiff shall be entitled to one continuance in case of a set-off, unless a particular statement of such debt or demand, with a notice that the defendant will set off the same, has been served on the plaintiff ten days before the sitting of the court. *R. S. 378, § 8.*

§ 19. Judgment shall be rendered for the balance which may appear to be justly due to either of the parties, unless in cases before justices the balance due to the defendant shall exceed thirteen dollars thirty-three cents; in which cases judgment shall be rendered for costs only. *R. S. 378, § 9.*

§ 20. Every justice may adjourn the trial of any civil cause before him to such future time as may be proper, not exceeding three months. *R. S. 347, § 12.*

§ 21. If such justice shall fail to attend at the time and place to which any process is returnable or continued before him, any other justice may attend and continue the same, not exceeding thirty days, without cost to either party, and saving the rights of all parties. *R. S. 347, § 13.*

§ 22. By the rules of the court of common pleas "no motion for a continuance, grounded on the want of material testimony, will be sustained unless supported by an affidavit which states the name of the witness, if known, whose testimony is wanted; the particular facts he is expected to prove, with the grounds of such expectation; and the en-

deavors and means that have been used to procure his attendance or deposition, to the end that the court may judge whether due diligence has been used for that purpose.”—*6 N. H. R. 579.*

§ 23. “And no action shall be continued on such motion, if the adverse party will admit that the absent witness would, if present, testify to the facts stated in the affidavit; and will agree that the same shall be received and considered as evidence on the trial, in like manner as if the witness were present and had testified thereto; and such agreement shall be made in writing at the foot of the affidavit, and signed by the party or his attorney.” *6 N. H. R. 579.*

§ 24. “The same rule shall apply in substance when the motion is grounded on the want of any material document, paper, or other evidence that might be used on the trial.”—*6 N. H. R. 580.*

§ 25. “On application for continuances on account of the absence of a material witness, who resides out of the state, and whom the party deems it necessary to have upon the stand, the continuance, if granted, shall be upon the terms that the party making the application indemnify the other for the delay, by paying the costs of the term, and taxing none during the same time.” *Rules, July term, 1840.*

§ 26. “In actions originally commenced in the common pleas, the defendant shall be entitled to a continuance at the first term, upon satisfying the court by affidavit that he has probable ground of defence, the nature of which shall be disclosed in the affidavit, unless the plaintiff has, thirty days previously to the commencement of the term, given to the defendant notice in writing to be prepared for trial.”—*6 N. H. R. 580.*

§ 27. “In all cases where the defendant answers to the action, the plaintiff shall be entitled to a continuance, unless the defendant shall have given notice to the plaintiff to be prepared for trial.” *6 N. H. R. 580.*

§ 28. In all cases where an administrator shall become a party to a suit then pending, he shall be entitled to one continuance of course. *R. S. 321, § 18.*

*Note.* The rules of the court of common pleas are not of themselves binding before justices of the peace, but it is supposed they will usually be adopted by justices, as the result of the experience of learned and able judges.

## FORMS OF PROCEEDINGS.

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### 1. *Complaint for neglect to enter an action.*

To J. P., a Justice of the Peace for the County of H. Complains C. D., of E., in said county, husbandman, that his goods and estate were attached and he was summoned to appear before you, at — office in M., in said county, this day, at — o'clock, in the — noon, to answer to N. S., of G., in said county, yeoman, in a plea of the case. And the said N. S. has neglected to enter his said action. Wherefore said C. D. prays judgment for his costs.

Dated the — day of —, A. D., 184—.

C. D.,

By his att'y, D. C.

2. Complains C. D., of, &c., that he was *summoned* to appear before you, at, &c.

3. Complains C. D., of, &c., that he was *arrested and held to bail*, for his appearance before you, &c.

### 4. *Notice of the filing of a complaint.*

After copying the complaint, add: To N. S., of —, in the county of —. Take notice, that a complaint, of which the above is a copy, is filed before the justice therein named, and the hearing thereon is adjourned to the — day of — next, at — o'clock in the afternoon, at — office in M., in said county.

C. D., by his att'y,

D. C.

or

5. To N. S., of —, &c. Take notice, that I have this day filed a complaint against you, before J. P., justice of the peace for the county of H —, for neglect to enter the action by you commenced against me, returnable before said justice at — office in M., in said county, on the — day of —, at — o'clock in the — noon, in which process was served on me by attachment of my goods and summons — praying for my costs.

C. D., by his att'y,

A. S.

### 6. *Affidavit of service of notice, upon a copy of the notice.*

I certify that on the — day of —, 1843, I gave to N. S. a notice of which the above is a true copy.

D. S.

HILLSBOROUGH ss., — —, 184—. Personally appeared D. S., and made oath that the above affidavit by him subscribed is true.

Before me: — —, *Justice of the Peace.*

### 7. *Form of entry of an action in the justice's docket.*

May 29, 1843.

67. JAMES GEORGE, pl., v. JOHN STILES.

J. Stevens, (att'y.) R. Adams.

Sufficient space should be left under each entry to allow the proper entries to be made of continuances, orders made in the progress

of the case, the judgment for debt and costs, the appeal and recognizances, if any, and the dates and returns of executions. Two cases upon each page of the common quarto blank book are enough.

All the papers in each case should be marked with the number of the action in the justice's docket; and when the case is ended, should be folded in a strong wrapper, and filed in numerical order in bundles containing the numbers from 1 to 100; from 101 to 200, &c.

If the pl. is nonsuited, the entry is:

"Plaintiff nonsuit;

Judgment for defendant for costs;  
taxed at \$—."

If the def. is defaulted, the entry is:

"Defendant defaulted;

Judgment for plaintiff, for debt, \$—  
cost, —."

#### 8. Rule to return a writ.

H— ss. Before J. P., Justice of the Peace, at M., May —, 1843.  
J. S. vs. J. D.

On motion of the defendant it is ordered, that — —, constable of the town of M., within four days next after notice of this rule to be given to him, do peremptorily return the writ of attachment issued between the said parties.

J. P., Justice of the Peace.

#### 9. Affidavit for an attachment for not returning a writ.

I, J. D., testify and say that the annexed (or within) writ of summons was served upon me by — —, constable of the town of M., and that a copy of the rule hereto annexed was served by me upon said — —, on the — day of —.

J. D.

H— ss., May —, 1843. Personally appeared J. D., and made oath that the foregoing affidavit by him subscribed is true.

Before me: J. P., Justice of the Peace.

#### 10. Rule for an attachment.

H— ss. Before J. P., Justice of the Peace, at M., May —, 1843.  
J. S. vs. J. D.

Upon motion of the defendant, upon reading a rule made in this case the — day of —, and the affidavit of J. D., it is ordered that an attachment of contempt be issued against said constable, for not returning the writ of attachment issued in this cause, pursuant to said rule.

J. P., Justice of the Peace.

#### 11. Attachment for contempt.

##### State of New-Hampshire.

H— ss. To the Sheriff of said County of H—, or his deputy, or to  
[L. S.] any constable of M., in said County.

We command you that you arrest the body of — —, constable of M., so that you have him before me, J. P., a justice of the peace for said county, at —, on —, at — o'clock in the — noon, to answer to what shall be objected against him, and particularly for not returning the writ of attachment in the action J. S. vs. J. D. And make return of this writ, with your doings therein.

Dated the — day of —.

J. P., Justice of the Peace.

12. *Order of notice by advertisement.*

H— ss. — Before J. P., Justice of the Peace, at M., May —, 1843.  
J. S. vs. J. D.

Upon suggestion that this action is founded on the defs. note, dated —, —, for — dollars, payable to the pl., or order, on demand, with interest, and that it was commenced by an attachment of the defs. goods, and that no personal service was made on the def., by reason that he resides out of the state, (or by reason that his residence is unknown to the officer serving the writ) and that said J. D. was last an inhabitant of M., in said county: *It is ordered* that said action be continued to the — day of — next, at — o'clock in the — noon, at the office of —, in M., in said county, and that notice of the pendency of said suit be given by posting up a copy of this order, in two or more public places in the said town of M., forty days at least before the said — day of —.

J. P., *Justice of the Peace.*

13. *Affidavit of notice.*

I, J. D., testify and say that on the — day of —, 184—, I posted up copies of the within order at the post-office, and at the inn of W. S., in said M., being two of the most public places in said town, and that the same continued so posted up until this — day of —.

J. D.

H— ss., —, 184—. Personally appeared J. D., and made oath that the above affidavit by him subscribed is true.

Before me: J. P., *Justice of the Peace.*

14. *Form of bond, to respond judgment on review.*

KNOW ALL MEN BY THESE PRESENTS, that I, J. S., as principal, and C. D. and E. F., as sureties, all of M., in the county of H., are holden and firmly bound to J. D., of —, in said county, in the sum of — dollars, (*double the judgment*) to be paid to said J. S., to which payment we bind ourselves and our heirs by these presents.

Sealed with our seals, and dated the — day of —.

*The condition of this obligation* is such, that whereas said J. S. heretofore commenced an action against said J. D., by attachment of his goods, and no personal notice was given to said J. D. by reason that he resides out of the state, and it was ordered by said justice that said action should be continued to the — day of —, and that notice should be given of the pendency of said suit by posting up a copy of said order at two of the most public places in said M., in which town said J. D. was last known to be an inhabitant of this state, forty days before said — day of —; which order has been complied with:

Now if said J. S. shall pay and respond the judgment which the said J. D. may recover upon a review of said action, then this obligation shall be void.

J. S. (*Seal.*)

C. D. (*Seal.*)

E. F. (*Seal.*)

15. *Plea to the jurisdiction of the justice: Damages exceed \$13-33.*

And the said J. D., in his proper person comes and defends, &c., and says the said justice ought not to take further cognizance of the action aforesaid, because the says that [the damages therein demanded exceed the sum of thirteen dollars thirty-three cents, and that the

said action is thereby within the jurisdiction of the court of common pleas for said county of H. and not within the jurisdiction of said justice] and this he is ready to verify. Wherefore he prays judgment, if the said justice will take further cognizance of said action.

J. D.

If the cause of action arose in another county, instead of the part in brackets say :

"the cause of action aforesaid, if any the pl. has, accrued to the pl. at C., in the county of R., within the jurisdiction of a justice of the peace for said county of R., and not within the county of H., within the jurisdiction of said justice."

16. *Motion to dismiss an action for want of jurisdiction.*

H— ss. Before J. P., Justice of the Peace, at M., May —, 184—. J. S. vs. J. D.

On motion of the def., it appearing to me, the said justice, that the damages demanded in said action exceed the sum of \$13.33, and that said action is not within my jurisdiction—

*It is ordered*, that said action be dismissed.

J. P., *Justice of the Peace.*

The entry on the justice's docket may be :

"Dismissed for want of jurisdiction."

17. *AMENDMENTS: Form of rule to amend.*

H— ss. Before J. P., Justice of the Peace, at M., May —, 184—. J. S. vs. J. D.

On motion of the pl., it is ordered, that the pl. have leave to amend his writ, by inserting the addition of the def.

J. P., *Justice of the Peace.*

18. *Form of amendment.*

Amendment of writ by leave of the Court.

After the name and residence of the defendant, insert the word, "husbandman."

Amendments should not be made by erasing or interlining the original paper, but should be written on a separate paper, and annexed by a wafer. 9 *N. H. R.*, 168, *Gibson v. Bailey.*

19. *Form of rule to amend on terms.*

H— ss. Before J. P., Justice of the Peace, at M., May —, 1843. J. S. vs. J. D.

On motion of the pl., it is ordered, that the pl. have leave to amend his writ, by adding a new count upon payment of the defs. cost to this time.

J. P., *Justice of the Peace.*

Formal rules or orders are not usual in cases of this kind before justices. The entry is usually made on the justice's docket in this form :

"Plaintiff has leave to amend, by inserting addition of defendant."

"Plaintiff has leave to file a new count, on payment of defs. cost to this time."

**20. Rule to amend after a default.**

H— ss. Before J. P., Justice of the Peace, at M., May —, 1843.  
J. S. vs. J. D.

On motion of the pl., it is ordered by the court, that the def. show cause, on the — day of —, at —, why leave should not be granted to the pl. to amend his said writ, by adding a new count for money had and received; and that a copy of this order be served on the said def., fourteen days before said — day of —.

J. P., Justice of the Peace.

**Affidavit of service.**

I, J. S., testify and say that on the — day of —, I left at the usual place of abode of said J. D. a copy of the within rule.

J. S.

H— ss., May —, 184—. Personally appeared J. S., and made oath that the above affidavit by him subscribed is true.

Before me: J. P., Justice of the Peace.

**21. Death of parties.**

The entry upon the justice's docket may be:

"Death of plaintiff suggested."

"Death of defendant suggested."

If the action does not survive, which is the case of actions of assault and battery, slander, and all actions for personal injuries, and generally for all wrongs except those enumerated in § 14, *ch.* 186, *R. S.*, the action is abated by the death of either party, if there is but one, and the only further entry on the justice's docket is merely,

"Dismissed."

If there are several parties, one of whom dies, there is no other entry but that of the death, as above.

If the cause of action survives, the administrator may come in voluntarily and prosecute or defend. In that case the entry is:

"A. B., administrator of deceased, comes in and prosecutes," or "defends."

Otherwise the entry is:

"Scire facias issued."

**22. Form of scire facias to administrator.**

**The State of New-Hampshire.**

H— ss. To the Sheriff of the County of H., or his Deputy, or to  
[L. S.] any Constable of any Town in said County.

Whereas J. D., of —, &c., on —, at —, was attached by his goods or estate, and summoned to appear before me, J. P., a justice of the peace for said county of H., at —, on —, at — o'clock in the —noon, to answer to J. S., of —, &c., in a plea of the case



(here copy the declaration to the words, "to the damage of the said J. S. the sum of — dollars,") as it is said, and before the entry of said action, the said J. D. died, and administration of his goods and estate was committed to N. D., of, &c., as we are informed. We command you, therefore, to summon the said N. D. to appear before me, the said justice, at —, on —, to show cause, if any he has, why the said J. S. should not recover judgment against the estate of said deceased, under his administration, for the cause of action aforesaid— And make return of this writ, and your doings therein. Dated the — day of —, A. D., 184--. J. P., *Justice of the Peace.*

23. After entry and continuance, say, after the words, "*it is said,*" and the said J. S. duly entered his said action, and the same was continued till the — day of —, before which day the said J. D. died, and, &c.

24. *Scire facias to administrator of plaintiff.*

Say: "Whereas J. S., of —, &c., on —, at —, caused J. D., of —, &c., to be attached by his goods and estate," &c., and conclude, instead of "for the cause of action aforesaid;" "for his costs."

*Return.*

H— ss., — —, 184—. I have summoned the within named N. D., as within commanded, by giving to him, (or leaving at his usual place of abode) an attested copy of this writ.

M. M., *Sheriff.*

*Fees.* Service, —  
Travel, —

The entry on the justice's docket may be, after "*Scire facias issued,*" "*returned served,* — —, 184--."

"N. D., administrator, comes in and defends;" or "is defaulted."  
"Judgment," &c.

25. If the death suggested is that of an administrator, say, after the word, "*died;*" "and administration of the goods and estate of the said — —, not administered, was committed to — —, of —, &c., as we are informed."

26. If the administrator is removed, say, instead of "the said J. D. died"—

"The said J. D. was removed from his trust of administrator of said — —, deceased, and administration of the goods and estate of said deceased, not before administered, was committed to — —, of —, &c., as we are informed."

27. If the administration is extinguished, say,— "The said J. D. intermarried with —, and became the wife of R. P., of —, &c., whereby the trust of administration of the estate of — —, deceased, was extinguished and administration, &c.

28. *Suggestion of marriage and order of notice.*

The entry on the justice's docket may be:

"Marriage of pl. to A. B., of —, &c., suggested."

The form of the entry of these suggestions on record will be given in the chapter relating to JUDGMENTS.

*Order of notice.*

H— ss. Before J. P., Justice of the Peace, at M., — —, 184—.

J. S. *vs.* J. D.

Upon suggestion that the said J. S., since the commencement of this suit, (or since the continuance of this suit) intermarried with P. R., of —, &c., and is now the wife of said P. R. : *It is ordered* that notice be given to said P. R. to appear and prosecute said action (or defend said action) at —, on —, by serving upon him an attested copy of the original writ in this action, and a copy of this order, fourteen days before the — day of —, aforesaid.

J. P., *Justice of the Peace.*

*Affidavit of service.*

I, J. D., testify and say that on the — day of —, I served upon said P. R. an attested copy of the original writ in the action mentioned in the foregoing order of court, and a copy of said order, by leaving the same at his usual place of abode.

J. D.

H— ss., — —, 184—. Personally appeared J. D., and made oath that the above affidavit by him subscribed is true.

Before me : J. P., *Justice of the Peace.*

*29. Notice of change of attorney.*

H— ss. Before J. P., Justice of the Peace, at M., — —, 184—.

J. S. *vs.* J. D.

To Mr. J. S. (or, the plaintiff will)

Take notice, that I have retained O. B. as my attorney in this action, and A. M. is no longer my attorney therein.

J. D.

*30. Entry of neither party.*

"Neither party appears ;

Dismissed."

**PLEAS IN ABATEMENT TO THE PERSON.**

Most pleas of this description are omitted, for the reason that the defendant can gain no material advantage by pleading them : thus :

*Infancy of plaintiff*, is obviated by motion to amend by inserting the name of a guardian or next friend. 3 *N. H. R.* 345, *Young v. Young.*

*Coverture of plaintiff*, by motion for a scire facias or order of notice to the husband.

*No marriage of joint plaintiffs*, by motion to strike out the name of the party not entitled to sue, if there were no marriage.

*Mistake of plaintiff's name, residence, or addition*, by motion to amend.

*Marriage of defendant*, by motion for a scire facias, or order of publication.

*Defendants not married*, by striking out either name, or amending so as to omit the allegation of the marriage.

*Death of co-defendant*, by striking out name of deceased.

*Mistake of defendant's name, residence, or addition*, by motion to amend.

In some cases it may be important, where responsible parties are omitted, to compel them to come in, with a view to their ultimate liability for costs, &c.

31. PLEA. *Joint promissor not joined.*

H—ss. Before J. P., Justice of the Peace, at M., —, 184--.

J. S. vs. J. D.

And the said J. D. comes and defends, &c., when, &c., and prays judgment of the writ aforesaid, because he says that the said several promises, in said writ declared upon, if any such were made, were made by one A. F. and one C. B., jointly with said J. D., and not by said J. D. alone, which said A. F. and C. B. are and each of them is still alive, to wit., at M. aforesaid; and this he is ready to verify: Wherefore, because they are not, nor is either of them named in said writ, the said J. D. prays judgment of the said writ, and that the same may be quashed.

(Signed.) J. D. (or) *by his att'y,*  
A. B.

32. *Replication.*

And the pl. says that, by any thing in said plea of said J. D. alleged, his said writ ought not to be quashed, because he says that the said several promises in said declaration mentioned were and each of them was made by said J. D. alone, as the pl. hath above thereof complained against him; and this he prays may be enquired of by the said justice.

Signed, &c.

And the said J. D. doth the like.

If the facts stated in the plea are not denied, the pl. may move for a scire facias to the defs. omitted.

33. *Form of scire facias.*

State of New-Hampshire.

H—ss. To the Sheriff of the County of H., or his Deputy, or to any Constable of any Town in said County.

[J. S.]

Whereas J. D., of —, &c., on —, at —, was attached by his goods, and summoned to appear before me, J. P., a justice of the peace for said county of H—, at —, on —, at — o'clock in the —noon, to answer to J. S., of —, &c., in a plea of the case (here copy the declaration to the words, “to the damage of the said J. S. the sum of — dollars”) as it is said, and the said J. S. duly entered his said action, and the said J. D. filed his plea, as follows: (here copy the plea:) Whereupon the said J. S. moved that said A. F. and C. B. might be made parties to said action, and that a writ of scire facias might issue against them: We command you, therefore, to summon the said A. F. and C. B., if to be found in your precinct, to appear before me, the said justice, at —, on —, to show cause, if any they

have, why the said J. S. should not recover judgment against them for the cause of action aforesaid. And make return of this writ, and your doings therein.

Dated the — day of —, A. D., 184--.

J. P., *Justice of the Peace.*

RETURN: See Forms 1 to 3, page 61.

34. *Order of notice, by publication.*

H— ss. Before J. P., Justice of the Peace, at M—, —, 184--.

J. S. vs. J. D.

In a plea of the case, founded upon an account annexed to the writ, amounting to \$—: the defendant having pleaded that the promises alleged were made by A. F. and C. B. jointly with him, on motion of the pl. that said A. F. and C. B. may be made parties to said action, *It is ordered*, that notice be given to said A. F. and C. B. to appear before me, the said justice, at —, on —, at — o'clock in the — noon, to answer to said J. S. in the plea aforesaid, by publishing a copy of this order in the —, a newspaper published at said M., three weeks successively, the last publication to be at least fourteen days before said — day of —.

J. P., *Justice of the Peace.*

35. PLEA. *No such person as pl.*

And the said J. D. comes and defends, &c., when, &c., and says that there is not, nor on the day of the purchase of this writ, nor ever since was there in nature any such person called J. S., of, &c., as by the said writ is supposed; and this he is ready to verify: Wherefore he prays judgment of the said writ, and that it may abate, and for his costs.

36. REPLICATION. *There is such person.*

And the said J. S. says that the said writ ought not to abate, for anything contained in the plea aforesaid, because he says that on the day of the purchase of said writ, to wit., on the — day of —, there was and yet is such a person called J. S., as in the said writ is supposed, to wit., at —; and this he prays may be enquired of by the said justice.

37. *Death of def., and estate insolvent.*

And the said def. prays judgment of the writ aforesaid, because he says that after the last continuance of the plea aforesaid, to wit., on the — day of —, at M. aforesaid, from which day the plea aforesaid was continued until this day, the said original def. died, and the estate of said deceased was decreed by the judge of probate for said county, on —, at —, to be administered as an insolvent estate; and this he is ready to verify: Wherefore he prays judgment of the said writ, and if the court here will further proceed, &c.

38 PLEA. *Def. never executor.*

And the said J. D. comes and defends, &c., when, &c., and prays judgment of the pls. writ, because he says that he, the said J. D., is not executor of the will of the said A. B., nor hath he ever administered as such upon any of the goods or estate, rights or credits of said A. B., and this he is ready to verify: Wherefore he prays judgment of said writ, and that the same may be quashed.

**39. Replication.**

And the pl. says his writ aforesaid ought not to abate, because he says that at the time of the purchase of his writ aforesaid, and for a long time before, and ever since, the said J. D. did administer upon the goods, estate, rights and credits of the said A. B., as executor of the will of said A. B.; and this he prays may be inquired of by the said justice.

*Note.* Pleas in abatement to the court; as, wrong joinder of causes of action; wrong action; action misconceived; defect of form; want of venire; no cause of action accrued; are omitted, because they may be rendered nugatory by an amendment. The last, if it is not a mere clerical error, is a good defence on the general issue.

Pleas in abatement to the writ; as, variance from the form; bad teste, as, not fourteen days before return; no such town; action brought in wrong county; are omitted, because, if the defect is such as to render the writ void, it will be quashed by the court on motion. And if it merely render the writ voidable or abateable, it may be amended.

## PLEAS IN ABATEMENT FOR DEFECTS IN SERVICE.

**40. PLEA: *Def. arrested when exempted by statute.***

And the said J. D. comes and defends, &c., when, &c., and prays judgment of the writ aforesaid, and that the same may be abated, because he says that he was arrested, by virtue of said writ, on the second Tuesday, being the — day of March, 1843, at B., in said county of G., being the day on which a town meeting was by law holden at said B., for the choice of governor of the state of New-Hampshire, the said J. D. then and there being an inhabitant of said B., and entitled to vote at said meeting; and this he is ready to verify: Wherefore the def. prays judgment of said writ, that the same may be abated, and for his costs. 2 *N. H. R.* 468, *Hubbard v. Sanborn*.

**41. PLEA: *No summons left.***

And the said J. D. comes and defends, &c., when, &c., and prays judgment of the writ aforesaid, and that the same may be abated, because he says that though his estate was attached by virtue of said writ, yet no summons in the form prescribed by law has been delivered to him, or left at his usual place of abode: And this he is ready to verify: Wherefore he prays judgment of the same writ, that it may be quashed, and for his costs. 4 *N. H. R.* 256, *Nelson v. Sweett*.

**42. PLEA: *Variance of summons from writ.***

And the said J. D. comes and defends, &c., when, &c., and craves oyer of the pls. said writ and declaration, and of the officer's return thereon, and they are read to him as follows:

(Here copy accurately the writ, including the declaration and the officer's return ;)

which being read and heard, the said J. D. produces here in court the writ of summons, served upon him by said officer in the action aforesaid, and prays that the same may be enrolled, and it is enrolled in the words following : (Here copy accurately the summons :)

Whereupon the said J. D. prays judgment of the writ aforesaid, that the same may be abated, because he says that the summons aforesaid delivered to him by the officer who served said writ, when his, the def's., goods were attached at the pls. said suit, did not contain the substance of the pls. said writ, in this, to wit., that by said writ the def. is required to answer to the pl. before said justice in this suit at —, on the — day of May, 1843 ; and in and by said summons the def. is required to answer to said pl. in a suit before said justice, at —, on the — day of June, 1843, and this he is ready to verify : Wherefore the def. prays judgment of the said writ, that the same may be abated, and for his costs.

J. D.

4 *N. H. R.* 256, *Nelson v. Sweet* ; 6 *N. H. R.* 268, *Bishop v. Lyman*.

43. *Defect of summons, in not stating damages in covenant.*

*Proceed as in last form to the words, "to wit.:"* Then say, "That it is not set forth in said summons what sum is demanded in damages and for what : and this he is ready to verify ;" Wherefore, &c. 5 *N. H. R.* 345, *Tucker v. Perley*.

44. *Defect in not stating date of note.*

Say, "in this, to wit., that it does not set forth the date of the note declared on in said writ and declaration, and this," &c. 8 *N. H. R.* 543, *Knowles v. Rowell*.

45. *PLEA IN ABATEMENT : Another action pending.*

And the said J. D. comes and defends, &c., when, &c., and says that he ought not to be compelled to answer to the said writ and declaration of the pl., because he says that the said pl. heretofore, to wit., on —, at —, in said county, impleaded the def. before D. B., a justice of the peace for said county, in a plea of the case for the same cause of action in the declaration aforesaid mentioned, as by the record thereof remaining with said justice, D. B., appears : That the parties to the plea aforesaid, before said justice D. B., and the said J. S., the now pl., and said J. D. are the same persons, and not other nor different, and that the plea last aforesaid before said justice, D. B., yet remains undetermined ; and this he is ready to verify : Wherefore he prays judgment if he ought to be compelled to answer to the writ and declaration aforesaid, &c. 2 *N. H. R.* 36, *Parker v. Colcord* ; 9 *N. H. R.* 545, *Davis v. Dunklee*.

46. *REPLICATION : There is no such record.*

And the said J. S. says, that, notwithstanding any thing by the said J. D. above in pleading alleged, the said J. D. ought to answer to his writ and declaration aforesaid, because he says there is not any such record of the writ and declaration aforesaid, in the plea aforesaid specified, as the said J. D. has above in pleading alleged : and this he is ready to verify : Wherefore he prays judgment, that said J. D. may answer to his writ and declaration aforesaid.

*Note.* Before pleading, if the declaration is general the

def. may move that the pl. file a **SPECIFICATION** of his causes of action. The entry of this order is usually made upon the docket as follows :

"Pl. to file specification within — days."

47. The formal order would be :

H— ss. Before J. P., Justice of the Peace, at M—, — —, 1843.  
J. S. vs. J. D.

On motion of def. *It is ordered*, that the pl. file (or deliver to the defendant's attorney) an account in writing of the particulars of his demand for which this action is brought, within — days ; and that in the mean time all further proceedings be stayed.

J. P., Justice of the Peace.

48. *Form of specification.*

H— ss. Before J. P., Justice of the Peace, at M., — —, 1843.  
J. S. vs. J. D.

This action is brought to recover the balance of the following account :

(Here set out the account.)

or,

This action is brought to recover the amount of the promissory note mentioned in the first count of the declaration.

J. A., *pls. att'y.*

In pleading, the def. may treat the specification as if it were a part of the declaration.

## PLEA OF THE GENERAL ISSUE.

49. *In assumpsit.*

H— ss. Before J. P., Justice of the Peace, at M—, — —, 1843.  
J. S. vs. J. D.

And the said J. D. comes and defends, &c., when, &c., and says he never promised the pl. as he has thereof declared against him, and of this puts himself on trial.

J. D., or: By his att'y,  
R. S.

And the pl. likewise,

J. S., &c.

50. *In debt on bond and in covenant.*

And the def. comes and defends, &c., when, &c., and says that the supposed writing obligatory in said declaration mentioned is not his deed. And of this he puts himself on trial.

By, &c.

And the pl., &c.

*Note.* The title of the pleas ; that is, the county, court, time, and names of parties, are generally inserted as in the form of the General Issue in Assumpsit, (49) except when they are written upon the writ ; and the similiter, that is, "and the pl. likewise," is added in the same form, except when a different form is given.

51. *In debt for rent, and on simple contract.*

And the said def. comes and defends, &c., when, &c., and says he does not owe the pl. the sum of — dollars, above demanded, or any part thereof as the pl. has above declared against him; and of this he puts himself on trial, &c.

52. *In trespass, trover, and case for wrongs.*

And the said J. D. comes and defends, &c., when, &c., and says that he is not guilty, as the pl. has alleged against him; and of this he puts himself on trial, &c.

### SPECIAL PLEAS.

*Note.* Special pleas usually begin and end in one form. Where the usual form is varied from, the form will be given; otherwise only the residue of the plea.

53. *Form of commencement and conclusion of special pleas.*

H— ss. Before J. P., Justice of the Peace, at M., —, 1843.  
J. S. vs. J. D.

And the said J. D. comes and defends, &c., when, &c., and ~~says~~ ~~pleads~~ the pl. his action aforesaid thereof against him ought to have and maintain, because he says that—

(Here insert the defence relied upon.)

and this he is ready to verify: Wherefore he prays judgment if the said pl. his action aforesaid thereof against him ought to have and maintain, and for his costs. By his attorney: S. K.

54. *Form of commencement and conclusion of replications.*

And the said pl. says, that by reason of any thing by said def. in pleading alleged, he ought not to be barred from having and maintaining his action aforesaid thereof against him, because he says that: (Here insert the answer to the plea.)

and this he is ready to verify: Wherefore he prays judgment and his damages to be adjudged to him. By his attorney: P. C.

*Note.* If the replication contains a mere denial of the defence stated in the plea, the conclusion is:

“And this he prays may be inquired of by the justice.” And the other party adds: “And the def. likewise by,” &c.

55. The form of commencement and conclusion of rejoinders is usually the same as that of pleas: And that of surrejoinders is usually the same as that of replications.

It is sufficient, however, to commence a rejoinder or surrejoinder in this manner:

“And the def. says, &c. ;” or, “And the pl. says.”

56. If several pleas are pleaded, the second and subsequent pleas usually commence in this form:

And for a further plea, *by leave of the court*, the def. says the plaintiff his action, &c., because, &c.



57. If any plea applies to a part of the declaration only, it must be mentioned in the introductory part of the plea to what it applies.

And the said def. comes and defends, &c., when, &c., and as to the first count in the pls. declaration says he never promised, &c.

And as to the second count in said declaration, the def. says the pl. his action, &c. Because he says, &c.

And for a further plea, by leave of the court, as to the second count in said declaration mentioned, the def. says the pl. his action, &c. Because he says, &c.

58. If the defence arose after the commencement of the action, the form is :

And the def. comes and defends, &c., when, &c., and says the pl. his action aforesaid thereof against him ought not *further* to have and maintain, because he says, &c.

And the conclusion in this case is : " And this the def. is ready to verify : Wherefore he prays judgment if the pl. his action aforesaid thereof against him ought *further* to have and maintain," &c.

If after a continuance, the form is :

And now, on the — day of —, until which day the said action was last continued, the said def. comes and defends, &c., ~~where, &c.~~ says the pl. his action thereof against him ought not *further* to have and maintain, because he says that after the last continuance of said action, to wit., on —, at —, &c.

Conclusion as in last form.

### SPECIAL PLEAS IN ASSUMPSIT.

59. *Statute of limitations.*]—The cause of action in the pls. declaration (or in the first, &c., count in the plaintiff's declaration) supposed did not accrue to him at any time within six years next before the commencement of this suit.

60. *REP. Action did accrue within six years.*] the cause of action in said declaration alleged did accrue to the pl. within six years next before the commencement of this suit. And this he prays may be inquired of by said justice.  
By, &c.

And the def. likewise, &c.

61. *REP. Pl. an infant, insane, &c.*] he, the said pl., at the time the said cause of action accrued, and afterward until the — day of —, was within the age of twenty-one years, to wit., of the age of twelve years; (or was insane, or was a married woman and under the coverture of —,) and that he commenced said action within two years after the said disability was removed, to wit., the — day of — aforesaid.

62. *REP. Pl. of full age.*] when the said cause of action accrued the pl. *was of full age, and not within the age of twenty-one years*, as the plaintiff has alleged, and of this he puts himself on trial.

or :

was and ever since has been of sound mind, and not insane ;

or :

was and ever since has been sole and unmarried, and not under coverture of said —.

63. **REJ. *Disability removed.***] more than two years before the commencement of the action aforesaid, to wit., on —, the plaintiff became of full age;  
or, became of sound mind;  
or, became sole and unmarried.

64. **SURREJOINDER. *Disability not removed.***] he, the said plaintiff, did not become of full age, &c., until the — day of — aforesaid.

65. **REP. *Def. out of state.***] when the cause of action aforesaid accrued, and always afterwards, until within six years next before the commencement of this suit, to wit., from — —, until —, the said def. was absent from and residing out of this state.

66. ***Another form.***] after the cause aforesaid accrued the said def. was absent from and residing out of this state from the — day of —, until the — day of —, and the cause of action aforesaid did accrue to the pl. within six years next before the commencement of this suit, exclusive of the time the def. was so absent from, and residing out of the state.

67. **REJ. *Def. was not absent.***] the said def., from the time said cause of action accrued till the commencement of this suit, was not at any time absent from and residing out of this state; and this he prays may be inquired of by said justice.

68. **REJ. *Def. returned.***] the said def., more than six years before the commencement of this suit, to wit., on —, returned to and afterwards resided in this state from said — day of — until the commencement of this suit, and said action did not accrue within six years before the commencement of this suit, exclusive of the time he was absent from the state; and this he prays, &c.

69. **REJ. *Def. did not return.***] the said def. did not return to, nor reside within the limits of this state, from said — day of —, until said — day of — —, and this he prays, &c.

70. **PLEA. *Statute of limitations by administrator.***] the said cause of action, in the pls. declaration supposed, did not accrue to the said pl. at any time within six years next before the decease of said A. B., to wit., on the — day of —.

71. **REPLICATION. *Action did accrue within six years.***] the said cause of action did accrue within six years next before the decease of said A. B., and this he prays, &c.

72. **PLEA. *Statute of limitations by administrator.***] original administration of the estate of said deceased was granted to said administrator on the — day of —, 18—, and that the pls. action aforesaid was not commenced within three years next following.

73. **REP. *Administration suspended.***] that — —, to whom administration of the estate of said deceased was originally granted, on — aforesaid, was married to one — —, on the — day of —, whereby the administration on said estate was suspended until the — day of —, when the said def. was appointed administrator thereof, and the pls. action was commenced within three years next following said original grant of administration, exclusive of the time the said administration was suspended as aforesaid.

74. **REJ.** The said — — was not married to said — — until the — day of — ; and so the pls. said action was not commenced within three years next after said original grant of administration, exclusive of the time said administration was suspended.

75. **REP.** To plea of statute of limitations by administrator that action did not accrue within six years before commencement of suit — *action brought within two years.*

The said right of action existed against said deceased at the time of his decease, to wit., on the — day of — ; and did by law survive against said administrator ; and the action aforesaid was brought against said defendant, within two years next after the original grant of administration to said def., to wit., on the — day of — .

76. **REJOINDER.** *Action not brought within two years.]* that administration was granted to said def. on the — day of — , and the action aforesaid was not commenced within two years next after the original grant of administration, as the pl. has alleged.

77. **REP.** *Action brought by administrator within two years after death of intestate.]* the said deceased had a right of action against said def. for the cause of action in said declaration mentioned, at the time of his decease, to wit., on the — day of — , at — ; and the said cause of action did by law survive to said administrator, and the said action was brought against said def. within two years next after the original grant of administration to the pl., to wit., the — day of — .

78. **REJOINDER.** *Deceased had no right of action at his decease.]* The said cause of action did not accrue to the deceased within six years next before his decease, to wit., the — day of — ; and so said deceased had no right of action thereon at the time of his decease, as the pl. has alleged, and of this he puts, &c.

79. **PLEA.** *Infancy of def.]* at the time of making the said promise, in the pls. declaration alleged, said def. was an infant, within the age of twenty-one years, to wit., of the age of nineteen years, and no more.

*Note.* If the def. is under age at the time of pleading, the commencement should be :

And the said D., *who is under the age of twenty-one years, by A. B., his guardian, who is admitted by the court here to defend for the said D., comes, &c.*

80. **REP.** *Def. was of age.]* the said D., at the time of making the promises in said declaration mentioned, was of the full age of twenty-one years, and not within the age of twenty-one years, as the said D. has alleged ; and this he puts, &c.

81. **REP.** *Articles furnished were necessities.]* said board and clothing, in said declaration mentioned, were necessities for the said D., and suitable for his estate and degree.

82. **REJ.** *They were not necessities.]* said board and clothing were not necessary for the said D., nor suitable to his estate and degree.

**REP.** *Promise confirmed after full age.]* the said D., since the mak-

ing of said promises, has attained the age of twenty-one years, to wit., at — on —; and thereafterwards, and before the commencement of this suit, to wit., at — on —, agreed to and confirmed the said several promises in said declaration mentioned, and each of them. 2 N. H. R. 51, *Wright v. Steele*; 6 N. H. R. 432, *Merriam v. Wilkins*; 8 N. H. R. 374, *Hale v. Gerrish*.

84. **REJ.** *Def. did not confirm.*] he did not, after he attained the age of twenty-one years, agree to and confirm the said several promises in said declaration mentioned, or either of them, as the pl. has alleged: and this he prays, &c.

85. **PLEA.** *Def. a married woman.*] the said def. before and at the time of making the said promises in said declaration mentioned, was and still is the wife of one A. B., who is still living, to wit., at —.

86. **REP.** *Def. not married.*] at the time of making the said promises in said declaration mentioned, said def. was and still is sole and unmarried, and not the wife of said A. B., as the said def. has alleged; and this she prays, &c.

87. **REP.** *Husband an alien, &c.*] said A. B., is *an alien, a subject of the government of the United Kingdom of Great Britain and Ireland, and resident at Plymouth, in said United Kingdom*; and said def. before the time of making said promises, in said declaration mentioned, had resided in this state for the term of six months successively, separate from her said husband, to wit., at —.

Or, instead of the words in italics, say: "is a citizen of the state of Maine, and resident at Portland, in said state," &c.

88. **REP.** *Husband a citizen of this state.*] said A. B. before and at the time of the making of the said several promises, in said declaration alleged, was, and still is, a citizen of the state of New-Hampshire, and resident therein, to wit., at —, and not an alien subject to the government of the United Kingdom of Great Britain and Ireland, (or not a citizen of the state of Maine.)

89. **SURREJ.** *Husband an alien.*] the said A. B., at the time of the making the said promises, in said declaration mentioned, was and still is an alien, and subject of the government of the United Kingdom of Great Britain and Ireland, and this he prays, &c.

90. **REP.** *Def. has not resided separate, &c.*] before the making of the said promises, in said declaration mentioned, the said def. had not resided in this state for the term of six months successively, separate from her said husband; and this she prays, &c.

91. **REP.** *Husband had deserted his wife.*] before the time of making the said promises in said declaration mentioned, the defs. said husband had deserted the def., his said wife, and remained absent for the space of three months, without making suitable provision for her support, and the maintenance and education of their minor children.

92. **REP.** *Husband had not deserted, &c.*] the defs. said husband, before the time of making the said promises in said declaration mentioned, had not deserted the said def., and this she prays, &c.

Or, instead of the words in italics, say, "had not remained absent

for the space of three months without making suitable provision for the support of said def."

93. **PLEA. Duress.**] the said def., before and at the time of the making of the said bill of exchange, in said declaration mentioned, was imprisoned by the pl., and others in collusion with him, to wit., at —; and was then and there kept and detained in prison until he, the said def., through the force and restraint of that imprisonment then and there made, gave the said bill of exchange to the pl.

94. **REP. Denial of duress.**] the said def., at the time of making the said bill of exchange, was free and at large, and not under any imprisonment; and that said def. made said bill of exchange of his own free will, and not by force, or restraint of any imprisonment, as the said def. has above alleged; and this he prays, &c.

95. **PLEA. Tender.**] And the said J. D. comes and defends, &c., when, &c., and says the pl. his action aforesaid thereof against him ought not to have and maintain, *to recover any more damages than ten dollars, in this behalf*; because he says that after the making of the promises in said declaration mentioned, and before the commencement of this action, to wit., at —, on —, he, the said J. D., tendered the said sum of ten dollars to the pl. who then and there refused to receive the same, and always, from the time of making said promise hitherto, he, the said J. D., has been and still is ready to pay the pl. the said sum of ten dollars, to wit., at —; and now brings the same here into court, ready to pay the pl., if he will accept the same, and this he is ready to verify: wherefore he prays judgment, if the pl. his action aforesaid ought to have or maintain against him to recover any more damages than said ten dollars.

96. **REP. No tender.**] And the pl. says that he ought not to be precluded by any thing in said plea alleged from having and maintaining his action aforesaid against the said J. D., to recover his full damages, in this behalf, because he says that the said J. D. did not tender to him the said sum of ten dollars in manner and form as the said J. D. has in pleading alleged; and this he prays may be enquired of by the said justice, &c.

And thereupon the pl. freely accepts out of court here, the said sum of ten dollars so brought here into court; whereupon the pl. is satisfied as to the said ten dollars, &c.

97. **REP. Subsequent request and refusal.**] And the pl. says that he ought not &c., *(as in the last Rep.)* because he says that after the making said tender in said plea mentioned, and before the commencement of this action, to wit., on —, at —, he, the pl., requested the said J. D. to pay him the said \$10, which the said J. D. then and there refused, and this, &c. *(as in last Rep.)*

98. **REP. Pl. did not request.**] And the said J. D. says that the pl. did not request him to pay the said \$10, as he has above in his replication alleged, and of this he puts him on trial.

99. **PLEA. Tender to a quantum meruit.**] And the said J. D. comes and defends, &c., *(as in last plea)* the pl. by reason of the promises in said declaration alleged, reasonably deserved to have the sum of — dollars, and no more; and from the time of making the said prom-

ises he always has been, and still is, ready to pay to the pl. the said sum of — dollars ; and before the commencement of this action, to wit., on —, at —, he offered to pay to the pl. the said sum of — dollars, which the said pl. then and there refused to receive ; and the said def. produces here in court the said sum of — dollars, ready to be paid to the pl., if he will receive the same, and this, &c., (*as in the last plea.*)

100. REP. *Tender insufficient.*] And [thereupon the pl. freely takes and accepts out of the court here the said sum of — dollars, so tendered and paid into court as aforesaid] and says he ought not to be barred from having and maintaining his said action thereof against said J. D. for further damages than said sum of — dollars, because he says that he reasonably deserved to have, by reason of said promises, more than said sum of — dollars, to wit., the sum of — dollars, as he has above in his declaration alleged ; and this he prays may be enquired of by said justice.

101. PLEA. *Tender to attorney.*] And the said J. D. comes and defends, &c., when, &c., and says the pl. his action aforesaid thereof against him ought not further to have or maintain, because he says that after the commencement of said action, and before the sitting of this court, to which the pls. said writ is returnable, to wit., on —, at —, he, the said J. D., tendered to D. C., Esq., attorney to the pl. in his said action the sum of — dollars, being the amount of the debt claimed in said action, and — dollars costs of said suit, which the said D. C. then and there refused to receive ; and from the time of making the said tender the said J. D. has been and still is ready to pay to the pl. the sums so tendered, and now brings the same here into court, ready to be paid to the pl. if he will accept the same ; and this he is ready to verify : wherefore he prays judgment if the pl. ought further to have or maintain his said action, and for his costs, &c.

102. REP. *Tender insufficient.*] And the said pl. says he ought not to be precluded from further having and maintaining his action aforesaid against said def., because he says that the debt demanded in said action amounted to a larger sum than the amount tendered as aforesaid, to wit., to the sum of — dollars, as in said declaration is alleged ; and this he prays may be enquired of by said justice.

103. PLEA. *Award.*] because he says that after the making of the several promises in said declaration mentioned, and before the commencement of this suit, to wit., at — on —, the pl. and said def. submitted all demands existing between them to the award of A. A., an arbitrator by them mutually chosen, so as said arbitrator should make his award before the — day of —, then next ; and said arbitrator having given due notice to the parties, and fully heard their evidence and allegations, made his award upon the matter submitted to him, on the — day of —, and thereby awarded that said def. should pay to said pl. the sum of — dollars, of which said pl. had due notice ; and the def. then and there, in pursuance of said award, paid to the pl. said sum of — dollars.

104. REP. *No such award.*] that the said arbitrator did not make any such award of and concerning the promises, as the def. has in pleading alleged, and this he prays, &c.

105. **REP.** *Cause of action not submitted where the submission was of all matters in dispute.*] the cause of said action was not a matter in dispute between said parties, and was not included in said arbitration.

106. **REP.** And said J. D. says that the said cause of action was a matter in dispute between said parties, and was included in said arbitration ; and of this he puts, &c.

107. **PLEA.** *Satisfaction.*] after the making the several promises in said declaration mentioned, and before the commencement of this action, to wit., at —, on —, he delivered to the pl., and the pl. accepted two pieces of broadcloth in satisfaction of the said promises, and of the damages arising from the non-performance thereof. 3 *N. H. R.* 518, *Blanchard v. Noyes.*

108. **REP.** *Def. did not accept.*] he did not accept the said two pieces of broadcloth, in satisfaction of said promises, or either of them, or of the damages arising from the non-performance thereof, as the def. has in pleading alleged, and this he prays, &c.

109. **PLEA.** *Discharge.*] after the making the said promises in said declaration mentioned, and before the alleged breach thereof to wit., on — at —, the pl. discharged the def. from said promises, and from all further performance thereof.

110. **REP.** *Pl. did not discharge.*] he did not discharge the said def., as the def. has alleged, and this he prays, &c.

111. **PLEA.** *Release.*] after the making of said promises, and before the commencement of this action, to wit., on —, at —, the pl., by his release of that date, sealed with his seal, and in court to be produced, did release and discharge the said def. from all actions and causes of actions, (as in the release.)

112. **REP.** *Not his deed.*] the said release, in said plea mentioned, is not the deed of the pl., and this he prays, &c.

113. **REP.** *Release obtained by fraud.*] the said release, in said plea mentioned, was obtained from said pl. by the fraud and covin of the said def., to wit., at — —.

114. **PLEA.** *Former judgment.*] that at a court holden before J. S., a justice of the peace for said county of H—, at —, on —, the said pl. impleaded the def. in a plea of the case, for not performing the same promises in said declaration mentioned ; and such proceedings were thereupon had that the said pl. then and there recovered against the def. in that plea — dollars for his damages, sustained by reason of the not performing the same promises in said declaration mentioned, together with — dollars costs of suit, as by the record thereof remaining with said justice appears, which judgment is in full force.

115. **REP.** *No such record.*] there is not any such record of a judgment recovered by the pl. against the def. as the said def. has in pleading alleged.

116. **REP.** *There is, &c.*] there is such record of a judgment recovered by said pl. against said def., as the said def. has in pleading alleged ; and this he is ready to verify by the said record.

## PLEAS BY EXECUTORS AND ADMINISTRATORS.

117. PLEA. *Never executor.*] he never was executor of the last will of said A. B., nor administered as such executor any of the goods or estate of said A. B. after his death.

118. REP. *Def. administered as executor.*] said def., since the death of said A. B. has administered divers goods and chattels which were of the said A. B. at his decease, as executor of the will of said A. B., to wit., at —, and this he prays may be enquired of by said justice.

119. PLEA. *Def. removed as administrator.*] since the commencement of the pls. action, at a court of probate holden at —, in and for said county of —, on the — day of —, on the petition of —, it was decreed by said court that the said def. be removed from the office of administrator of the estate of said A. B., deceased; whereby the def. was removed from said office.

120. PLEA. *Demand not exhibited within two years.*] administration of the estate of said deceased was originally granted to said def., on —, at —; and the def. has ever since duly administered on said estate; and the demand in said declaration mentioned was not exhibited to said administrator at any time within two years after said original grant of administration.

121. REP. *Demand exhibited.*] said demand was exhibited to said administrator within two years after said original grant of administration, to wit., on —, at —, and this he prays, &c.;

REP. *Administration suspended:* See form 73.]

122. PLEA. *Insolvent estate.*] that at a court of probate holden at —, for said county of —, on the — day of —, it was decreed by said court, upon application of said administrator, that the estate of said A. B. should be administered as an insolvent estate, which decree is in full force.

123. PLEA. *Set-off.*] before and at the commencement of this suit, the said pl. was, and still is, indebted to the def. in the sum of — dollars, for goods, wares and merchandize sold and delivered by the pl. to the def., at his request; which sum exceeds the damages sustained by the pl. by the nonperformance of the promises in said declaration mentioned, out of which said def. is ready and willing, and offers to allow the full amount of said damages.

*Note.* Any other demand founded on judgment or contract existing in favor of the def. against the pl. may be set forth substantially as in a declaration.

If the set-off is less than the demand in suit, the general issue should be pleaded as to all but the amount of the set-off.

A debt due the principal may be set off in an action against a principal and surety. 8 N. H. R. 539, *Mahurin v. Pearson*.



124. **REP.** *Pl. does not owe.*] he, the said pl., was not nor is indebted to the def. in manner and form as he has in his said plea alleged, and this he prays, &c.

It is more usual to plead the general issue, and give notice of set-off. See form of general issue, form 49.

125. *Notice of set-off.*] (*written under the general issue*) The pl. will take notice, that on the trial of this issue the def. will give in evidence that at the time of the commencement of this suit the pl. was and still is indebted to the def. in the sum of — dollars, upon his promissory note dated —, whereby for value received he promised the def. to pay him or order — dollars, on demand with interest; and that the def. will set off so much thereof as may be necessary to satisfy any demand of the pl. which may be proved on said trial, and claim judgment for the balance.

J. D., by his atty,  
—.

126. **PLEA.** *Bankruptcy.*] the said cause of action in said declaration mentioned was a debt owing by said def. on the — day of —, 184—; and on the said — day of —, the said def. applied to the District Court of the United States for the District of New-Hampshire, by his petition verified by his oath, for the benefit of the act of Congress of the United States, passed August 19, 1841, entitled “An act to establish a uniform system of bankruptcy throughout the United States;” and thereupon such proceedings were had that said def. was by a decree of said court declared a bankrupt; and on the — day of — it was decreed by said court that said def. be fully discharged of and from all his debts owing by him at the time of the presentation of his petition aforesaid, to wit., the — day of —, aforesaid.

*Note.* If the discharge is granted after the suit is commenced, it should be pleaded in bar of the *further* maintenance of the action. If granted after a continuance, in form of a plea after the last continuance. See form 58.

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## PLEAS IN DEBT ON SIMPLE CONTRACT.

These may be in similar form to those in assumpsit, except the general issue.

### ON BONDS.

127. **PLEA.** *Not defs. deed.*] And said def. comes and defends, &c., when, &c., and says that the supposed writing obligatory is not his deed, and of this he puts himself on trial, &c.

**PLEA.** *Not deed of deceased.*] Say, “is not the deed of said A. B., deceased.”

128. **PLEA.** *Not defs. deed after oyer.*] And the said def. comes and defends, &c., when, &c., and craves oyer of the said supposed writing obligatory in said declaration mentioned, and it is read to him,

&c. ; he also craves oyer of the condition of the said supposed writing obligatory, and it is read to him, in these words ; (here recite the condition verbatim) which being read and heard the said def. says that the said supposed writing obligatory is not his deed, and of this, &c.

129. PLEA. *Bond never in possession of def.*] the supposed writing obligatory, in said declaration mentioned, is not nor ever was in his possession, as the pl. has alleged ; and of this he puts himself on trial.

130. PLEA. *Fraud.*] the said writing, in said declaration mentioned, was obtained from the said def. by the fraud and covin of the said pl., and others in collusion with him.

PLEA. *Duress.*] See PLEAS IN ASSUMPSIT.

131. PLEA. *Payment.*] said def., on the said — day of —, mentioned in said condition, to wit., at —, paid the pl. the said sum of —, mentioned in said condition, with lawful interest for the same, according to the said condition.

132. REP. *Did not pay.*] the said def. did not pay the pl. the said sum of —, in said condition mentioned, with lawful interest for the same, as the said def. has in pleading alleged ; and this he prays, &c.

133. PLEA. *Payment after the day.*] oyer, &c., as above : the said def., after the said — day of —, &c., and before the commencement of this action, did pay the pl. the said sum of —, with all the interest due at the time of such payment.

134. PLEA. *Payment at several days.*] oyer, &c., as above : the said def. paid to the said pl. all and singular the sums of money in said condition specified, at the several days specified in said condition, according to the form and effect of said condition, to wit., at —.

135. REP. *One payment not made.*] the said def. did not pay to the pl. — dollars on the — day of —, which he ought to have paid on that day, according to the condition aforesaid, &c.

136. REP. *Def. did pay.*] And the def. says that he paid the said — dollars on the — day of —, according to the said condition, as he has above alleged, and of this he puts himself on trial, &c.

137. PLEA. *Def. not damnified on indemnity bond.*] after oyer, &c. the said pl. has not at any time since the making of said writing obligatory and condition thereof, hitherto been in any wise damnified by reason or means of any thing in the condition of said writing obligatory mentioned.

138. REP. *Pl. was damnified.*] the said def. did not pay to said E. F. said sum of — dollars, and interest thereof, on the day mentioned in the condition of said writing obligatory, whereby the said pl. on —, at —, was obliged to pay, and did pay to said E. F. the said sum of — dollars, and interest, together with the costs of a certain action brought by said E. F. against him for the recovery thereof, amounting in the whole to the sum of — dollars —.

139. REP. *Pl. did not pay.*] the said pl. did not pay the said sum

of — to said E. F., nor said costs of suit brought by said E. F., as he has alleged, and of this he puts, &c.

140. PLEA. *No award on arbitration bond.*] the said arbitrators named in said condition did not, nor did any two of them on or before the — day of —, named in said condition, make any award in writing, under their hands or the hands of any two of them, of and concerning the premises in said condition mentioned, and so referred as aforesaid.

### IN DEBT FOR RENT.

141. PLEA. *No rent in arrear.*] no part of the said rent, in the said declaration mentioned, is in arrear or unpaid, as the pl. has in his declaration alleged; and of this he puts, &c.

142. PLEA. *Pl. did not lease.*] And the said def. comes and defends, &c., when, &c., and says that the pl. did not demise to the def. the said premises in said declaration mentioned, as the pl. has declared against him: and of this he puts himself upon trial.

143. PLEA. *Pl. had nothing in the tenements.*] the plaintiff, at the time of the supposed demise aforesaid, in said declaration mentioned, had nothing in the tenements aforesaid whereof he could make the demise aforesaid.

144. PLEA. *Eviction.*] the said pl., after the making of said indenture, and before any rent became due thereon, on —, at —, with force and arms entered into said demised premises, expelled the def. from the possession thereof, and has ever since kept him out, and this, &c.

145. REP. *Did not expel, &c.*] the said pl. did not, before the said rent became due, expel the def. from said premises, or any part thereof, as the def. has in pleading alleged; and this he prays, &c.

146. PLEA. *Assignment of lease.*] after the making of said lease, and before any part of the rent mentioned in said declaration became due, to wit., on — at —, the said def., by his deed of that date, did assign and transfer to one G. H. all his right and interest in said demised premises; by virtue whereof the said G. H. then and there entered into said demised premises, and became possessed thereof for the residue of the term in said lease mentioned; and the pl. after the entry of said G. H., to wit., on —, at —, did accept of said G. H. the sum of —, for the rent reserved by said lease, and then and there accepted said G. H. as his tenant of said premises. 8 *N. H. R. 22, Trustees v. Clough.*

147. REP. *Pl. did not accept rent, &c.*] the said pl. did not accept from said G. H. the said rent, in said plea mentioned, or any part thereof, nor accept said G. H. as his tenant of said premises, as said def. has alleged; and this he prays, &c.

148. PLEA. *Surrender.*] after the making of said indenture, and before the rent in said declaration mentioned became due, to wit., on —, at —, the def. surrendered to the pl. the whole estate which he

had in said demised premises by virtue of the demise aforesaid, to which surrender the pl. then and there agreed.

149. REP. *Def. did not surrender.*] the said def. did not surrender to the pl. his estate in said demised premises, as said def. has alleged, and this he prays, &c.

### ON JUDGMENTS.

150. PLEA. *No such record.*] there is not any such record of the said judgment as the plaintiff has above alleged against him.

151. REP. *There is a record.*] there is such record of the said judgment as the said pl. has alleged; and this he is ready to verify by the said record, as the court shall order.

152. PLEA. *Payment.*] after the recovery of said judgment, and before the commencement of this action, to wit., on —, at —, the def. paid to the pl. the said debt and damages, in form aforesaid recovered against said def.

153. REP. *Did not pay.*] the said def. did not pay to the pl. said debt and damages in form aforesaid recovered, as the said def. has in pleading alleged; and this he prays, &c.

### IN COVENANT.

154. PLEA. *Payment.*] And the said def. comes and defends, &c., when, &c., and says that on the — day of — aforesaid, at — aforesaid, he paid to the pl. the sum of —, in said indenture mentioned; and of this he puts himself on trial.

PLEA. *Satisfaction.*

*Tender.*

*Release.*

*Eviction.*

*Surrender.*

*Former recovery.*

See ASSUMPSIT.

155. PLEA. *Performance.*] always, after the making of said indenture to the commencement of this action, he has performed and kept all and singular the covenants and agreements on his part to be performed, and kept according to said indenture.

*Note.* This plea is good only where the covenants are affirmative.

156. PLEA. *Performance of master's covenants in indentures.*] after the making of said indenture until the — day of —, in said declaration mentioned, the def. did instruct said M. in the art and calling of a saddler; did cause him to be taught to write and cipher, and delivered to him two good suits of apparel when he attained to the age of twenty-one years, according to the indenture aforesaid, and of this he puts himself on trial, &c.

157. PLEA. *Performance of covenants in a deed.*] the def. was the lawful owner of said premises; was seized thereof in his own right in fee simple, and had full power and lawful authority to grant and convey the same in the manner aforesaid, according to the tenor

and effect of said deed; that the said W. in said declaration mentioned, was not at the time of executing said deed, nor ever since, entitled to any dower in said premises in said deed conveyed, nor any part thereof, (or that said W. did not enter into said premises, or any part thereof, and hold the same as her dower;) and that said J. M., in said declaration mentioned, had not, at the time of executing said deed, nor ever since, any lawful right or title to said premises, nor any part thereof (or that said J. M. did not enter into said premises, or turn the plaintiff out of possession thereof or withhold the same) as the said plaintiff has declared, and thereof puts himself on trial, &c.

158. PLEA. *Def. not assignee.*] all the estate and interest of the said E. then to come in said demised premises, by assignment thereof legally made, did not come to and vest in the def. as the pl. has declared, and of this he puts, &c.

159. PLEA. *Pl. not assignee.*] the said E. did not bargain, sell and convey to the pl. the premises in said declaration mentioned, as the said pl. has declared, and of this he puts, &c.

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### IN CASE.

Pleas of *statute of limitations, satisfaction, release and award*, are the same as in *assumpsit*.

160. PLEA. *That pl. was guilty of theft.*] before the speaking and publishing of the said words, in said declaration mentioned, of and concerning the pl., to wit., on —, at —, the pl. did feloniously steal, take and carry away certain goods and chattels, to wit., —, of one E. F., of the value of —: wherefore the defendant afterwards, at the time in said declaration mentioned at — spoke and published the said words in said declaration mentioned of and concerning the said pl., as he lawfully might for the cause aforesaid.

*Note.* Actions for words are limited to two years. *R. S. 360, § 3.*

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### IN TRESPASS.

*Note.* The plea of statute of limitations may be the same as in *assumpsit*; except in actions for assaults, batteries and imprisonments, the limitation is two years.

The pleas of satisfaction, release and award, are the same as in *assumpsit*.

As it is usual to allege trespasses in terms of extravagance, since the party may always recover damages for so much as he can prove, it is often necessary to consider what part of the facts alleged can be justified. The party then pleads the general issue as to all which he cannot jus-

tify, and in the introductory part of his plea describes the facts which he intends to justify, thus :

161. And the said def. comes and defends, &c., when, &c., and as to the force and arms, and all the trespass, above supposed to be done, except as to the assaulting and beating the plaintiff, in said declaration mentioned, says that he is not guilty thereof, and of this he puts himself on trial, &c.

And as to the assaulting and beating the pl., in said declaration mentioned, the def. says the plaintiff his action, &c., because he says, &c.

In this case he refers to the trespasses intended to be justified; as, "the said assaulting and beating;" or, "the said trespasses in the introductory part of this plea mentioned."

#### FOR ASSAULT AND BATTERY.

162. PLEA. *Pls. first assault.*] that at the time and place when and where the said trespass is supposed to have been committed, to wit., at —, on —, the said pl. with force and arms assaulted and beat the def., and would have further beaten, bruised and wounded him: Wherefore the def. did then and there defend himself against the pl., which is the same trespass whereof the pl. complains as aforesaid; and if any damage happened to the pl. the same arose from the pls. assault upon the def. and in his defence.

163. REP. *Of his own wrong.*] the said def. at the time when, &c., committed the trespass aforesaid, in said declaration alleged, of his own wrong, and without any such cause as is by the def. in pleading alleged, and this the pl. prays may be enquired of, &c.

164. PLEA. *Defence of father.*] the pl. at the time and place when and where the said trespasses are alleged to have been committed, to wit., on —, at —, with force and arms assaulted E. F., then and there being the father of the said def., and would then and there have beat, bruised and ill-treated him: Wherefore the def. did then and there defend the said E. F. against the said pl.; and if any damage then and there happened to the pl., the same was occasioned by his own assault aforesaid upon said E. F., and in the defence of said E. F.

165. PLEA. *To preserve the peace.*] the said pl. and one C. D. at the said time when said trespass is alleged to be committed, at —, were fighting together, and striving with force and arms to beat and wound each other, against the peace: Wherefore the def., for the preservation of the peace, and that the said pl. and said C. D. might do no hurt to each other, and in order to separate and part them, then and there gently laid his hands upon the pl., which is the said assault, beating and ill-treating the pl., in said declaration mentioned.

166. PLEA. *Correction of apprentice.*] at the said time when, &c., in said declaration mentioned; to wit., on —, at —, the pl. was the apprentice and servant of the def., and because of the disobedience

and refractory behavior of the pl., and for his moderate correction therefor, the def. then and there gently laid his hands upon the pl., and moderately beat and restrained and imprisoned him: which is the supposed assault, beating and imprisonment in said declaration mentioned.

167. **REP.** *Of his own wrong.*] the said def., of his own wrong, and without any such cause as he has in his plea alleged, assaulted, beat and imprisoned said plaintiff, as in said declaration is alleged, and this he prays, &c.

168. **PLEA.** *Defence of possession.*] the def., before and at the time when, &c., in said declaration mentioned, to wit., on —, was lawfully possessed of a certain dwelling-house, situate at —; and the pl. then and there unlawfully entered into said dwelling-house and made a great noise and disturbance therein, and thereby greatly disturbed and disquieted the def. in the possession thereof: Whereupon the def. then and there requested the pl. to cease said noise and disturbance, and to go out of said house; which the pl. then and there refused to do; and stayed and continued therein, making and continuing such his noise and disturbance: Whereupon the said def. gently laid his hands upon the pl., in order to remove him, and did then and there gently remove the pl. out of said house; which is the same assault and ill-treating the pl. in said declaration mentioned; whereof the pl. has complained against the def.

169. **REP.** *Of his own wrong.*] the def., on the day in said declaration mentioned, of his own wrong, and without the cause by the def. in pleading alleged, assaulted, beat and ill-treated the pl., as the pl. has complained against him, and this he prays, &c.

170. **PLEA.** *By a police officer.*] the said pl., at the time when, &c., in said declaration mentioned, to wit., on —, in a certain street called —, in M., in said county, did throw stones and bricks, contrary to the form of the statute in such case made and provided; and the def., then and there being a police officer of said town of M., who then and there saw and had view of the said offence, then and there gently laid his hands upon the pl., and arrested him, in order to carry him before a justice of the peace for said county, to answer to a complaint therefor; and because it was then and there late at night, after sunset and before sunrise, the def. did retain in safe custody and imprison said pl. until the next morning; and on the next morning, as soon as conveniently could be, the said def. carried and took the said pl. before a justice of the peace for said county of H., to answer to a complaint for said offence, and detained him in custody until afterwards, on the same day, the said pl. was discharged by due course of law; and on the occasion aforesaid did necessarily detain and imprison said pl. for the space of time in said declaration mentioned: which is the assault, beating and imprisonment whereof the pl. has in his said declaration complained against him.

171. **PLEA.** *Arrest by a constable under a warrant.*] before the said time when said trespass is alleged to be done, to wit., on —, at —, J. P., a justice of the peace for said county of —, upon complaint of one —, made his certain warrant, under his hand and seal, bearing date the — day of —, and the tenor of which complaint and war-

rant is as follows, to wit.: (Here insert the complaint and warrant;) which warrant was then and there delivered to the def., then being a constable for said town of —, by virtue whereof the said def. afterwards, to wit., on —, at —, gently laid his hands on the pl. and arrested him, in order to bring him before the said justice, and did accordingly bring him before said justice, and then and there detained him in his custody before said justice while the said pl. was examined before said justice touching the said complaint; and until he was discharged from the custody of the def. by order of said justice, to wit., for the space of — hours, which is the same trespass, assault and imprisonment whereof the pl. complains against said def.

172. PLEA. *By a deputy sheriff and party on arrest on execution.*] the said J. D., by the consideration of the justices of the court of common pleas, holden at —, on —, recovered judgment against said def. in a plea of trespass, for — damages, and — costs of suit, as by the record thereof now remaining in said court appears, which judgment is in full force, and not reversed, annulled or satisfied; and the said J. D., for obtaining said damages and costs, sued out of said court a writ of execution, which execution is as follows: (Here recite the execution;) and afterwards and before the return day of said execution, to wit., on —, at —, delivered the said execution to said D. S., then being a deputy sheriff of said county of —, to be executed, by virtue whereof the said D. S., then being a deputy sheriff as aforesaid, afterwards, and before the return thereof, at the said time when, &c., in said declaration mentioned, to wit., on —, at —, gently laid his hands upon the pl. in order to arrest and take him; and did then and there accordingly arrest and take the said pl. under and by virtue of said execution, and imprison and detain him in prison for the time in said declaration mentioned, which is the same trespass whereof the pl. in his declaration complains against said def.: and afterwards, and at the return day of said writ of execution, to wit., on —, the said D. S. duly returned said writ to said court, and then and there returned thereon that he had arrested the body of the said pl., and him imprisoned until he gave bond to the said J. D., with two sufficient sureties, residents in the state, jointly and severally bound in the sum of —, with a condition substantially as follows: (here recite the condition:) when the pl. was discharged; which is the same trespass in said declaration mentioned.

173. PLEA. *Removal of goods from pls. land.*] before and at the said time when, &c., the def. was lawfully possessed of a certain tract of land, situate in the town of —, bounded, &c.; and because the said goods and chattels, in said declaration mentioned, before and at the time when, &c., in said declaration mentioned, were wrongfully in and upon the said tract of land, encumbering the same, and doing damage there to the said def., he, the said def., at the said time when, &c., in said declaration mentioned, seized and took the said goods and chattels in said tract of land, so encumbering the same as aforesaid, and removed and carried away the same to a small and convenient distance, to wit., at — aforesaid, and there left the same for the use of the said pl., doing no unnecessary damage to the said goods and chattels on the occasion aforesaid; which is the same trespass whereof the said pl. has above complained against said def.



174. PLEA. *Sale on execution by a constable.*] on the — day of —, at —, a writ of execution of that date against the said pl. in favor of one A. B., in due form of law was issued by J. P., a justice of the peace for said county of —, for the sum of — damages, and — costs of suit, which writ was directed to the sheriff of said county of H., or his deputy, or to any constable of any town in said county, and was returnable to said justice within sixty days from the date thereof, and was then and there delivered to the defendant, then being a constable of the town of —, in said county, to be executed : And the def. afterwards, to wit., on —, at —, by virtue of said writ of execution, took the said goods and chattels, in said declaration mentioned, as the property of the pl., to satisfy the said execution, and safely kept the same at the expense of the said debtor for the space of four days, and advertised the same to be sold at public vendue, to the highest bidder, by posting up notices of the time and place of sale forty-eight hours before the expiration of said four days, at two of the most public places in the town of —, where the said sale was to be ; and on —, at —, in the said town of —, after the expiration of said four days, according to said advertisement sold the same goods and chattels at public vendue to the highest bidder, and the monies arising from said sale he applied to pay his fees and charges of keeping and sale, and to satisfy the said execution ; and afterwards, on —, at —, he made due return of the said execution, with his doings thereon, according to the precept thereof, particularly describing the goods and chattels taken and sold, and the sum for which each article was sold, in said return ; which is the same trespass in said declaration mentioned.

175. REP. *No execution.*] the said def. of his own wrong took and carried away the goods and chattels aforesaid, and converted them to his own use ; without this, that any such writ of execution issued against the pl. as the def. in his plea aforesaid has alleged.

176. REP. *Execution did issue.*] And the def. as before says, that such writ, as in his plea aforesaid is above mentioned, did issue against the pl. ; and this he is ready to verify by the record thereof remaining with said justice, as the court shall order, &c.

### TRESPASS TO REAL ESTATE.

177. PLEA. *Soil and freehold.*] the said close in said declaration mentioned is, and at the time when said trespass is alleged to be committed, to wit., on —, was the soil and freehold of the said def. ; wherefore the said def. (in his own right, and the said A. B. and C. D., as his servants, and by his command) at the said time when, &c., the close aforesaid, as the close, soil and freehold of the said def. broke and entered, and the said trees, in said declaration specified, in the said close then growing, cut down and carried away, as he lawfully might.

178. REP. *Not defs. soil and freehold.*] the said close in said declaration mentioned, at the time when the said trespass was committed was the soil and freehold of the pl. ; without this that said close was the soil and freehold of said def., as the def. has in pleading alleged.

179. **REJ.** And the said def. as before says, that the said close in said declaration mentioned, was at the said time when, &c., the soil and freehold of said def., as he has in pleading alleged, and of this he puts, &c.

180. **Note.** By the Revised Statutes, if any plea by which the title to real estate is drawn in question is pleaded in trespass, the justice shall record such plea, and no further proceedings shall be had. See *R. S.*, 346, § 3.

In such case the entry on the justice's docket may be :

"Defendant pleads soil and freehold."

"Plaintiff nonsuit."

"Judgment for def., for costs, \$—."

or : "No further proceedings had."

181. **PLEA.** *License.*] the said def., at the said times when, &c., in said declaration mentioned, by the leave and license of the said pl. to him for that purpose given and granted, to wit., at — aforesaid, committed the said several supposed trespasses in the said declaration mentioned, as he lawfully might for the cause aforesaid.

182. **PLEA.** *Right of way.*] at the said several times when, &c., the def. was, and still is, seized in his demesne as of fee in a certain tract of land, situate in —, bounded, &c., and long before the said times in said declaration mentioned, and at the time of making the grant hereinafter mentioned, one J. S. was seized of the close in said declaration mentioned in his demesne as of fee, and one P. H. was seized in his demesne as of fee of the tract of land aforesaid; and the said J. S. being so seized, long before the said times when, &c., by a certain deed made and executed by him to said P. H., which deed has been since lost and destroyed by accident, and therefore cannot be brought into court here, and the date whereof is for that reason wholly unknown to the def., did grant to said P. H., so being the owner of the said tract of land, and to his heirs and assigns, a certain way for him and them, and their tenants, occupiers of the said tract of land for the time being, and their servants through the said close in which, &c., to the public highway in said —, from said tract of land and to the same tract of land from said public highway, to pass and repass on foot and with horses, cattle and carriages, every year, at all times of year, for the convenient occupation of said tract of land by virtue whereof the def. having the estate of said P. H. in said tract of land being seized thereof as aforesaid, and in the occupation thereof, and having occasion to use said way for the convenient occupation of said tract of land, entered into said close in said declaration mentioned, and with his cattle and carts passed and repassed from said tract of land through said close in the said way, there to the said public highway, and back through said close in said way there from said highway to said tract of land, as it was lawful for him to do for the cause aforesaid; and in so doing the def. with his feet in walking, and with said cattle and carts unavoidably a little trod down, &c., the grass, &c., and subverted the soil of said close; and the said cattle at said times when, &c., in passing and repassing in said way, by stealth and morsels, and against the will of said def., ate, &c., a little of the grass then there growing in said way; and

because the said fence in said declaration mentioned, before the said times when, &c., had been wrongfully erected, and was then standing in and across said way, and obstructing the same, so that, without throwing down and destroying the same, the def. could not pass and repass with his cattle and carriages, as aforesaid; the said def., at the said times when, &c., threw down and destroyed the said fence, and took and carried the said posts and rails, in said declaration mentioned, to a small and convenient distance, and there left the same for the use of the pl., doing no unnecessary damage to the pl. on those occasions, which are the same supposed trespasses in said declaration mentioned.

*Note.* By the Revised Statutes, p. 45, § 17, the words, "*real estate*," shall be construed to include lands, tenements and hereditaments, and all rights thereto, and interests therein. If, therefore, pleas of this kind are filed before a justice, no further proceedings can be had.

183. PLEA. *Justifying entering a house by a constable, to attach.*] on the — day of —, a writ of attachment against the said pl., in due form of law, was issued by J. P., a justice of the peace for said county of —, directed to the sheriff of said county of —, or his deputy, or to any constable of any town in said county, requiring them to attach the goods or estate of said pl. to the amount of — dollars, and summon him to appear before said justice at —, on —, to answer to one A. B. in a plea of the case to the damage of said A. B. the sum of \$13.33, and to make return of said writ; which writ was then and there delivered to the def., then being a constable of the town of C., in said county, to be executed; by virtue whereof the def. being such constable, afterward, and before the return of said writ, to wit., at the said time when, &c., peaceably entered into the said dwelling-house in which said trespass is alleged to be committed, (the outer door thereof being then and there open) in order to attach, and did then and there attach the said goods and chattels in said declaration mentioned, the same then and there being in said dwelling-house; and took and carried away, and still holds the same, for security to satisfy the judgment which the said A. B. may recover against the said pl. in the plea aforesaid; and in so doing the said def. did unavoidably make a little noise and disturbance in said dwelling-house, and stay and continue therein, making such noise and disturbance, for the said space of time in said declaration mentioned, doing no unnecessary damage to the said pl. on that occasion, which are the said supposed trespasses in said declaration mentioned.

184. PLEA. *Justifying breaking doors to attach.*] Proceed as in last form, to the words, "*in the plea aforesaid*"; and because a part or the said goods and chattels so attached were in a certain room in said dwelling-house, and belonging to the same, the entrance of which was fastened and stopped by the said doors, locks, bolts, latches and hinges, in said declaration mentioned, the said def. did then and there request one C. D., being the only person then and there present in said dwelling-house, to open the said doors of said room, and permit him to enter the same, and take said goods and chattels therein; but the said C. D. wholly refused to open the same, and then

and there obstructed and hindered the def. from entering the said room; so that, without forcing and breaking open said door, locks, bolts, latches and hinges, the def. could not enter the said room to take said goods and chattels; therefore the def., by virtue of said writ, at the said time in said declaration mentioned, necessarily broke open said door, locks, bolts, latches and hinges, and in so doing unavoidably a little broke to pieces, damaged and spoiled the same, and made a little noise and disturbance in said house, doing no unnecessary damage to the pl. on the occasion aforesaid; which are the said several supposed trespasses in said declaration mentioned.

### DEMURRERS.

185. *To declaration.*] And the def. comes and defends, &c., when, &c., and says that the said declaration (or the first count in said declaration) is not sufficient in law, and that he is not by law bound to answer the same; and this he is ready to verify: wherefore he prays judgment that the pl. may be barred from having or maintaining his aforesaid action thereof against him, &c.

186. *Joinder.*] And the pl. says that said declaration (or the first count in said declaration) is sufficient in law, and he is ready to verify the same, as the court shall award: wherefore he prays judgment for his damages and costs.

187. *Special demurrer.*] same as above, and add, "and the def. shows to the court the following causes of demurrer:

It does not appear in said declaration on what day or in what month (or at what place) the def. made said promises therein mentioned.

The said promise is alleged to have been made on the 31st day of November, 1842, when there was no such day.

The pl. has not brought said supposed deed of release into court; or made any profert thereof; and because, as in the said release is above alleged, the def. cannot have oyer of the same; and because it does not appear by said declaration whether said supposed deed of release is actually destroyed, or whether it does not still exist, and is only mislaid.

It is not alleged in said declaration that said trespass was committed with force and arms, nor against the peace.

It is alleged in said declaration that said assault and battery was committed on the — day of —, and on divers days and times between that day and the day of the commencement of this suit.

188. *DEMURRER. To a plea in abatement.*] And the pl. says that the said plea of the said def. is not sufficient in law to abate the said writ, and that he is not by law bound to answer the same; and this he is ready to verify: wherefore he prays judgment that the def. may answer further to the said declaration, &c.

189. *Joinder.*] And the def. says that the said plea is sufficient to abate said writ, and that he is ready to verify the same, as the court shall direct: wherefore he prays judgment of said writ, that the same may be abated, &c.

190. *Causes of demurrer.*] See Form 187.

The def. has not cravedoyer of said original writ.

The def. has not set forth said original truly, in this, to wit.: the said writ bears date the 10th day of May, 1843, whereas the said writ in said plea set forth is dated the 10th day of April, 1843, &c.

191. *Demurrer to plea in bar.*] And the pl. says that the said plea is not sufficient in law to bar him from maintaining his said action, and that he is not bound by law to answer the same; and this he is ready to verify: wherefore he prays judgment for his damages and costs.

192. *Joinder.*] And the said def. says that the said plea is sufficient in law to bar the said pl. from having and maintaining his said action thereof against the def., and he is ready to verify the same, as the court here shall direct: wherefore he prays judgment that the pl. may be barred from maintaining said action, &c.

193. *Causes of demurrer.*] See Form 187.

The def. has not concluded his plea by putting himself on trial.

The def. has not by his plea denied or put in issue any matter of fact alleged by the pl., but has introduced and attempted to put in issue matters of fact not alleged nor necessary to be alleged.

The said plea amounts to the general issue.

The def. has alleged that he did not promise within six years next before the commencement of this suit; when the cause of action did not accrue upon the making of said promises, but upon events afterwards occurring.

The said plea denies that the def. promised, instead of denying that the def. was indebted to the pl. (in debt.)

The def. in said plea denies that he was indebted to the pl., instead of denying that said writing obligatory was his deed; (in debt on bond.)

The plea takes issue upon the said promise on a particular day, when the said day is not material.

194. *Demurrer to replication.*] And the said def. says that the said replication, (or the replication to said second plea) is not sufficient in law for the said pl. to maintain his said action against the def., and that he is not bound to answer the same, and this he is ready to verify: wherefore he prays judgment if the pl. ought to maintain his said action thereof against him, &c.

195. *Joinder.*] the said pl. says that the said replication is sufficient in law for the pl. to maintain his said action, wherefore he prays judgment for his damages and costs, &c.

196. *To rejoinder.*] the form resembles a demurrer to a plea, saying "rejoinder" instead of "plea."

*Causes, &c.* The said rejoinder is double, and contains two distinct and separate answers, and offers two distinct and separate issues.

The said rejoinder is not a direct denial of the escape therein mentioned, but is only an argumentative denial, &c.

## BRIEF STATEMENTS.

*Note.* No forms of Brief Statements are found in the

books. As the object of them is to give notice to the other party of the grounds of defence, it is supposed that no particular attention need be paid to the form.

The following form is suggested :

197. H—*vs.* Before J. P., Justice of the Peace, at M., — —, 1843.

J. S. *vs.* J. D.

The def. makes the following brief statement of his defence, namely :

The pls. cause of action did not accrue within six years before this suit was commenced.

The def. was under twenty-one years of age when the promise declared on was made.

The def. was married to A. B., now living, when the alleged promise was made.

The note declared on was obtained from the def. by duress of imprisonment.

The def. was always ready, and offered, on the — day of —, 184—, to pay \$—, the amount due on the note, but the pl. refused to receive it, and he brings that sum into court.

The parties, on —, submitted all demands between them to — and —, who, after notice and hearing the parties, awarded that def. should pay pl. — dollars, in full, which he has paid.

The def., on —, delivered two pieces of broadcloth to the pl., and the pl. accepted them in full satisfaction of the said promises.

The pl., on —, released all demands he had against the def., by his deed under seal.

The pl., on —, recovered judgment on the same cause of action, before J. P., justice of the peace, for — damages, and — costs.

The def. was never executor of A. B., nor administered any of his estate as such.

It was decreed by the court of probate of the county of H—, on —, at —, that the estate of said A. B. should be administered as an insolvent estate.

The def., on —, presented his petition to the district court of the United States for New-Hampshire district, praying for the benefit of the Act of Congress entitled, &c.; was by said court decreed a bankrupt, and on — said court decreed that he be fully discharged from all his debts owing by him at the time of presenting his petition, of which the demand in suit is one.

The writing declared on is not def's. deed.

The writing declared on was obtained of the def. by fraud.

The def., on —, paid the pl. the sum of —, mentioned in the condition of said bond, with interest.

The pl. has never been damnified from any cause mentioned in said bond.

The arbitrators named in the bond never made any award.

The def., on —, assigned all his interest in the lease declared on to one G. H., and the pl. accepted him as his tenant, and no rent was due before or on that day.

The pl., on —, assaulted and beat the def., and the def. defended himself against the pls. attack, which is the whole trespass complained of.

The pl., on —, entered the defs. house in —, made a great noise and disturbance there, and did not go out when requested; and the def. therefore put him out of his house as gently as might be, and the def. is not guilty of the other matters complained of.

198. *Confession of action.*

H—ss. Before J. P., Justice of the Peace, at M., — —, 1843.

J. S. *vs.* J. D.

The said def. comes and defends, &c., when, &c., and confesses the pls. said action, and that the pl. is entitled to recover damages therein to the amount of — dollars, and no more.

By R. A., his att'y.

And as to the residue of the pls. claim, the said def. says he never promised the pl., as he has alleged against him, and thereof he puts himself on trial.

By R. A., his att'y.

And the pl. doth the like.

By, &c.

199. *Confession of part of action.*

The said def. comes and defends, &c., when, &c., and confesses the first count of the pls. action (or the following items of the account annexed to the pls. writ,) to wit.,

(Here copy them :)

and that the pl. is entitled to recover damages therefor to the amount of — dollars, and no more.

By, &c.

And as to the residue of the pls. claim, the said def. says he never promised the pl. as he has alleged against him, and thereof puts, &c.

or :

he is not guilty, as the pl. has alleged against him; and of this he puts, &c.

or :

any special plea.

200. *Remission of residue of damages, &c.*

And thereupon the said pl. freely here in court remits the residue of his claim aforesaid, and prays judgment for the damages above confessed, and his costs.

By, &c.

201. *Confession of action after plea.*

And the said def., relinquishing his said plea by him above pleaded, confesses this action, and that the plaintiff is entitled to recover damages therein to the amount of —, and no more.

202. *Confession of action upon stay of execution.*

And the said def. confesses this action, and that the pl. is entitled to recover damages therein to the amount of —; and that if default be made in the payment thereof, with costs, on the — day of — next, judgment shall be entered thereon for said damages and costs.

The entry on the justice's docket may be :

"Def. confesses action and damages, \$—."  
or : "Def. confesses first count, and damages, \$—."

"Pl. remits residue of his claim."

"Judgment for damages, \$—."

"Costs, —."

203. *Payment of money into court with general issue.*

H— ss. Before J. P., Justice of the Peace, at M., —, 1843.  
J. S. vs. J. D.

Upon motion of the def., *It is ordered*, that the def. have leave to bring into court the sum of — dollars; and thereupon, unless the pl. will accept thereof, with costs, to be taxed by the court, in full discharge of this suit, the said sum of — dollars shall be struck out of the declaration, and paid out of court to the pl. or his attorney; and upon the trial of the issue the pl. shall not be permitted to give evidence for the said sum of — dollars.

J. P., *Justice of the Peace.*

204. *With a special plea.*

H— ss., &c. Upon motion of the def., *It is ordered*, that the def. have leave to bring into court the sum of — dollars, and the costs of the pl. up to this time, taxed by the court at — dollars; and thereupon, unless the pl. shall accept thereof in full discharge of this suit, the said sum of — dollars shall be struck out of the declaration, and paid out of court, with the said costs, to the pl. or his attorney; and upon the trial of any issues that may be joined in the case the pl. shall not be permitted to give evidence for said sum of — dollars.

J. P., *Justice of the Peace.*

205. *With a setoff.*

H— ss., &c. Upon motion of the def., *It is ordered*, that the def. have leave to bring into court the sum of — dollars, and the costs of the pl. up to this time, taxed by the court at — dollars; and thereupon, unless the pl. shall accept thereof in full discharge of the balance due to him, after deducting the sum due to the def. on his setoff filed in the case, the said sum of — dollars shall be struck out of the declaration, and paid out of court to the pl. or his attorney; and upon the trial of any issues that may be joined in the case the pl. shall not be permitted to give evidence for the said sum of — dollars.

J. P., *Justice of the Peace.*

*Rules of Court, December Term, 1833.*

If the payment is made into court upon a part of the pls. claim, it should be so stated in the rule.

“that the def. have leave to bring into court the sum of — upon the first count of the pls. declaration;” or, “upon the following items of account, in the pls. declaration (or specification) mentioned, to wit,” &c.

If paid into court generally, it may operate as an admission of all the contracts stated in the declaration.

The entry on the justice’s docket may be :

“June 1, 1843.

“Def. by leave pays into court \$—, with the general issue;” or, “with a special plea;” or, “set-off;” “same day paid out to the pl. ;” or, “same day accepted in full, and paid out to the pl.” “Dismissed.”



**206. Entry of continuance.**

"Continued to July 16, 1843, at 2, P. M." "by agreement," or, "on motion of pl." or, "def."

If the justice fails to attend, another justice may attend and continue the case. *R. S.* 347, § 13.

The entry may be made on the justice's docket, if present, or on the writ, &c., as follows :

H— ss., ——. At the office of J. R., Esq., in M—, on the — day of —, 1843, at — o'clock in the —noon.

J. S. *vs.* J. D.

J. R., Esq., justice of the peace, having failed to attend at this time and place, to which the process in the action between said parties was returnable, (or continued) I have attended and continued the same to the — day of —, at — o'clock in the —noon, without cost to either party, and saving the rights of all parties.

D. C., *Justice of the Peace.*

If the entry is not made on the justice's docket the entry may be :

"Continued by D. C., justice of the peace, to the — day of —, at 2, P. M., without cost, and saving rights of parties."

**207. Affidavit of absence of a witness ; for a continuance.**

H— ss. Before J. P., Justice of the Peace.

J. S. *vs.* J. D.

The said J. D. makes oath, and says that he is advised and verily believes that P. W., of —, is a material and necessary witness for him on the trial of this action, and that he cannot safely proceed to trial without his testimony. The deponent believes the said P. W., if present, would testify that on or about the — day of —, he was present and with said J. S. and J. D. at —, in —, and heard the pl. say, &c.

The reason this deponent believes the said P. W. would so testify, is, that he knows the said P. W. was present and heard the said conversation ; or, "that said P. W. has told this deponent he should so testify."

This deponent, on the — day of — last, caused enquiry to be made at the usual place of abode of said P. W., in —, for the purpose of serving him with a subpoena to attend the trial of this cause, but that he then learned that the said P. W. was absent on a journey to B., in the state of M., but that he was expected to return some time in the month of — next ; and this deponent believes he shall be able to procure his attendance at the (next term of this court,) day to which this case may be adjourned.

If the attempt was to get the witness's deposition, say :

The deponent made enquiry at the usual place of abode of said P. W., in —, for the purpose of summoning him to attend as a witness before a justice of the peace, for the purpose of giving his deposition to be used in this case, and learned that said P. W. was then confined to his bed by a fever, and that he would not be able to leave his room, or to give his deposition, in season to be used at this court ;

that he is informed and believes the said P. W. is recovering from said illness, and he shall be able to procure his deposition in this case before the day to which this action may be continued.

Signed: J. D.

H — ss., — —. Personally appeared J. D., and made oath that the above affidavit by him subscribed is true.

Before me: J. P., *Justice of the Peace.*

208. *Agreement to admit the testimony:* (written at the foot of the affidavit.)

The said J. S. admits that the said P. W., if present, would testify to the facts stated in the foregoing affidavit, and agrees that the same shall be received and considered as evidence on the trial, in the same manner as if said P. W. were present, and had testified thereto.

J. S., by his att'y, R. A.

209. *Affidavit of want of a necessary document.*

H — ss., &c. The said J. D. makes oath, and says that he is advised and verily believes that the original deed, of which the annexed paper is a certified copy from the records of deeds for said county of —, is material, and necessary for this deponent, (inasmuch as the deponent is informed and believes that the execution and delivery of the same will be contested by the pl.) on the trial of this case: That the custody of said deed of right belongs to the said —, the grantee therein named; that this deponent has caused enquiry to be made for said —, at —, where he heretofore resided; and he is informed and believes that said — has removed to and now resides in —, in the state of Ohio; that he has written to said —, to forward to him the said original deed by mail; that he has received no answer to his said letter, because of the distance, but that he verily believes he shall be able to procure said deed before the day to which this case may be continued.

J. D.

Certificate of oath.

210. *Affidavit of defence for a continuance.*

H — ss. Before J. P., Justice of the Peace, at M —, — —, 184—.

J. S. vs. J. D.

The said J. D. makes oath and says that he is advised and believes that he has a just defence to said action, to wit: a discharge from said promises before breach thereof, by the pl.; or, "payment of the said sums in said declaration mentioned;" or, "that the cause of said action did not accrue to the pl. within six years before the commencement of this suit," and that further time is necessary to prepare for said trial.

J. D.

Certificate of oath.

211. *Notice to be prepared for trial.*

To J. D. of —. Take notice, that in the action brought by me against you, returnable before J. P., a justice of the peace for the county of H., at his office in —, on the — day of —, at — in the noon, I shall insist on a trial on the said — day of —, and that you are to be prepared for trial at that time.

J. S.

*Affidavit of service,* (written on a copy.)

I certify that on the — day of —, I gave to said J. D. (or I left at the usual place of abode of said J. D.,) an original notice, of which the above is a true copy.

D. S.

Certificate of oath.

## CHAPTER 9.

## OF DEPOSITIONS AND EVIDENCE.

- |                                                               |                                             |
|---------------------------------------------------------------|---------------------------------------------|
| 1. Summons, form of.                                          | 21. Deposition, how signed and sworn.       |
| 2. Justices may issue, for witnesses.                         | 22. Certificate of taking, requisites.      |
| 3. Summons to depose, justice may issue.                      | 23. Proof of notice annexed to certificate. |
| 4. Summons, how served on witnesses.                          | 24. Neglect to take, after notice, penalty. |
| 5. Fees of witnesses.                                         | 25. Depositions to be sealed and directed.  |
| 6. Fees for toll bridges, &c.                                 | 26. How taken before court.                 |
| 7. Liability for neglect to attend.                           | 27. Length of notice.                       |
| 8. Courts may compel attendance.                              | 28. Notice to real party.                   |
| 9. No person disqualified as witness by his religious belief. | 29. Commissions to take evidence.           |
| 10. Ceremony in swearing.                                     | 30. Depositions in perpetual remembrance.   |
| 11. Affirmation, when allowed.                                | 31. Statement of claim to be made.          |
| 12. Members of public corporations, &c., competent.           | 32. Notice, how to be given.                |
| 13. Depositions, when may be taken.                           | 33. Deposition, how to be taken.            |
| 14. Who may take depositions.                                 | 34. Deposition may be recorded, how.        |
| 15. Notice given to residents, how.                           | 35. Deposition or copy, when used.          |
| 16. Notice given to attorneys, when.                          | 36. Witness to attend out of state, when.   |
| 17. Attorney, who is, for this purpose.                       | 37. Neglect to attend, as such, penalty.    |
| 18. Notice to corporations.                                   | <i>Forms of Proceedings.</i>                |
| 19. In case of death of party.                                |                                             |
| 20. Who disqualified to take depositions.                     |                                             |

§ 1. Writs of summons to witnesses shall be signed by the clerk or justice by whom they are issued, directed to the person to be summoned, and shall be substantially in the form following—

## The State of New-Hampshire.

R— ss. To — —.

[L. S.]

You are required to appear at —, in the county of —, on the — day of —, to testify what you know relating to a plea

of —, to be heard and tried betwixt —, plaintiff, and —, defendant.

Hereof fail not, as you will answer your default under the penalties prescribed by law.

Dated at —, the — day of —, A. D., 18—.

*R. S. 379, § 2.*

§ 2. Every justice may issue writs of summons for witnesses, in cases pending in any court, in all matters before the general court, in cases pending before himself or any other justice, and in all matters triable before auditors, referees, arbitrators or commissioners. *R. S. 379, § 4.*

§ 3. Every justice or notary may issue writs of summons to witnesses to appear before himself, or any other justice or notary, to give a deposition in any matter or cause where the same may be lawfully taken. *R. S. 379, § 5.*

§ 4. Any person may be summoned to attend as a witness to testify or give a deposition, by reading to him the writ of summons, and paying or tendering to him the fees by law established for his travel to and from the place where his attendance is required, and for one day's attendance.—  
*R. S. 379, § 6.*

§ 5. The fees of witnesses shall be—at the superior court or court of common pleas :

For each day's attendance, one dollar ;

For travel to and from court, each mile, six cents ;

Before justices—for each day's attendance, forty cents ;

For travel to and from the place of testifying, each mile, four cents. *R. S. 472, § 12.*

§ 6. A ferry or toll bridge shall be reckoned as three miles' travel. *R. S. 472, § 13.*

§ 7. If any person so summoned shall neglect to attend, or to give his attendance so long as may be necessary for the purpose for which he was summoned, or refuse to testify or to give his deposition, if required, having no reasonable excuse therefor, he shall be liable to the party aggrieved for all damages sustained by such default or refusal. *R. S. 379, § 7.*

§ 8. Every court and justice before whom any witness has been summoned to appear and testify, or give a deposition, may bring any such witness neglecting or refusing to appear and testify, by attachment, before them ; and if on examination he has no reasonable excuse, may punish him by a fine not exceeding fifty dollars, if imposed by a court, or ten

dollars, if imposed by a justice, and may order him to pay costs. *R. S. 379, § 8.*

§ 9. No person who believes in the existence of a Supreme Being shall be adjudged an incompetent witness in any judicial proceeding, on account of his opinions on matters of religion. *R. S. 380, § 9.*

§ 10. No other ceremony shall be deemed necessary in swearing than holding up the right hand. *R. S. 380, § 10.*

§ 11. Persons scrupulous of swearing may affirm, the magistrate administering the oath using the word "affirm" instead of the word "swear;" and the words, "this you do under the pains and penalties of perjury," instead of the words, "So help you God." *R. S. 380, § 11.*

§ 12. Inhabitants of towns, and members of public corporations, and members of mutual insurance corporations, shall be competent witnesses in cases affecting the interests of such corporations. *R. S. 380, § 12.*

§ 13. The deposition of any witness in a civil cause, who is old and infirm, or sick and unable to appear at court, or who lives out of the state, or more than ten miles from the place of trial, or who is about to leave the state and not return before the time of trial, may be taken and used on the trial. *R. S. 380, § 13.*

§ 14. Any justice or notary public in this state, any commissioner appointed under the laws of this state to take depositions in other states, any judge, or justice of the peace, or notary public, in any other state or country, may take such depositions. *R. S. 380, § 14.*

§ 15. The party proposing to take such deposition shall cause a notice in writing, signed by a justice or notary, stating the day, hour and place of taking the same, to be delivered to the adverse party, or one of them, or left at his usual place of abode, if either of such parties reside in this state, or within twenty miles of the place of taking or of the party taking the same, a reasonable time before the taking thereof. —*R. S. 380, § 15.*

§ 16. If such adverse party resides out of the state, or more than twenty miles from the place of caption, or from the party proposing to take such depositions, a like notice given to the agent or attorney of such adverse party, or left at his usual place of abode, shall be sufficient. *R. S. 380, § 16.*

§ 17. No person shall be deemed such agent or attorney

for this purpose, unless he has endorsed the writ or the summons to be left with the defendant in the cause, or appeared for his principal before the court, justice, referees or arbitrators, where the action is pending, or shall have given notice in writing that he is such attorney or agent. *R. S.* 380, § 17.

§ 18. When the adverse party is a corporation, the notice may be served upon some proper officer of the corporation, upon whom service of writs may be made. *Eastman v. Bank*, 1 *N. H. R.* 24; *Company v. Mathes*, 5 *N. H. R.* 574.

§ 19. If the party to a suit dies, no depositions can be taken by the opposite party until the executor or administrator of the deceased becomes a party to the suit upon the record. *Ela v. Rand*, 4 *N. H. R.* 54.

§ 20. No person shall write the testimony of any witness, or act as a magistrate in taking the same, who would be disqualified to act as a juror on the trial of the cause for any reason except exemption from service as a juror. *R. S.* 380, § 18.

§ 21. Every witness shall subscribe his deposition, and shall make oath that such deposition contains the truth, the whole truth, and nothing but the truth, relative to the cause for which it was taken. *R. S.* 380, § 19.

§ 22. The magistrate taking any deposition shall certify such oath, with the time, place and cause of taking the same, and the case and court in which it is to be used, and that the adverse party was or was not present, was or was not notified, and that he did or did not object. *R. S.* 381, § 20.

§ 23. A copy of the notice, left with the adverse party, his agent or attorney, with the return of the officer or affidavit of the person leaving such notice thereon, stating the time of leaving the same, shall be annexed to the certificate of the taking thereof, when the adverse party did not attend. —*R. S.* 381, § 21.

§ 24. If any party, after giving notice to the adverse party as aforesaid, shall neglect or refuse to take a deposition, such adverse party shall be entitled to recover twenty-five cents a mile for actual travel of himself or his attorney to attend the same, by action on the case, unless seasonably notified in writing, signed by the party giving such notice, that such deposition will not be taken. *R. S.* 381, § 22.

§ 25. Depositions shall be sealed up by the magistrate taking the same, directed to the court or justice before

whom they are to be used, with a brief description of the case, and shall be so delivered into court. *R. S.* 381, § 23.

§ 26. By the rules of the court of common pleas, "no deposition which has been taken after the Tuesday next preceding the Tuesday on which the term commences, shall be used in the trial of any cause before a jury: Provided, however, that this rule will not be construed to apply to witnesses who may become sick after the time limited as aforesaid, nor to persons who may be bound to sea, nor to depositions taken by consent of the parties, and the consent stated by the magistrate in the caption." 6 *N. H. R.* 579.

§ 27. "No notice to the adverse party of the taking of depositions shall be deemed sufficient unless served three days before the day on which they are to be taken; and when the adverse party shall live more than ten miles from the place of caption, one day more shall be allowed for every additional twenty miles. Provided, however, that twenty days notice shall be deemed sufficient in all cases." 6 *N. H. R.* 579.

§ 28. "When the suit is in the name of a nominal party, and the name of the real party is put upon the docket at the time the action is entered, notice of the taking of depositions shall be given to the real party in all cases where the statute requires notice to be given, to the party: and in all other cases notice shall be given to the real party, or his attorney or agent." 6 *N. H. R.* 579.

§ 29. "The clerk of the court in the county where any action is pending, may issue a commission to take depositions in the vacation; which commission shall be directed to any justice of the peace, notary public, or other officer legally empowered to take depositions or affidavits in the state or county where the deposition is to be taken." 6 *N. H. R.* 579.

§ 30. Depositions may be taken, in perpetual remembrance of any fact or transaction, before any court of record, or before two justices, one of whom shall be of the quorum. —*R. S.* 381, § 24.

§ 31. Any person wishing to take such depositions shall make a statement in writing, under oath, briefly setting forth in substance his title, interest or claim in or to the subject, or setting forth the facts to which the desired testimony relates, and the names of all persons supposed to be interested therein, and also the names of the witnesses proposed to be

examined, which statement shall be delivered to the court or justices before whom the depositions are to be taken.—*R. S. 381, § 25.*

§ 32. Notice shall be given in the manner provided by law in cases of depositions taken to be used in actions then pending, to all persons known to be interested in the property or transaction to which the testimony relates. *R. S. 381, § 26.*

§ 33. Every such deposition shall be written, signed and sworn to, as is provided in this chapter in case of depositions in actions pending, with the necessary variation in the form of the oath; and the said court or justices shall annex to each deposition a certificate of the time and place of taking, the name of the person at whose request it was taken, and of all those who were notified to attend and did attend, and shall also annex thereto a copy of the notice, as is prescribed in the twenty-first section of this chapter. *R. S. 381, § 27.*

§ 34. The said statement, deposition, certificate and copy of notice shall, within ninety days after taking the same, be recorded in the registry of deeds in the county where the land or any part of it lies, if the deposition relate to real estate, and if not, in the county in which it was taken.—*R. S. 381, § 28.*

§ 35. All depositions, taken in perpetual remembrance as aforesaid, or a copy of such record, the original being lost, may be used in the trial of any cause between the person at whose request it was taken, and any of the persons named in the statement and duly notified, or those claiming under them, concerning the title, claim, interest or fact set forth in the statement. *R. S. 382, § 29.*

§ 36. If the clerk of any court in any other of the United States shall certify that there is a criminal case pending in such court, and that a person residing in this state is supposed to be a material witness therein, any justice shall, upon such certificate or paper annexed thereto, issue a summons requiring such witness to appear and testify at such court. *R. S. 382, § 30.*

§ 37. If any person on whom such summons shall be served, having tendered to him twelve cents for each mile to be travelled to and from such court, and two dollars for each day his attendance may be required, shall unreasonably



neglect or refuse to attend and testify at said court, he shall forfeit the sum of three hundred dollars to any person who will sue for the same. *R. S. 382, § 31.*

## FORMS OF PROCEEDINGS.

### 1. *Summons for witnesses at courts.*]

#### The State of New-Hampshire.

H—ss. *To A. B., of M., in said county, C. D., of B., E. F., of*  
[L. S.] *G., both in said County.*

You are required to appear at the court of common pleas to be holden at A., in and for said county, on the — day of —, at — o'clock in the —noon, to testify what you know relating to a plea of the case then and there to be heard and tried betwixt J. S., of —, pl., and J. D., of —, def. Hereof fail not, as you will answer your default under the penalties prescribed by law.

Dated at —, the — day of —, A. D., 184—.

J. P., *Justice of the Peace.*

Instead of the words, "*to a plea of the case,*" &c., say, "*to an indictment then and there to be heard and tried betwixt the state of New-Hampshire and J. R.;*" or, "*to a complaint then and there to be made before the grand inquest for said county, by — against —;*" or, in the probate court, "*to a petition of D. A., for the allowance of his account of administration of the estate of J. A., deceased,*" &c.

2. *Summons for witnesses before justices.*] to appear before J. P., a justice of the peace for said county, at the inn of B. F., in N., in said county, on the — day of —, 184—, at — o'clock in the —noon, to testify what you know relating to a plea of trespass, then and there to be heard and tried betwixt J. S., of —, pl., and J. D., of —, def., &c.; or, instead of "*plea of trespass,*" &c., say, "*a complaint then and there to be heard and tried betwixt the state of New-Hampshire and A. R.*"

3. *To give a deposition.*] as in last form to, "*a plea of the case*"; then say, "*to be heard and tried at the court of common pleas to be holden at C., in and for said county of M., betwixt J. S., of —, pl., and J. D., of —, def., &c.*"

4. *To testify before referees, &c.*] to appear at the office of J. S., in P., in said county, on the — day of —, 184—, at — o'clock in the —noon, to testify what you know relating to a plea of the case (or the matters in controversy) then and there to be heard and tried before F. G., J. H., and A. R., referees (or before J. A., auditor,) betwixt J. S., of —, pl., and J. D., of —, def., &c.

5. *Subpœna duces tuum.*] after stating the names of the parties, as

in the preceding forms, say, "And you are also required to bring with you, and produce at the time and place aforesaid, a certain deed made by — to —, dated —," &c.; or, "a certain promissory note made by — to —, dated —, for the sum of —, payable —;" or, "the original book of records of the town of —, containing the record of a town meeting holden at —, on the — day of —," &c.: more briefly; "and to bring with you and then and there produce a certain receipt, made by — to —, dated —, for —," &c.

6. *Notice to party to produce papers.*]

H— ss. Before J. P., Justice of the Peace.  
J. S. vs. J. D.

Take notice, that you are hereby required to produce on the trial of this cause a certain deed made by — to —, dated —, &c., (describing the deeds, papers, books, letters, &c., desired) and all other letters, books, papers and writings whatsoever, in any wise relating to the matters in question in this cause.

Dated the — day of —, 184—.

Yours, &c.

J. S., by his att'y,

R. A.

To Mr. J. D.

*Certificate of service.*] written on a copy of the notice.

I certify that on the — day of —, 184—, I gave (or left at the usual place of abode of) the said J. D. the original notice, of which the above is a true copy.

J. A.

H— ss., — —, 184—. Personally appeared J. A., and made oath that the above certificate by him subscribed is true.

Before me: J. P., Justice of the Peace.

7. *Return of service of a summons.*]

H— ss., — —, 184—. I this day summoned the within named A. B. to appear, as within directed, by reading to him this writ, and paid him — dollars, — cents, as his fees for his travel and attendance.

J. M. R., Deputy Sheriff.

8. *Affidavit of service.*]

I, A. M., do testify and say that I summoned the within named A. B. to appear as within directed, by reading to him this summons on the — day of August, 184—, and paid (or tendered) him the sum of — dollars, — cents, as his fees for his travel and attendance.

A. M.

H— ss., — —, 184—. Personally appeared A. M., and made oath that the above affidavit by him subscribed is true.

Before me: J. P., Justice of the Peace.

9. *Motion for an attachment.*]

H— ss. Before J. P., Justice of the Peace, at M—, — —, 184—.  
J. S. vs. J. D.

On motion of J. D., it being shown by the affidavit of A. M. that A. B. was duly summoned to attend this day before me, as a witness in said action, and his fees for his travel and attendance paid; and said A. B. having neglected to appear: *It is ordered*, that an attachment be issued against him for the said contempt.

J. P., Justice of the Peace.

10. *Form of attachment against a witness.*]**The State of New-Hampshire.**

H— ss. *To the Sheriff of said County of H., or his Deputy, or to any Constable of the Town of —, in said County.*  
 [L. S.]

Whereas it has been shown to me, J. P., a justice of the peace for said county of —, by the affidavit of A. M., that A. B., of —, was duly summoned to attend this day before me, the said justice, as a witness in the action betwixt J. S., pl., and J. D., def., and his fees for his travel and attendance paid him, and said A. B. has neglected to appear:

We command you, therefore, to arrest the body of said A. B., and bring him before me, the said justice, to answer to what shall be objected against him, and particularly to the said contempt. And make return of this writ, with your doings therein.

Dated the — day of —.

J. P., *Justice of the Peace.*

*Return.*

H— ss., — —, 184--. I arrested the body of the within named A. B., and now have him before said justice, as within commanded.  
 J. S., *Deputy Sheriff.*

H— ss., — —, 184--. I have made diligent search for said A. B., and he is not found in my precinct.

J. S., *Deputy Sheriff.*

*Note.* As this proceeding is in its nature a criminal proceeding, the form of *examination, judgment and mittimus*, will be inserted among the criminal proceedings. As the witness is usually discharged upon making his excuse, and payment of costs, these proceedings are rarely necessary!

11. *Affidavit for a habeas corpus to testify.*]

H— ss. Before J. P., Justice of the Peace, at M., — —, 184--.  
 J. S. *vs.* J. D.

I, J. S., the above named pl., testify and say that one P. W., now a prisoner for debt in the common jail for said county of H., is a material and necessary witness for this deponent in this cause, and is ready and willing to attend as a witness at the trial thereof, and this deponent is advised and verily believes that he cannot safely proceed to trial without the testimony of said P. W.

J. S.

Sworn, &c. See form 8, page 139.

12. *Writ of habeas corpus to testify.*]**The State of New-Hampshire.**

H— ss. *To the Sheriff of said County of H., or his Deputy, keeper of the jail at A., in said County.*  
 [L. S.]

We command you that you have the body of P. W., detained in the jail in your custody, as it is said, under safe and secure conduct before me, J. P., a justice of the peace for said county, at —, on —, at — o'clock in the —noon, then and there to testify what he knows relating to a plea of the case then and there to be heard and tried before me, the said justice, betwixt J. S., pl., and J. D.,

def.; and immediately after the said P. W. shall then and there have given his testimony before me, the said justice, that you return him to said jail under safe and secure conduct, and make return of this writ, with your doings therein.

Dated the — day of —, A. D., 184—.

J. P., *Justice of the Peace.*

*Return.]*

H— ss., — —, 1843. I have the body of the within named P. W. before said justice, as I am within commanded.

N. D., *Deputy Jailer.*

H— ss., — —, 184—. Immediately after said P. W. had given his testimony before said justice, I returned him to said jail.

N. D., *Deputy Jailer.*

*Fees, &c.*

*13. Form of witness's oath.*

You solemnly swear, that the testimony you shall give relating to the cause now on trial, shall be the truth, the whole truth, and nothing but the truth : So **HELP YOU GOD.**

*14. Form of witness's affirmation.*

You solemnly affirm, that the testimony you shall give relating to the cause now on trial, shall be the truth, the whole truth, and nothing but the truth. **THIS YOU DO UNDER THE PAINS AND PENALTIES OF PERJURY.**

*15. Notice of depositions.*

To J. D., of M—, in the county of —. You are hereby notified that one or more depositions will be taken before J. P., a justice of the peace in and for the county of —, at the office of R. A., in G—, in the county of —, on the — day of —, 184—, at — o'clock in the —noon, to be used in a plea of the case to be heard and tried at the court of common pleas to be holden at A., in and for the county of —, on the — Tuesday of —, 184—, in which plea you are pl. (or def.) and J. S., of —, in the county of —, is def., (or pl.)

Dated the — day of —, A. D., 184—. J. P., *Justice of the Peace.*

If there are several parties, the notice should be addressed to all. If the service is to be made on the attorney, it may be well to add :

“ and to D. C., attorney of said J. D.”

*16. Return of service of notice, (written on a copy.)*

H— ss., — —, 184—. I this day gave (or left at the usual place of abode of) the within named J. D. the original notice, of which the within is a true copy.

F. F., *Deputy Sheriff.*

*17. Affidavit of service.*

I certify that on the — day of —, 184—, I gave (or left at the usual place of abode of) the within named J. D. the original notice, of which the within is a true copy.

G. F.

H— ss., — —, 184—. Personally appeared G. F., and made oath that the above affidavit by him subscribed is true.

Before me : J. P., *Justice of the Peace.*

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18. *Notice that one is attorney.]*

H— ss. Before J. P., Justice of the Peace.

J. S. vs. J. D.

Take notice, that I have been retained and am attorney for the def.  
in this cause.

Yours, &amp;c.,

— —, 184—.

R. A., att'y.

To Mr. J. S.

19. *Form of deposition.]*

The deposition is usually commenced without stating the court or case, thus :

"I, A. B., of —, testify and say, that."

If either party desires it, the age of the witness may be stated immediately after his name : "of the age of — years."

This is of no consequence unless the witness is young or very aged.

After the witness has told his story, the party taking the deposition may propose any question he wishes ; and the justice will write both the question and the answer, if either party desires it.

If the parties express no wish on the subject, the substance of the answer may be added to the body of the deposition.

After the party taking the deposition has proposed such questions as he chooses, the other party puts such questions as he thinks proper. If no objections are made, the substance of the answers may be written ; otherwise the questions and answers may be both written. If the substance of the answers, they may be introduced in this way :

• "On cross examination by the def., the deponent says," &c.

After the party cross examining, has proposed such questions as he wishes, the other party may reexamine. If the questions and answers are not written, the reexamination is introduced in this way :

"On re-examination by the pl., the deponent says," &c.

If the adverse party objects to the witness testifying, he should state his objection in writing, and the justice should attach the objection to the deposition. If either party objects to any question, the justice should reduce the question to writing, and under it, and before the answer, should write or let the party write his objection, and take down the answer. As the justice will not usually decide on the validity of the objections, unless in cases which he considers very clear, he should ordinarily permit no discussion in relation

to them in the presence of the witness ; and if the answer is objected to, he will, unless he thinks it clearly improper, write it down and note the objection, or let the party write it at the close.

The questions proposed, unless the parties agree to a different course, should be written, and after being read to the witness, no talk, explanation or discussion by the parties should be permitted, until the answer is written. If the question is misunderstood, or if the answer is not full, a farther question should be proposed.

Objections may be noted as follows :

The def. objects to the admission of P. Q., to testify in this case, because *he is a party to the suit* ; or, because *he is interested in the suit, &c.*

The def. objects to this question, *because it is leading* ; or, *because it is irrelevant to the case* ; or, *because it relates to hearsay merely* ; or, *because it relates to conversations of the pl. only* ; or, *because it relates to the contents of a written instrument* ; or, *because it relates to matters of opinion, &c.*

The deposition should be read by or to the witness, and signed by him, and he should then be sworn.

#### 20. Form of oath.]

You solemnly swear that this deposition, by you subscribed, contains the truth, the whole truth, and nothing but the truth, relative to the cause for which it was taken. SO HELP YOU GOD.

21. The fees of the justice and of the witness should be certified on the deposition, thus :

#### JUSTICE'S FEES.

|                       |     |     |
|-----------------------|-----|-----|
| Swearing and caption, | .34 |     |
| Writing two pages,    | .34 |     |
| Travel, two miles,    | .7  |     |
|                       | —   | .75 |

#### WITNESS'S FEES.

|                      |     |     |
|----------------------|-----|-----|
| Attendance, one day, | .40 |     |
| Travel, six miles,   | .48 |     |
|                      | —   | .88 |
| Subpœna,             | .10 |     |
| Summoning,           | .17 |     |
|                      | —   | .27 |

\$1.90

Taxed — —, 184--.

By J. P., Justice of the Peace.

#### 22. Form of caption.

H— ss. Personally appeared the within named A. B. at the office of —, in —, in said county, on the — day of —, 184--., and made solemn oath that the within deposition, by him subscribed, contains the

truth, the whole truth and nothing but the truth, relative to the cause for which it was taken. Taken at the request of E. F., of —, to be used at the court of common pleas, to be held at —, in and for said county of H—, on the — day of — next, in a plea wherein —, of —, is pl., and said E. F. is defendant. The said A. B. being duly notified, was present and did not object. The deponent living more than ten miles from the place of trial, is the cause of this caption.

J. P., *Justice of the Peace.*

**23. Form of direction of depositions.]**

*To the Court of Common Pleas for the County of H.*

Enclosed are depositions to be used in the action in which J. S. is pl., and J. D. is def.

Sealed up by J. P., *Justice of the Peace.*

If depositions are taken out of the state, the magistrate should always be desired to annex a proper certificate, from the secretary of state or clerk of the county court, under seal, that he is such magistrate. *Dunlap v. Waldo*, 6 N. H. R. 450.

If original papers are referred to in a deposition, they should be annexed, and the justice should make a minute upon them, to identify them :

“ Paper marked ‘ A,’ or ‘ Letter No. 1,’ (or the like,) referred to in the deposition of C. D.”

J. P., *Justice of the Peace.*

## DEPOSITIONS IN PERPETUAM.

The statement required by the Revised Statutes to be made to the justices, previous to taking depositions in perpetuam, must necessarily vary in every case. A single form only is inserted.

**24. Form of statement.]**

To J. P., Justice of the Peace and Quorum, and S. P., Justice of the Peace for the County of H.

J. S., of —, in the county of —, and state of New-Hampshire, respectfully makes the following statement, to wit. : On the — day of —, 184—, J. D., of —, in said county, being seized of a certain tract of land, situate in —, in said county, containing — acres, bounded, &c., by his deed of that date conveyed the said tract of land, with the appurtenances, to the said J. S. and his heirs, in fee and in mortgage, subject to the condition that if said J. D. should, within — months from that date, pay to said J. S. the sum of — dollars and interest, the said deed should be void : That subsequently to said conveyance the said J. D. conveyed the same lands to one R. S., in fee and in mortgage, to secure the sum of — dollars ; and afterwards one C. D. caused the right in equity of said J. D. to be attached to secure the judgment which said C. D. may recover against said J. D. upon his said writ of attachment : That on the — day of —, 184—, the said J. S., the condition of his said mortgage being then broken, made a peaceable entry into the said mortgaged premises for the pur-

pose of foreclosing the right in equity to redeem the same, and thenceforth remained in the continued actual peaceable possession thereof for the space of one year; and more than six months before the right to redeem the same would be foreclosed, he published in the —, a newspaper published at —, in said county, three weeks successively, a notice stating the time at which such possession, so taken for condition broken, commenced; the object of such possession; the name of the mortgager and mortgagee; the date of the mortgage, and a description of the premises: That the only persons supposed by the said J. S. to be interested therein are the said J. D., said R. S., and said C. D.; and that he proposes to examine as witnesses in relation to the matters before stated M. C., J. N. and E. B., all of —, in said county: Wherefore he prays that notice being given to said J. D., R. S. and C. D., the depositions of said N. C., J. N. and E. B. may be taken before you in relation to the premises, to be preserved in perpetual remembrance.

J. S.

H— ss., —, 184--. Personally appeared J. S., and made oath that the facts set forth in the foregoing statement are in his belief true.

Before me: J. P., *Justice of the Peace.*

### 25. Form of notice.]

To J. D., R. S. and C. D., all of —, in the county of H—.

You are hereby notified that the depositions of M. C., J. N. and E. B., all of —, in said county, will be taken before J. P., justice of the peace and quorum, and R. P., justice of the peace for said county of H., at the office of said J. P., in M., in said county of H., on the — day of —, 184--., at — o'clock in the —noon, relative to a deed of mortgage made by said J. D. to J. S., of —, in said county, of a certain tract of land, situate in —, containing — acres, bounded, &c., dated —, and relative to the peaceable entry of said J. S. into said mortgaged premises for the purpose of foreclosing said mortgage, his remaining in the continued actual peaceable possession of said premises for the space of one year thereafter, and relative to his publishing a notice thereof in the —, a newspaper published at —, in said county, three weeks successively, more than six months before the right in equity to redeem the same would be foreclosed.

Dated the — day of —, A. D., 184--.

J. P., *Justice of the Peace.*

*Return and affidavit of service of notice.] See Forms 16 and 17.*

### 26. Form of caption attached to each deposition.]

H— ss., —, 184--. We certify that the foregoing deposition was taken by us, J. P., justice of the peace and quorum, and R. P., justice of the peace for said county, at the office of J. P., in M., in said county, on the — day of —, 184--., at — o'clock in the —noon, at the request of J. S., to be preserved in perpetual remembrance; that J. D., R. S. and C. D., all of —, in the county of H—, were duly notified; were present and did not object; and that the said deposition being by us reduced to writing, was read to and subscribed by the deponent, and the said deponent made oath that the said deposition contains the truth, the whole truth and nothing but the truth, relative to the matters stated therein.

J. P., } *Justice of the Peace;*  
R. P., } *one of the Quorum.*



**27. Affidavit for a commission to examine witnesses.]**

H— ss. Court of Common Pleas, April term, 1843.

J. S. vs. J. D.

J. S., the above named pl., testifies and says, that he is advised and verily believes that one J. W. is a material and necessary witness for the deponent in this cause, and without whose testimony he cannot safely proceed to the trial thereof; and that said J. W. is now a resident at Havana, in the island of Cuba.

J. S.

*Affidavit*: See Form 4, p. 145.

If the affidavit is also designed to found an application for a continuance, it should be drawn agreeably to form 207, p. 130.

**28. Rule for a commission.]**

H— ss. Court of Common Pleas, April term, 1843.

J. S. vs. J. D.

Upon reading the affidavit of J. S., and hearing the counsel for the parties, it is ordered that a commission issue, directed to any judge or notary public at Havana, in the island of Cuba, for the examination of J. W., one of the pls. witnesses, now resident at Havana aforesaid, upon interrogatories to be exhibited to him upon said commission, and that the def. be at liberty to file cross interrogatories for the cross examination of said witness, to be annexed to said commission: and that the pl. file his interrogatories within — days, and the def. file cross interrogatories within — days.

By the Court: P. D., Clerk.

A special rule is not required, unless the order or commission is desired to be different from that required by the common rule. § 29.

**29. Form of interrogatories.]**

Interrogatories to be administered to E. G., a witness (or to the witnesses) to be examined in the action now pending in the court of common pleas for the county of —, between J. S., pl., and J. D., def., pursuant to a rule of said court.

*First*: Do you know the parties, pl. and def., in the title of these interrogatories named, or either, and which of them? How long have you known them?

*Second*: Do you, &c.

*Lastly*: Do you know of any other matter or thing concerning the matter in question in this cause; that may tend to the benefit of the pl.? If so, state the same at large, as if you had been particularly interrogated thereto.

H. A., Att'y for pl.

**Form of cross interrogatories.]**

These may be in similar form, except that after the words, "*pursuant to a rule of said court*;" there may be added, "*by way of cross examination*."

30. *Form of commission.***The State of New-Hampshire.**

[L. S.] S— ss. *To any Justice of the Peace, Notary Public, or other officer legally empowered to take depositions or affidavits, at Havana, in the island of Cuba.*

We, reposing full trust and confidence in your integrity and ability, do hereby authorize, empower and request you, to take the deposition or depositions of any person or persons, to be used in a plea wherein — is pl., and — is def., to be heard and tried at the court of common pleas, to be holden at —, within and for the county of —, on the — Tuesday of — next, that said — may desire; and the same deposition or depositions, with your caption thereon, together with this commission, to return to said court.

Witness J. P., chief justice of said court of common pleas, at —, the — day of —, A. D., 184—.

J. H. S., Clerk.

If the name of the judge or justice, &c., is known, the commission may be addressed to him by name, by order of court.

If the examination is to be upon interrogatories, insert after the words, "*that said — may desire,*" "upon the several interrogatories and cross interrogatories hereto annexed."

If the commission is to be sent abroad, and perhaps generally it will be expedient, to annex the form of the oath to be administered to the witness, the form of the caption, and the superscription upon the envelope in which the papers are to be sealed. They may be referred to in the commission, thus: "The deposition of each witness being written and subscribed by him, you will administer to him the oath, the form of which is hereto annexed."

Instead of the words, "*with your caption thereon,*" say: "with your certificate of the taking thereof, agreeably to the form hereto annexed."

Add after the words, "*to said court,*" "sealed up in an envelope addressed to said court, agreeably to the form hereto annexed."

31. *Declaration against a witness for not attending on a summons.]*

in a plea of the case, for that the pl., on —, at —, impleaded one E. F. before J. P., a justice of the peace for said county of H—, in a plea of the case to the damage of the pl. thirteen dollars, and such proceedings were thereupon had before said justice in that plea, that on —, at —, a certain issue joined therein came on to be tried before said justice; and before the said trial, to wit., on —, at —, the pl. sued out a writ of summons, signed by said justice, directed to said def., requiring him to appear before said justice at —, on the said — day of —, at — o'clock in the —noon, to testify what he knew relating

to the plea aforesaid, and caused the said def. to be summoned to attend as a witness in said action, by reading to him the said writ of summons, and paying to him the sum of — dollars, being the fees by law established for his travel to and from the said place where his attendance was required, and for one day's attendance ; yet the def., having no reasonable excuse therefor, did neglect to attend at the time and place of said trial, by reason whereof, and that the evidence he would have given was material and necessary for the pl., to prove his declaration, and that the pl. could not safely proceed to the said trial without his testimony, the pl. was compelled to become nonsuit, and judgment was rendered against him in favor of said E. F. for — dollars costs, which he has been compelled to pay ; and the pl. has paid and expended in and about the prosecution of said suit the sum of — dollars, and has otherwise been put to great trouble and expense.

32. *Declaration against a party for not taking a deposition.*] in a plea of the case for that the said J. S., on —, at —, gave to the said J. D. a notice in writing, signed by J. P., a justice of the peace for said county, that one or more depositions would be taken before the said justice, at —, on —, at — o'clock in the —noon, to be used in a plea of the case to be heard and tried at the court of common pleas to be holden at —, for the county of —, on the — day of —, 184-- ; in which plea the said J. S. was pl. and the said J. D. was defendant, the plea aforesaid mentioned in said notice, being then pending in said court of common pleas ; and the said J. D. avers that he was not seasonably notified in writing, signed by said J. S., nor otherwise, that such deposition would not be taken ; and that, in pursuance of said notice, he did attend at the time and place therein mentioned, and for that purpose did actually travel the distance of ten miles ; and the said J. S. did then and there neglect and refuse to take any deposition to be used in said action, by means whereof the said J. S. is entitled to recover the sum of twenty-five cents, for each mile he so actually travelled, amounting in the whole to two dollars and fifty cents, all which is to the damage, &c.

## CHAPTER 10.

## OF JUDGMENTS, COSTS AND APPEALS.

- |                                                    |                                                                    |
|----------------------------------------------------|--------------------------------------------------------------------|
| 1. Judgments to be rendered in dollars and cents.  | 11. On neglect to enter appeal, costs.                             |
| 2. Interest, at what rate—usury.                   | 12. Trials on pleas in abatement.                                  |
| 3. Evidence, and triple deduction made.            | 13. Costs on appeal for defendant, when.                           |
| 4. What is not usury.                              | 14. Justices to keep records.                                      |
| 5. Costs to follow event, unless.                  | 15. Executors and others to deposit records in the clerk's office. |
| 6. No cost in action on judgment, when.            | 16. Justice removing, to deposit records.                          |
| 7. Costs where several suits brought, how allowed. | 17. Justices out of commission to give copy.                       |
| 8. Appeal may be taken.                            | <i>Forms of Proceedings.</i>                                       |
| 9. Appeal, when and how granted.                   |                                                                    |
| 10. Copies to be filed on appeal.                  |                                                                    |

§ 1. All judgments shall be rendered in dollars and cents.  
—*R. S. 383, § 1.*

§ 2. Interest, in the rendition of judgments, and in all business transactions where interest is secured or paid, shall be computed at the rate of six dollars on a hundred dollars for one year, unless a lower rate is expressly stipulated; and every person who upon any contract shall, directly or indirectly, receive interest at a higher rate, shall forfeit for every such offence three times the sum so received. *R. S. 383, § 2.*

§ 3. When any person, for the recovery of any debt or damages, shall be sued upon any instrument hereafter made, and interest at a higher rate than six dollars for a hundred dollars for one year, has been paid or secured upon the money sued for, or is secured by such instrument, if the debtor (the creditor being alive,) will come into court where the action is pending, and offer to make oath, and if required by the court, actually swear that there has been taken or secured upon the money sued for, or that there has been or is secured in and by the instrument sued, interest above the rate aforesaid, then the court in rendering judgment shall deduct from the sum lawfully due three times the amount so taken or secured, unless the creditor will swear that he has

not, directly or indirectly, willingly taken or secured on the money sued for, or secured in and by the instrument sued, any interest above the rate aforesaid. *R. S. 383, § 3.*

§ 4. Nothing in this chapter shall extend to the letting of cattle, or other usages of like nature in practice among farmers, or to maritime contracts, as bottomry, insurance or course of exchange, as heretofore used. *R. S. 384, § 4.*

§ 5. Costs shall follow the event of every action or petition, unless otherwise directed by law or by the court. *R. S. 385, § 1.*

§ 6. No costs shall be allowed the plaintiff in any action upon a judgment upon which execution might lawfully issue, if the court shall be of opinion that the plaintiff could have availed himself of such execution as advantageously, for the collection of his demand, as he could of such action. —*R. S. 385, § 2.*

§ 7. When a plaintiff shall, at the same term, bring divers actions against the same party, which might have been joined, or shall bring more than one action upon a joint and several contract, the court may allow such and so many bills of cost as they may deem equitable. *R. S. 385, § 3.*

§ 8. Either party aggrieved by the judgment given by any justice, in any civil cause, may appeal therefrom to the next court of common pleas to be holden in the same county. —*R. S. 346, § 6.*

§ 9. Every appeal shall be claimed within two hours after the judgment is rendered, and shall not be granted unless the party appealing shall enter into recognizance to the adverse party, with sufficient sureties, in the sum of twenty dollars, to pay the costs which may be recovered against him. —*R. S. 346, § 7.*

§ 10. The party claiming an appeal shall produce, at the court to which the appeal is claimed, attested copies of the writ, pleadings, judgment, and all other papers used and filed in the cause in the court below. *R. S. 346, § 8.*

§ 11. If any appellant shall fail to enter his appeal, or to produce such copies, or to pay the jury fees, the former judgment shall be affirmed and costs taxed for the appellee. —*R. S. 347, § 9.*

§ 12. If the court shall reverse the judgment of a justice that any writ be abated, the case shall not be remanded, but shall be heard and determined in said court. *R. S. 347, § 10.*

§ 13. If the plaintiff appeal in any action founded on con-

tract, and shall not recover damages to a greater amount than were awarded by the justice, the defendant shall recover his costs on such appeal. *R. S. 347, § 11.*

§ 14. Every justice shall keep a fair record, in one or more books to be kept for that purpose, of all proceedings, civil or criminal, before him. *R. S. 347, § 15.*

§ 15. The executor or administrator of every deceased justice, and every other person into whose hands the records and official files of such justice shall come, shall forthwith deposit the same in the office of the clerk of the court of common pleas, where they shall be kept; and if any such person shall neglect to deposit the same as aforesaid, for six months, he shall, for each month's neglect afterwards, forfeit and pay to any person who will sue for the same the sum of five dollars. *R. S. 347, § 16.*

§ 16. When any justice in commission shall remove from his county, he shall deposit his records and files with the clerk as aforesaid; and if he shall neglect so to do, he shall forfeit, for every month's neglect after such removal, the sum of five dollars to any person who will sue for the same.—*R. S. 347, § 17.*

§ 17. Every person who has sustained the office of a justice of the peace may give attested copies of any proceedings before him as such justice, and his certificate shall be valid. *R. S. 347, § 19.*

## FORMS OF PROCEEDINGS.

### 1. *Form of judgment of nonsuit.*]

1. R— ss. Before J. P., Justice of the Peace, at the office of —, in —, in said county, on the — day of —, 184—, at — o'clock in the —noon.

2. J. S., of, &c., pl., *vs.* J. D., of, &c., def.

3. In a plea of the case for that the def., at —, on —, by his note of that date, for value received promised the pl., to pay him or order, ten dollars, on demand, with interest; yet, though requested, has never paid the same, to the damage of the said C. D., as he says, thirteen dollars.

4. And now the parties appeared, and thereafterwards the said J. D. did not appear nor prosecute his said suit, but became nonsuit:

5. It is, therefore, considered by me, the said justice, that the said J. D. recover of the said J. S. his costs, taxed at two dollars.

*J. P., Justice of the Peace.*

*Note.* The first clause, marked 1, is uniform, being the style of the court on the day the judgment is rendered.

The names of the parties, marked 2, are to be entered, as they are in the writ, except where changes have occurred by death, &c., in which case the names of the parties at the time of judgment are to be entered.

The declaration, marked 3, is to be recited at length from the writ. It is considered sufficient in the court of common pleas to refer to the declaration in the writ on file, thus: "at large set forth in the writ on file;" but in making a copy of the judgment it is always copied at length.

The next clause, marked 4, contains the history of the proceedings in the case, and varies much in different cases.

The last clause, marked 5, is always substantially in the same form as above where judgment is for the def., and in the form given upon default, No. 3, in case the judgment is for the pl.

In the subsequent forms those parts which are in common form will not be repeated. It will be seen by the numbers prefixed, where the form given is to be introduced.

2. *Upon complaint for not entering action.]*

H— ss., &c.

J. D., complainant, against J. S.

3. For that the said J. D. was summoned to appear before the said justice, at —, on —, to answer to said J. S. in a plea of the case; yet the said J. S. neglected to appear and enter his said action.

4. It appearing to me, the said justice, that said J. S. was duly summoned to appear as aforesaid, and that said J. S. has neglected to appear and enter his said action:

5. It is, &c., (as in last form.)

3. *Upon default.*

4. And now the pl. appears, but the def. does not appear, but makes default:

5. It is, therefore, considered by me, the said justice, that the said J. S. recover of the said J. D. the sum of — dollars damages, and costs taxed at —.

4. *Upon default after continuance.]*

4. This action was entered July 16, 1842. The parties appeared, and the action was continued to this day; and now the pl. appears, but the def. does not appear, but makes default:

It is, &c.

5. *Upon default and continuances after.]*

4. This action was entered May 26, 1843. The pl. appeared, but the def. did not appear, but made default, and the said action was continued from time to time to this day, and now

It is, &c.

**6. *Upon default of one def. ; two others not served.*]**

4. No service of the pls. writ was made on said R. D. and O. D. : the action is not, therefore, prosecuted against them. The pl. appears, and the def. (appears but afterwards) does not appear, and makes default.

**7. *Upon default after order of notice.*]**

4. This action was entered January 29 ; the pl. appeared, and suggested to the court that the said action was commenced by an attachment of the defs. goods, and that no personal service was made on the def., by reason that he resides out of the state, (or by reason that his residence is unknown to the officer serving the writ) and that said J. D. was last an inhabitant of —, in said county ; and it was ordered that said action be continued to the — day of —, at — o'clock in the —noon, at —, in —, in said county, and that notice of the pendency of said suit be given by posting up a copy of this order in two or more public places in the said town of M., forty days at least before the said — day of —. And now satisfactory evidence is shown to me, the said justice, that the said order has been complied with, and the said J. D. does not appear but makes default, and the said J. S. files a bond, with sufficient sureties, to respond the judgment which the def. may recover upon a review of said action, and thereupon

It is, &c.

**8. *Upon default after amendment.*]**

4. This action was entered — —, 184--. The pl. appeared, and the said def. did not appear, but made default ; and on motion of the pl. it was ordered that the def. show cause, on the — day of —, at —, why leave should not be granted to the pl. to amend his said writ, by adding a new count for money had and received, and that a copy of said order be served on the said def. fourteen days before said — day of — ; and satisfactory evidence being shown to the court that said order has been complied with, and the said def. not appearing nor objecting thereto, it is ordered that the pl. have leave to amend as aforesaid, and he thereupon filed said new count.

5. It is, &c.

**9. *Upon default after death of pl.*]**

2. D. W. B., of C., widow, administratrix of the estate of J. O. B., late of said C., deceased since the commencement of this suit, pl., against A. B.

3. In a plea, &c.

4. This action was commenced and entered — —, 184-- , by said J. O. B., then alive ; said J. O. B. and the def. appeared, and the action was continued to this day. And now the said administratrix appears, and suggests that said J. O. B. has deceased since the last continuance, and on motion is admitted to prosecute this action, and the def. does not appear, but makes default.

5. It is, &c.

***Upon default after death of one party.*]**

4. The pl. appears, and suggests to the said justice that R. D. is



deceased since this action was commenced ; therefore said action as to him is discontinued, and the said J. D. appears, and being called to answer further, does not appear but makes default.

10. *Upon default, after death of def. and citation of executor.]*

2. J. S. against C. D., Executor of J. D., deceased since the commencement of this suit.

4. This action was entered — —, 184—; the parties appeared, and the action was continued to the — day of —, 184—, at which day the pl. appeared and suggested to the said justice that since the last continuance the said def. had deceased, and that E. X. was executor of the will of said deceased; and on his motion, it was ordered that a writ of scire facias be issued to said executor, to show cause why judgment should not be recovered against the estate of said deceased, for the cause aforesaid, returnable on the — day of —, to which time said action was continued; and now it appears to me, the said justice, that said writ of scire facias has been duly served upon said —, executor as aforesaid; but the said — does not appear, but makes default:

5. It is, therefore, considered that the pl. recover against the estate of said deceased, in the hands of said executor, &c.

11. *Upon default, after suggestion of marriage of pl.]*

2. P. R., and J. R. his wife, vs. J. D.

4. This action was commenced and entered — —, 184—, by J. S. The parties appeared, and the action was continued to the — day of —, 184—, at which day the parties appeared, and the said J. D. suggested to the court that the said J. S., since the continuance of this suit, intermarried with P. R., of —, &c., and is now the wife of said P. R.: Whereupon it was ordered that notice be given to said P. R. to appear and prosecute said action at —, on —, at — o'clock in the forenoon, by serving upon him an attested copy of the original writ in this action, and a copy of this order, fourteen days before the said — day of —; and now, on said — day of —, the said P. R., and J. his wife, appeared, but the said J. D. does not appear, but makes default:

5. It is, &c.

12. *Upon default, after suggestion of marriage of def.]*

2. J. S. vs. R. D. and J. D., his wife.

4. This action was commenced and entered the — day of —, 184—, by the pl. against said J. D. The pl. appeared, but the said J. D. did not appear, but made default; and the said J. S. suggested to the court that since the commencement of this suit said J. D. intermarried with R. D., of —, &c., and is now the wife of said R. D.: Whereupon it was ordered that notice be given to said R. D. to appear and defend the said action at —, on —, at — o'clock in the —noon, by serving upon him an attested copy of the original writ in this action, and a copy of this order, fourteen days before the said — day of —; and now, on said — day of —, the pl. appears, and shows to the court satisfactory evidence that said order has been complied with; but the said R. D. does not appear, but makes default. It is, therefore, considered by me, the said justice, that said J. S. recover against said R. D. and J. D. his wife, &c.

13. *Upon the general issue.]*

4. The pl. appears, and the said def. comes and defends, &c.,

when, &c., and says that he never promised the pl., as he has declared against him, and thereof puts himself on trial, by J. H., his attorney; and the pl. doth the like, by L. M., his attorney. And after hearing and considering the allegations, evidence and arguments of the parties, it appears to me, the said justice, that the said def. did promise the pl., as he has declared against him:

It is, &c.

**14. Upon special pleadings.]**

4. The pl. appears, and the said def. comes and defends, &c., when, &c., and says (here copy the plea;) and the plaintiff says he ought not, &c., (here copy the replication;) and this he prays may be enquired of by the said justice: by his attorney, J. H.; and the def. doth the like by his att'y, L. M. And after, &c., as in last form.

If the pleadings are long, it seems to be considered sufficient in the court of common pleas to refer to them, thus:

"Issue is joined between the parties, as set forth at large in the plea, replication and rejoinder on file."

**15. Upon confession.]**

4. The parties appear, and the defendant comes and defends, &c., when, &c., confesses the pls. action, and that he has sustained damage to the amount of —, and no more; and as to the residue of the pls. claim, says he never promised the pl. as he has alleged against him, and thereupon the pl. freely remits the said residue of his claim.

5. It is, &c.

**16. Upon payment of money into court.]**

4. The parties appear, and the def. pays into court, under the general issue and rule of court, five dollars, which the pl. receives with costs, taxed by the court at —, in discharge of this action. This action is therefore discharged.

If issues are joined, the judgment follows the form in Nos. 13 and 14.

**17. Upon a set-off.]**

4. The pl. appears, and the def. comes and defends, &c., when, &c., and says he never promised the pl. as he has alleged against him, and thereof puts himself on trial, by J. H., his att'y; and the pl. doth the like, by N. M., his att'y; and the said def. gives notice to the pl. that on the trial he will give in evidence that before the commencement of this suit the pl. was and still is indebted to the def. in the sum of — dollars, for goods sold and delivered to him by the def., at his request; and that he will set-off so much of said sum of — dollars against any claim which may be proved by the def., as will be necessary to balance the same, and claim judgment for the balance.

And after hearing and considering the allegations, evidence and arguments of the parties, it appears to me, the said justice, that after allowing the sum of —, proved by the pl., there is due to the def. from said pl. the sum of —.

5. It is, therefore, considered by me, the said justice, that the def. recover of said pl. the sum of —, and costs of suit, taxed at —.

The costs are usually taxed upon the writ, or in a separate bill, thus :

18. H— ss. Before J. P., Justice of the Peace, at M., —, 184—. J. S. vs. J. D.

*Costs taxed by the pl.*

|                                       |     |     |
|---------------------------------------|-----|-----|
| Writ,                                 |     | ·67 |
| Service,                              |     | ·48 |
| Entry,                                |     | ·50 |
| Pls. travel, ten miles,               |     | ·25 |
| Pls. attendance, one day,             |     | ·25 |
| Issue,                                |     | ·50 |
| Witnesses : J. W. : travel, one mile, | ·8  |     |
| Att. one day,                         | ·40 |     |
|                                       | —   | ·48 |
| P. W. : travel, six miles,            | ·48 |     |
| Att. one day,                         | ·40 |     |
|                                       | —   | ·88 |
| Subpœna,                              | ·10 |     |
| Summoning two witnesses,              | ·34 |     |
|                                       | —   | ·44 |
| Adjournment,                          |     | ·17 |
| Pls. travel, 2d day,                  |     | ·25 |
| Att. " "                              |     | ·25 |
| Witnesses : J. W., as above,          |     | ·48 |
| J. W., " "                            |     | ·88 |
| Subpœna,                              | ·10 |     |
| Summoning,                            | ·34 |     |
|                                       | —   | ·44 |

6·92

Allowed : J. P., *Justice of the Peace.*  
Or : Allowed : J. H., *Def. att'y.*

Depositions, copies from the records, &c., are to be taxed whenever they are necessary.

19. *Appeals.*

Appeals are usually claimed verbally, and the entry is made immediately following the judgment, thus :

From which judgment the said def. (or pl.) claims an appeal to the court of common pleas, next to be holden at —, in said county, on the — Tuesday of — next, and enters into a recognizance to the pl. in the sum of \$20, with sufficient sureties, for the payment of the costs which may be recovered against him.

J. P., *Justice of the Peace.*

The entry on the justice's docket may be :

Def. appeals.

|                       |                                                          |
|-----------------------|----------------------------------------------------------|
| J. D., as principal,  | } Recognize for the payment of costs in the sum of \$20. |
| T. S.,                |                                                          |
| S. B., } as sureties, |                                                          |

20. *Form of recognizance.*

R— ss. Be it remembered that on this — day of —, 184—, came

before me, J. P., a justice of the peace for said county, J. D., of —, as principal, and T. S. and S. B., of —, as sureties, and severally acknowledged themselves to be indebted to J. S., of —, in the sum of twenty dollars each, to be levied upon their goods and chattels, lands and tenements, and for want thereof upon their bodies respectively, if default be made in the condition following : The condition of this recognizance is, that whereas the said J. S. has this day recovered judgment before me, the said justice, against said J. D., for — dollars, damages, and —, costs of suit, from which judgment the said J. D. has appealed to the court of common pleas next to be holden at —, in said county : Now if the said J. D. shall pay to said J. S. all such costs as may be recovered against him in said suit, then this recognizance shall be void. Attest : J. P., *Justice of the Peace.*

21. *Copies of case.*]

The justice will prepare, at the request of the appellant, exact copies of the writ, and all the endorsements upon it ; the pleadings, judgment, recognizance, and all papers used and filed in the case. Each of these should be certified thus :

A true copy of the record : J. P., *Justice of the Peace.*

Upon the wrapper enclosing these papers should be a certificate, in this form :

I certify that the enclosed (or accompanying) papers, numbered from — to —, are true copies of the writ, pleadings, judgment, and all other papers used and filed in the action J. S. *vs.* J. D.

Before me : J. P., *Justice of the Peace.*

## CHAPTER 11.

## OF EXECUTIONS.

- |                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Executions, when to issue.</li> <li>2. Execution from justices, how returnable.</li> <li>3. Execution may issue within two years.</li> <li>4. Interest payable on executions.</li> <li>5. Executions issued on scire facias.</li> </ol> | <ol style="list-style-type: none"> <li>6. One only on same contract at a time.</li> <li>7. If execution not against body, part to be omitted.</li> <li>8. Execution, form of writ of.</li> <li>9. Possession, form of writ of.</li> <li>10. Execution against property of person imprisoned, when.</li> <li>11. Justice to issue execution after his commission expires.</li> </ol> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

§ 1. No execution shall issue until the expiration of twenty-four hours after judgment rendered. *R. S. 388, ch. 193, § 1.*

§ 2. Executions issued by justices, may be made returnable within sixty days from the date thereof. *R. S. 388, § 4.*

§ 3. Executions may be issued at any time within two years after the judgment rendered, or after the return day of any former execution. *R. S. 388, § 5.*

§ 4. Interest shall be payable on all executions in civil actions, from the time the judgment was rendered. *R. S. 388, § 6.*

§ 5. The court may award execution on any judgment after the expiration of said two years, upon scire facias, for the amount then due, with interest. *R. S. 388, § 7.*

§ 6. Where several judgments are rendered upon the same contract, at the same term, only one execution shall be issued on said judgments at one time, except by order of the court. —*R. S. 388, § 8.*

§ 7. Where any execution shall not run against the body of the defendant, the form may be varied by omitting such parts as relate to the arrest of the person. *R. S. 388, § 9.*

§ 8. Writs of execution shall be substantially in the following form :

**The State of New-Hampshire.**

R—ss.

[L. S.] *To the Sheriff of any County, or his Deputy.*

WHEREAS A. P., of —, by the consideration of our justices of our court of —, holden at —, in said county of —, on the — Tuesday of

—, recovered judgment against A. D., of —, for the sum of — dollars, and costs, taxed at —, as appears of record, whereof execution remains to be done: We command you, therefore, that of the goods, chattels or lands of the said debtor in your precinct, you cause to be levied and paid to the said creditor the aforesaid sums, with lawful interest thereon, and — more for this writ and your own fees, and in default thereof to arrest the said debtor and commit him to jail; and the keeper of such jail is required to detain him in custody until he pay the same, with your fees, or until he is discharged by the creditor, or otherwise according to law. And make return of this writ, with your doings thereon, to said court, to be holden at —, in said county, upon the — Tuesday of —.

Witness J. P., Esquire, the — day of —, A. D., —.

—R. S. 385, § 10.

R. G., Clerk.

§ 9. Writs of possession shall be substantially in the following form:

### **The State of New-Hampshire.**

R—ss. *To the Sheriff of any County in this State, or his Deputy.*

[L. S.]

WHEREAS A. P., of —, by the consideration of our justices of our — court of —, holden at —, in said county of —, on the — Tuesday of —, recovered judgment against A. D., of —, for a certain —, with the appurtenances, situate in the town of —, and costs, taxed at —, as appears of record: We command you, therefore, that without delay you cause said A. P. to have possession of the said premises: We also command you that of the goods, chattels or lands of the said debtor, in your precinct, you cause to be levied and paid to said creditor the aforesaid sum, with lawful interest thereon, and — more for this writ and your own fees, and in default thereof to arrest the said debtor, and commit him to jail: and the keeper of the jail is required to detain him in custody until he pay the same, with your fees, or until he is discharged by the creditor, or otherwise according to law. And make return of this writ, and your doings therein, unto said court, to be holden at —, in said county, upon the — day of —.

Witness J. P., Esquire, the — day of —, A. D., —.

R. G., Clerk.

—R. S. 389, § 11.

§ 10. Whenever a debtor shall be committed to prison on execution, the creditor, on the return of the same, may have a further execution against the property of the debtor, notwithstanding the debtor shall not be discharged; and upon the satisfaction of such execution, the debtor shall be discharged. R. S. 389, § 12.

§ 11. Any justice may issue execution on any judgment recovered before him during his term of office under any former commission, in the same manner as if his commission had not expired. R. S. 347, § 18.

## CHAPTER 12.

### OF THE LEVY OF EXECUTIONS ON PERSONAL ESTATE.

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|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Executions may be set off, when.</li> <li>2. Money and bank notes may be levied on.</li> <li>3. Chattels, how advertised and sold.</li> <li>4. Personal property mortgaged, &amp;c., may be levied on—how.</li> <li>5. Proceeds of sale, how applied.</li> <li>6. Right of redemption may be sold.</li> <li>7. Owner may redeem before sale.</li> <li>8. Proceeds, how applied on several executions.</li> <li>9. Officer's return, what to state.</li> <li>10. Fraud in sale, penalty for.</li> <li>11. Officer may adjourn sale, how.</li> <li>12. Pews, how advertised and sold.</li> </ol> | <ol style="list-style-type: none"> <li>13. Franchises, how advertised and sold.</li> <li>14. Who is the purchaser—his rights.</li> <li>15. Rights of corporation, how affected.</li> <li>16. Shares in corporation, how taken on execution.</li> <li>17. Shares in corporation, how advertised and sold.</li> <li>18. Notice, how given if debtor out of county.</li> <li>19. Copy of return filed with clerk.</li> <li>20. Officer of corporation to give account of shares—penalty for refusal, &amp;c.</li> <li>21. Officer of corporation to exhibit records—penalty for refusal, &amp;c.</li> </ol> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

§ 1. Executions in which the creditor in one is debtor in the other, in the same right and capacity, shall be set off by the officer to whom one of such executions has been delivered, and the other shall be tendered: and such officer shall return both such executions satisfied, so far as such set-off will extend. *R. S. 390, ch. 194, § 1.*

§ 2. Money may be taken on execution and paid to the creditor. Bank notes, and other evidences of debts issued by any moneyed corporation, and circulated as money, may be taken on execution and paid to the creditor at their par value, if he will accept of them; otherwise they may be sold at auction like other chattels. *R. S. 390, § 2.*

§ 3. Goods and chattels, taken on execution, shall be safely kept by the officer, at the expense of the debtor, four days at least; shall be advertised for sale, by posting up notices of the time and place of sale, at two of the most public places in the town where the sale is to be, forty-eight

hours before the expiration of said four days, and sold at public auction to the highest bidder. *R. S. 390, § 3.*

§ 4. Personal property subject to any mortgage, pledge or lien, may be taken in execution in the same manner it may be attached, and may be sold in the same manner as other personal property ; and the creditor and officer shall have the same right to demand an account of the amount due and to hold the same, if no account or a false account is given, as in case of an attachment. *R. S. 390, § 4.*

§ 5. The proceeds of the sale shall be applied to pay the sum paid or tendered to the mortgagee, pledgee or holder, and interest, and the residue to the satisfaction of the executions on which the same is holden. *R. S. 390, § 5.*

§ 6. The debtor's right to redeem such property may be taken on execution and sold as in other cases, without such payment or tender. *R. S. 390, § 6.*

§ 7. The owner may redeem any goods and chattels before the sale, by otherwise satisfying the execution, and officer's fees and charges. *R. S. 391, § 7.*

§ 8. The money arising from any sale of personal property shall be applied by the officer to the payment of the charges and the satisfying of the executions levied thereon, in the order in which the attachments thereon, if any, were made ; otherwise in the order in which the executions were delivered to him ; and the balance shall be returned to the debtor, upon request. *R. S. 391, § 8.*

§ 9. The officer shall make return of the execution according to his precept, with his doings thereon, particularly describing the goods and chattels taken and sold, and the sum for which each article was sold. *R. S. 391, § 9.*

§ 10. If any officer shall be guilty of any fraud in the sale or return, he shall be liable to each party injured to pay him five times the sum defrauded. *R. S. 391, § 10.*

§ 11. The officer may adjourn any sale under this chapter from time to time, not exceeding ten days at one time, or sixty days from the seizure, giving the same notice of the adjournment as of a sale. *R. S. 391, § 11.*

§ 12. Pews or seats in meeting houses may be taken, advertised and sold on execution, in the same manner as other personal property, except that if there has been no previous attachment the debtor shall be notified by the officer of the time and place of sale of such pew or seat, by giving to him a notice in writing, or leaving such notice at his usual



place of abode, if he resides in the town, otherwise with the town clerk; and the time of giving or leaving such notice shall be deemed the time of taking such property. *R. S. 391, § 12.*

§ 13. The franchise of any corporation authorized to take tolls, may be taken and sold on execution at public auction, the officer giving notice of the time and place of sale, by posting up a notice thereof at any toll house at which such tolls are or have been usually taken, and causing a like notice, with the name of the creditor and the amount of the execution, to be posted up at two or more public places in the town in which any toll house of said corporation is situate, at least thirty days before the day of sale. *R. S. 391, § 13.*

§ 14. The person who will pay such execution and the lawful fees and expenses thereon, for the right to receive all such tolls for the shortest period, shall be the highest bidder; and shall, upon such sale, be entitled to the possession of the toll houses and gates of the corporation, to be delivered by the officer, and entitled to receive all such tolls for the term of his purchase, with all the rights of the corporation in relation thereto. *R. S. 391, § 14.*

§ 15. The rights and obligations of the corporation, except as to such tolls, shall not be affected by such sale; and they may redeem such franchise by paying the purchaser the amount paid by him therefor, with twelve per cent. interest thereon, at any time within three months from such sale.—*R. S. 392, § 15.*

§ 16. The shares or interest of any person in any corporation may be taken on any execution, in the same manner they may be attached. *R. S. 392, § 16.*

§ 17. Notice in writing of the time and place of sale of such share or interest, shall be given by the officer to the debtor, or left at his usual place of abode, and posted up at one or more public places in the town where the sale is to be, and in two adjoining towns, thirty days before the sale.—*R. S. 392, § 17.*

§ 18. If the debtor does not reside in the county, the posting up [of] such notice as prescribed in the preceding section, and publishing such notice in some newspaper, if any, in the county, otherwise in an adjoining county, three weeks previous to the sale, shall be sufficient without further notice to the debtor. *R. S. 392, § 18.*

§ 19. The officer shall cause an attested copy of the ex-

ecution, and of his return thereon, to be filed with the clerk, treasurer, or cashier of the corporation, and pay for the recording thereof; and the purchaser shall thereupon be entitled to such shares or interest, and the income or dividends become due thereon since the attachment, and to such certificates as are the usual evidence of the shares or interest of a proprietor in such corporation. *R. S. 392, § 19.*

§ 20. The officer of every corporation, having the care of the records or accounts of the shares or interests of the corporators therein, shall on request and on the exhibition of a writ of attachment or execution against any person interested in such corporation, give to the officer having such writ a certificate of the number of his shares, or amount of his interest therein, with the numbers of the shares, or other description by which they are distinguished; and on neglect or refusal to give such certificate, or if he shall wilfully give any false certificate thereof, he shall be liable to pay to the creditor the whole amount of his demand against such debtor, to be recovered by an action of debt. *R. S. 392, § 20.*

§ 21. If any officer of a corporation shall, on request of an officer, and on exhibition of such writ of attachment or execution, refuse or neglect to exhibit to him such records and documents in his keeping as may be useful to direct and assist him in the discharge of his duty, he shall forfeit twenty dollars to the officer, and shall be answerable for all damages sustained by any person thereby. *R. S. 392, § 21.*

## CHAPTER 13.

## OF LEVIES ON REAL ESTATE.

- |                                        |                                       |
|----------------------------------------|---------------------------------------|
| 1. Real estate to be appraised.        | 10. Rent or income, how extended.     |
| 2. Appraisers, how appointed—oath.     | 11. Return to be made and recorded.   |
| 3. If debtor neglects or is absent.    | 12. Effect if return is not recorded. |
| 4. Notice to officers of corporations. | 13. Debtor may redeem—how.            |
| 5. Levy, when commenced and completed. | 14. Creditor to release on payment.   |
| 6. Appraisers to set off by bounds.    | 15. Form of judgment for dower.       |
| 7. Undivided interest, when set off.   | 16. Dower, how set out by officer.    |
| 8. How part set off in special cases.  | 17. Rights of widow therein.          |
| 9. Whole to be described in such case. | 18. Dower not of unimproved lands.    |
|                                        | 19. Dower, how estimated.             |
|                                        | 20. Dower, when specially assigned.   |

§ 1. All real estate may be taken on execution, and shall be appraised and set off to the creditor, at its just value, in satisfaction of such execution and the cost of levying, except in those cases where by law a sale of it is authorized.—*R. S. 393, ch. 195, § 1.*

§ 2. The officer levying such execution, shall cause three appraisers to be appointed; one by the creditor, one by the debtor, and one by himself; who shall be discreet and disinterested men, resident in the county, and shall be sworn by a justice impartially to appraise such real estate as shall be shown them as the estate of the debtor. *R. S. 393, §§ 2.*

§ 3. If the debtor, on due notice, neglect to appoint an appraiser, or in case he does not reside in the county or within twenty miles of the property to be appraised, the officer shall appoint an appraiser for the debtor. *R. S. 393, § 3.*

§ 4. Notice given to the clerk, treasurer, agent, or one of the directors of a corporation, to choose an appraiser for the corporation, ten days before the levy, shall be legal notice to the corporation. *R. S. 393, § 4.*

§ 5. A levy commenced by the appointment and swearing

of one or more of the appraisers, may be completed before the return day of the execution. *R. S. 393, § 5.*

§ 6. Such appraisers shall set off to the creditor, by metes and bounds, or other distinct description, the real estate appraised by them, or so much as may be necessary in payment of the execution and cost of levying. *R. S. 393, § 6.*

§ 7. If such real estate is holden jointly or in common with others, the levy shall be made upon the undivided interest of the debtor, or a part thereof. *R. S. 393, § 7.*

§ 8. If such real estate cannot, in the judgment of the appraisers, be divided and set out by metes and bounds, without greatly impairing the value of the whole, the levy may be made upon an undivided interest therein, or by such mode of division as the nature of the property will admit.—*R. S. 393, § 8.*

§ 9. In either of the cases aforesaid, the whole of the property of which part shall be set off, shall be described by metes and bounds, or other distinct description. *R. S. 394, § 9.*

§ 10. If any debtor is seized of a rent, or of the income of any real estate, a levy may be made thereon, and the appraisers may set off the same for such term as they judge sufficient to pay the judgment, interest and costs; and the sheriff shall cause the tenant to attorn and become tenant to the creditor; and upon his refusal, shall turn him out of possession, and deliver seizin to the creditor, to hold for the term aforesaid. *R. S. 394, § 10.*

§ 11. The officer shall deliver seizin and possession of the property so set off, to the creditor or his attorney; shall make a full return of his proceedings, and cause the execution and return to be recorded at length in the registry of deeds of the county, and returned to the office of the clerk of the court to which it is by law returnable. *R. S. 394, § 11.*

§ 12. All the debtor's interest in such real estate shall pass by the levy as against all persons whatever, if the levy is recorded as aforesaid on or before the return day of the execution; otherwise, only as against the debtor and his heirs, until such record is made. *R. S. 394, § 12.*

§ 13. Such extent shall be void, if, within one year from the return day of the execution, the debtor, or any person interested, shall pay or tender to the creditor the sum at which such real estate was appraised, with interest from the

time such levy was received for record by the register of deeds. *R. S. 394, § 13.*

§ 14. The creditor, upon such payment or tender, having his reasonable charges therefor duly tendered to him, shall execute a release to the debtor of his right in such real estate acquired by such levy. *R. S. 394, § 14.*

§ 15. In actions of dower judgment shall be rendered for the demandant that she recover "seizin of such part of a certain —, with the appurtenances, as will produce a yearly income equal to one third part of the yearly income thereof, on the — day of —." *R. S. 412, ch. 205, § 5.*

§ 16. The officer to whom such writ of seizin is directed, shall cause such dower to be set off by three discreet and disinterested men of the neighborhood, who shall be appointed and shall proceed in the same manner as is provided in the case of the levy of executions on real estate. *R. S. 412, § 6.*

§ 17. The rights of every such woman and the mode of setting out her dower, shall be the same as in similar cases before a judge of probate. *R. S. 412, § 7.*

§ 18. No widow shall be entitled to dower in any lands, unless the same were, during the marriage and seizin of the husband, in a state of cultivation, or were used or kept as a wood or timber lot, and occupied with some farm or tenement owned by the husband. *R. S. 329, ch. 165, § 4.*

§ 19. Every widow having right of dower, shall be endowed of so much of any real estate of the husband as will produce a yearly income equal to one third of the yearly income thereof at the time the husband died or parted with his title. *R. S. 329, § 5.*

§ 20. When the dower of any widow cannot be conveniently and equitably assigned by metes and bounds, she shall be endowed thereof in a special manner, as of the third part of the rents and profits thereof, to be estimated as aforesaid. *R. S. 329, § 6.*

## CHAPTER 14.

## OF LEVIES ON EQUITIES OF REDEMPTION.

- |                                        |                                                   |
|----------------------------------------|---------------------------------------------------|
| 1. Rights in equity may be sold.       | 9. Proceeds of sale, how applied.                 |
| 2. Notice to debtor and public, given. | 10. Purchaser, how liable for profits.            |
| 3. Notice by publication, when.        | 11. Right to receive conveyance sold.             |
| 4. Levy, when commenced and completed. | 12. Right to redeem any interest sold.            |
| 5. Debtor may redeem, when and how.    | 13. Terms for years and other interests—how sold. |
| 6. Creditor to release, when and how.  | 14. Rights of purchaser in such cases.            |
| 7. Deed of officer, how made.          |                                                   |
| 8. Deed not valid unless recorded.     |                                                   |

§ 1. Rights in equity of redeeming mortgaged real estate taken on execution, may be sold at public auction, and a valid deed thereof made by the officer to the purchaser; and such execution, with the doings of the officer thereon, shall be returned according to the precept. thereof. *R. S. 394, ch. 196, § 1.*

§ 2. Notice of the time and place of sale shall be given to the debtor, or left at his usual place of abode, if he resides in the county or within twenty miles of the property, and a like notice posted up at two of the most public places in the town in which the property is situate, thirty days before the sale. *R. S. 395, § 2.*

§ 3. If the debtor does not reside in the county or within twenty miles of the property, a like notice shall also be published in some newspaper printed in the vicinity, three weeks successively before the sale. *R. S. 395, § 3.*

§ 4. The levy shall be commenced by posting up notices as aforesaid, and may be completed afterwards, and the sale may be adjourned, not exceeding ten days at a time nor sixty days in the whole, notice of the adjournment being posted up in the same manner as notices of the sale. *R. S. 395, § 4.*

§ 5. If the debtor shall, within one year after the sale, redeem such right in equity, by paying to the purchaser the purchase money and any money paid by him to redeem such

mortgage in whole or in part, after entry or notice for the purpose of foreclosure, with interest thereon, the sale and deed thereof shall be void. *R. S. 395, § 5.*

§ 6. On payment, the purchaser, having his reasonable charges therefor duly tendered to him, shall execute a release to the debtor of all right to such estate acquired by or under such sale. *R. S. 395, § 6.*

§ 7. The deed of the officer making such sale shall briefly state his office, the names of the parties to the action in which the execution issued, and the court and term at which the judgment was rendered therein, the consideration paid therefor, a description of the premises conveyed and the right of the debtor to redeem the same; and shall contain a covenant that the officer has observed all the requisitions of the law by virtue of which the deed is made. *R. S. 395, § 7.*

§ 8. No sale upon execution of any greater interest in any real estate than a term of seven years shall be valid, except against the debtor and his heirs, unless the execution and the return shall be recorded in the registry of deeds in the county in which the estate is situate. *R. S. 395, § 8.*

§ 9. The proceeds of such sale shall be applied to the satisfaction of the executions issuing in the actions in which such estate was attached, in the order of the attachments, and then to the payment of any other execution in the officer's hands, in the order in which they were received, and the residue shall be paid to the debtor. *R. S. 395, § 9.*

§ 10. The purchaser shall be liable to the debtor, after redemption, for the rents and profits received therefrom over the expenditures made thereon; but such purchaser may pay or tender to the debtor, either before or after action brought, the amount for which he deems himself justly accountable as aforesaid, and costs; and unless the debtor shall recover a greater amount, the defendant shall recover his costs. *R. S. 396, § 10.*

§ 11. The right of any debtor to receive a conveyance of real estate on performance of any contract, may be taken on execution and sold at auction, and the purchaser shall have a remedy by bill in equity to compel a conveyance.—*R. S. 396, § 11.*

§ 12. The right of any debtor to redeem any right or interest in real estate, may be taken in execution and sold at auction. *R. S. 396, § 12.*

§ 13. Terms for years may be attached on mesne process, and taken and sold on execution; and in all cases where real estate taken in execution is required to be sold at auction, the proceedings relative to such sale, and the rights of parties thereupon, shall be the same as in cases of the sale of equities of redemption. *R. S. 396, § 13.*

§ 14. The person having the estate or right of the creditor, purchaser or debtor in any real estate taken in execution, shall be deemed to be, and shall have the rights, privileges and remedies, in all cases, of the creditor, purchaser or debtor, as to all persons having notice of his right; and no act done by or to the original creditor, purchaser or debtor, shall thenceforth be of any validity. *R. S. 396, § 14.*

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## CHAPTER 15.

### OF LEVIES AND INJUNCTIONS.

- |                                       |                                          |
|---------------------------------------|------------------------------------------|
| 1. Lien not lost by injunction, when. | 3. Proceedings, if notice of sale given. |
| 2. Proceedings in case of injunction. |                                          |

§ 1. Whenever the levy of any execution shall be stayed by injunction, the lien and interest of the attaching creditor, existing at the time of such injunction, shall continue and be in full force until the expiration of thirty days after the dissolution of such injunction. *R. S. 396, ch. 197, § 1.*

§ 2. The proceedings on such levy shall be suspended during the continuance of such injunction, and may be resumed and completed at any time within thirty days after the dissolution thereof, notwithstanding the return day of such execution may have passed; and such execution shall for this purpose remain in full force until such proceedings shall have been completed. *R. S. 396, § 2.*

§ 3. If the notice of the sale of any property, real or personal, shall have been given on any such execution at the



time when the levy thereof shall be stayed by such injunction, notice of the sale of such property on such execution may be given after the dissolution of such injunction, in the same way and manner as is prescribed by law for the sale of personal property on executions, and such sale shall be valid.—*R. S. 397, § 3.*

## CHAPTER 16.

### OF EXECUTIONS AGAINST TOWNS.

- |                                                 |                                                   |
|-------------------------------------------------|---------------------------------------------------|
| 1. Estate of towns, how taken.                  | 4. Extent may issue against collector.            |
| 2. Copy of execution to be left with selectmen. | 5. Property of selectmen and others liable, when. |
| 3. Selectmen to pay or assess tax.              | 6. Contribution, how regulated.                   |

§ 1. The goods and estate of towns may be taken on execution, and appraised or sold in the same manner as the property of other corporations. *R. S. ch. 198, § 1.*

§ 2. If no such goods or estate are found, an attested copy of the execution shall be left with one of the selectmen.—*R. S. 397, § 2.*

§ 3. The selectmen, upon such copy being so left, shall pay such execution, or shall assess the inhabitants of such town in a sum sufficient to satisfy the same, and within thirty days thereafter collect the sum so assessed, by a collector by them appointed, and with the money so collected satisfy such execution. *R. S. 397, § 3.*

§ 4. If the collector to whom any warrant or list of taxes shall be committed under this act, shall neglect to collect and pay over such taxes to the selectmen within thirty days after he shall receive the same, the selectmen may issue an extent against him. *R. S. 397, § 4.*

§ 5. If such execution shall not be satisfied within sixty days after a copy of such execution is left as aforesaid, such execution may be levied upon the goods and estates of the

selectmen, and, if they are insufficient, upon the property of any inhabitant of such town or owner of property situate therein. *R. S. 397, § 5.*

§ 6. Every person upon whose property an execution against any town has been levied, may, in an action of assumpsit for money paid, recover of such town the sum so levied, and damages and double costs. *R. S. 397, § 6.*

## FORMS OF PROCEEDINGS.

The form of execution prescribed by the statute should be altered when issued by justices of the peace.

1. The direction should be,

*To the Sheriff of said County of R., or his deputy, or to any constable of any town of said County.*

If the writ is properly directed in any other manner, (see *chap. 2, § 15, 16,*) the execution should be directed in the same manner.

2. The names of the parties should be inserted in the same manner as they are in the writ, except in those cases where, from the death or other change of parties, the judgment is rendered in favor of or against a different person. In that case the execution should follow the judgment.

3. The style of the justice may be inserted in this way, immediately after the name of the pl.

*"On the — day of —, A. D., 184—, before — —, a justice of the peace for the county aforesaid."*

4. Care should be taken that the damages and costs agree with the judgment.

If a part of the amount recovered is paid or collected, in the new execution, after the words, "whereof execution remains to be done," say: "in part, to wit., for the sum of — dollars." It is usual to insert in the margin the debt and cost, and their amount; and if payments have been made, to make the deduction in figures. If a second or subsequent execution is issued, the amount due for all the executions is inserted before the words, "more for this;" then insert, "and a former," before "writ;" or, "and former writs."

### 5. The return is inserted thus :

And make return of this writ, with your doings therein, to said justice, within sixty days next coming.

Dated the — day of —, A. D., 184--.

6. That part of the execution relating to the arrest and commitment should be omitted in actions founded on contract.

## RETURNS.

### 1. *Set-off of executions.*]

H— ss., — —, 184--.. By request of the debtor within named, I have set off, in part satisfaction of this execution, an execution recovered by said debtor against the within named creditors before J. P., justice of the peace, for — dollars damages, and — costs, and return this execution satisfied in part, to wit., for said sum of — dollars.

F. F., *Deputy Sheriff.*

*Fees, &c.*

### 2. *On the other execution.*]

H— ss., — —, 184--.. By request of the creditor within named, I have set off this execution in part satisfaction of an execution now in my hands against him in favor of the within named debtor, recovered before J. P., justice of the peace, for — dollars damages, and — costs. I therefore return this execution satisfied in full.

F. F., *Deputy Sheriff.*

*Fees, &c.*

### 3. *Return of levy on money.*]

H— ss., — —, 184--.. I have taken the sum of — dollars, money of the within named debtor, and have paid thereof to the creditor the sum of — dollars, in full satisfaction of this execution ; and have retained thereof the sum of — dollars, for my fees, and return this execution satisfied in full.

J. M. R., *Constable of —.*

*Fees.* Service, —  
Travel, —  
Poundage, —

### 4. *On bank notes.*]

Say, in the above form, instead of “ money,” “ bank notes ;” and after the word, “ creditor,” insert, “ who accepted the same at their par value ;” and after the words, “ retained thereof,” say, “ at their par value.”

### 5. *On personal property.*]

H— ss., — —, 184--.. (Return day.) On the — day of —, I took one horse, the property of the within named debtor, and on the same day I advertised the said horse for sale, at —, on —, the — day of —, 184--., at — o'clock in the afternoon, by posting up notices of the said time and place of sale, at the inn of —, and at the inn of —, two of the most public places in said — ; and on the said — day of — I sold the said horse, at the time and place appointed as aforesaid, at public auction, to the highest bidder, for the price of —, from which sum I

have deducted the lawful charges of keeping and selling the same, being — dollars; and the residue thereof, being — dollars, I have applied in full satisfaction of this execution.

F. F., Deputy Sheriff.

Fees. Service, —  
Travel, —  
Poundage, &c., —

6. *On many articles.]*

Say, "I have taken the following goods and chattels, the property of the within named debtor, to wit," (here enumerate the articles;) (or, enumerated in the schedule hereto annexed,) and on the same day I advertised, &c., "and on — I sold the said goods and chattels, at the time and place appointed as aforesaid, at public auction, to the highest bidders, as follows: one cart to J. H. at \$4.00; one yoke to P. F., at \$1.50, &c., (or, to the highest bidders for the prices mentioned in the schedule hereto annexed) the whole amount of the proceeds of said sale being \$—, from which sum," &c.

7. *In case of redemption.]*

State the taking and advertising, as in form 5, and proceed: and the said debtor, having before the said sale paid and satisfied the said execution, with my fees and charges, I thereupon restored to him the property aforesaid, and now return this execution satisfied in full.

F. F., Deputy Sheriff.

8. *In case of adjournment.]*

And on the — day of — I adjourned the said sale to the — day of —, at the same place and hour, and then gave notice of said adjournment by posting up notices thereof at the inn of said —, and at the inn of said —, being two of the most public places in said —; and on the — day of — I sold, &c.; or, and I then gave the same notice of the said adjournment as I gave of the sale aforesaid, and on, &c.

9. *Of sale of bank notes.]*

I took two bank notes, of the denomination of five dollars each, of the — bank; and the said creditor refusing to accept the same at their par value, I advertised, &c.

10. *Form of schedule.]*

Schedule of articles attached upon the annexed writ, and account of sales.

| Articles attached. | To whom sold. | Price.  |
|--------------------|---------------|---------|
| 1 yoke of oxen.    | R. N.         | \$56.00 |
| 70 bushels corn.   | B. A.         | 35.00   |
| 1 cart, &c.        | P. J.         | 6.00    |

11. *Application on several executions.]*

Say, "the whole amount of the proceeds of said sale being — dollars, from which sum I have deducted my fees, and the lawful charges of keeping and selling the same, and have applied the sum of — dollars in full satisfaction of this execution and interest on the same;

and the residue I have applied in part satisfaction of another execution in my hands, recovered by — against said debtor.

F. F., *Deputy Sheriff.*

*Fees.* Service, —  
 Travel, —  
 Poundage, —  
 Charges, moving, &c.

If the property levied on exceeds the amount due on the first execution, the articles sold, beyond the amount necessary to pay that execution, should be returned on the next, because the officer is not justified in selling on any execution beyond the amount necessary to pay it, and the fees and charges upon it. It may be prudent, when several executions are levied on the same property, to describe the order of the attachment, or of the delivery of the executions, thus :

After the words, " interest on the same," " the said execution being issued in the action in which the first, &c., attachment was made on said property ;" or, " said execution being the first, &c., execution delivered to me against said debtor."

**12. Return of levy on proceeds of property sold on a writ.]**

B— ss., — —, 184--. The personal property attached upon the original writ in this suit having been sold by consent of parties (or, having been examined and sold) as by the return upon said writ will appear, for the sum of — dollars, I have applied the sum of — dollars, part of the net proceeds thereof, in satisfaction of this execution, and of my fees.

D. S., *Deputy Sheriff.*

*Fees.* Services, —  
 Travel, —  
 Poundage, —

**13. Return of levy on proceeds of property restored.]**

B— ss., — —, 184--. The personal property attached upon the original writ in this suit being appraised and restored to the within named debtor, upon his giving bond with sureties, according to the Revised Statutes, as by the return upon said writ will appear, on the — day of —, 184--, within thirty days after the judgment was rendered in said suit, I demanded of the said debtor (or of —, one of the sureties in said bond) the payment of said execution; and the said debtor (or said —) having paid to me the sum of — dollars, I have applied the same in satisfaction of this execution, and of my fees.

W. Y., *Deputy Sheriff.*

*Fees, &c.*

**14. Return of demand and refusal.]**

Follow the above return to the words, " will appear ;" then say, " on the — day of — I demanded of the said debtor the payment of so much of the appraised value of said property as was necessary for the satisfaction of this execution ; and the said debtor neglected and refused, and has hitherto neglected to pay the same : I therefore return this execution in no part satisfied. "

W. Y., *Deputy Sheriff.*

15. *Return of levy on mortgaged goods.]*

G— ss., — —, 184—. I took, as the property of the within named debtor, two horses, subject to a mortgage to one N. R., and on the same day I demanded of said N. R. an account on oath of the amount due on the debt or demand secured by said mortgage; and such account not being given to me, I retained said property in my custody until the — day of —, 184—, on which day the said N. R. gave to me an account on oath as follows:

*To W. D. M., Deputy Sheriff:* Sir: The amount due me on the debt secured by the mortgage made to me by J. D., of the two horses now taken by you in execution, is ten dollars. N. R.

G— ss., — —, 184—. Personally appeared N. R., and made oath that the above account by him subscribed is true.

Before me: J. P., *Justice of the Peace.*

Whereupon I paid to said N. R. the said sum of ten dollars; and on the same day I advertised the said horses for sale at —, on —, at — o'clock in the —noon, by posting up notices of the time and place of sale at the post office and at the inn of P. R., two of the most public places in the said town of —; and on the said — day of — I sold the said horses, at the time and place appointed as aforesaid, at public auction, to the highest bidders, as follows:

One horse, to J. T., for \$37.00;

One horse, to M. N., for 13.00;

the whole amount of the proceeds of said sale being \$50.00, from which I have deducted my fees, and the lawful charges of keeping and selling said horses, being \$5.00; and the residue thereof I have applied to repay myself the said sum of \$10.00 paid to said mortgagee, and the sum of —, to the satisfaction of this execution; and the balance, being the sum of six dollars, I hold in my hands ready to be paid to said debtor, upon request.

W. D. M., *Deputy Sheriff.*

*Fees, &c.*

FORM OF DEMAND. See form 31, page 69.

16. *Return, if no account given.]*

G— ss., — —, 184—. I took one bureau as the property of the within named debtor, subject to a mortgage to one N. R.; and on the same day I demanded of said N. R. an account on oath of the amount of the debt or demand secured by said mortgage, and such account not being given to me by said N. R. within fourteen days, nor at any time afterwards, on the — day of —, 184—, I advertised, &c.: (proceed as in form 5, page 172.)

17. *Return of sale of mortgagor's right.]*

G— ss., — —, 184—. I took all the right of the within named debtor to redeem all the corn standing on a certain lot of land, situate in M—, in said county, bounded, &c., the said corn being subject to a mortgage to G. H., to secure the sum of — dollars; and being then fully ripe and fit for harvesting, and on the same day I advertised the said debtor's right aforesaid for sale, &c.: (proceed as in form 5, page 172.)

18. *Return of sale of a pew.*]

H— ss., — —, 184--. I took, as the property of the within named debtor, one pew, numbered —, in the meeting house of the — society, in P., in said county, and on the same day I advertised the said pew for sale at —, in said P., on the — day of —, 184--, at — o'clock in the —noon, by posting up notices of the said time and place of sale, at the inn of —, and at the store of —, two of the most public places in said town of P., and gave to the said debtor (or left at the usual place of abode of said debtor) a notice in writing of the said time and place of sale of said pew, and on the said — day of —, I sold the said pew, &c. : (proceed as in form 5, page 172.)

If the debtor does not reside in town say, instead of "and gave to said debtor," &c., "and left at the usual place of abode of the town-clerk of said town of P., (the said debtor not residing in said town of P.) a notice in writing of the said time and place of sale of said pew," &c.

19. *Form of notice.*]

HILLSBOROUGH ss., — —, 184--.

To Mr. — — : You are hereby notified that pew numbered —, in the meeting house of the — society in P., in said county, has been taken on the execution in favor of — against you, issued by J. P., justice of the peace for said county, on the — day of —, 184--, and that the said pew will be sold at public auction on —, the — day of —, 184--, at — o'clock in the —noon, at the inn of —, in said P.

— —, *Deputy Sheriff.*

20. *Return of sale of the franchise of taking tolls.*]

H— ss., — —, 184--. I have taken the franchise of the within named corporation, so far as relates to the right to receive tolls, with all the privileges and immunities belonging thereto ; and on the same day I advertised the same for sale, at —, on —, at — o'clock in the —noon, by posting up notices of said time and place of sale, with the name of the said creditor, and the amount of this execution, at the toll house in said —, at which the said tolls are usually taken ; and at the inn of —, and at the inn of —, two of the most public places in the town of —, in which town one of the toll houses of said corporation is situate ; and on the said — day of —, I sold the same at the time and place appointed as aforesaid, at public auction, to the highest bidder, (the person who would pay said execution and the lawful fees and expenses thereon, for the right to receive all such tolls for the shortest period, being the highest bidder) to —, of —, for the term of ten years, for the sum of — dollars ; and I thereupon delivered to said — the possession of the toll houses and gates of said corporation, and I have applied the said sum of — dollars, after deducting my fees and charges of sale, amounting to — dollars, in full satisfaction of this execution.

M. G., *Deputy Sheriff.*

*Fees.* Service, —  
Travel, —  
Poundage, —  
&c.

21. *Return of seizure and sale of shares in a corporation.*]

S— ss., — —, 184--. I have taken on this execution five shares

in the capital stock of the — corporation, numbered —, &c., property of the within named debtor, by leaving with the clerk, (or treasurer, &c.) of said corporation an attested copy of said execution, and of this my return thereon.

E. H., Sheriff.

S— ss., —, 184--. (Date of sale.) I gave to the said debtor on the — day of —, 184--, notice in writing that said shares would be sold at —, the counting room of said corporation at D., in said county, on the — day of —, 184--, at — o'clock in the —noon; and on the same day I posted up notices of said sale at the inn of —, in said D., one of the most public places in said town of D.; at —, in the town of S., and at —, in the town of M., being public places in two towns in said county, adjoining said town of D., and on said — day of — I sold the said five shares (or the shares numbered — and —, being three of the shares taken as aforesaid) at the time and place mentioned in said notices, at public auction, to the highest bidder, for the sum of —; from which sum I have deducted my fees and charges of selling the same, and the residue thereof, being the sum of — dollars, I have applied in full satisfaction of this execution; and I thereupon filed with the clerk (&c.) of said corporation an attested copy of the said execution, and of this my return thereon, and paid him for the recording thereof the sum of — cents.

E. H., Sheriff.

|              |                            |   |
|--------------|----------------------------|---|
| <i>Fees.</i> | Service,                   | — |
|              | Travel,                    | — |
|              | Poundage,                  | — |
|              | Notice to debtor,          | — |
|              | Advertising,               | — |
|              | Attending sale,            | — |
|              | Copy,                      | — |
|              | Paid clerk of corporation, | — |

*22. If the debtor does not reside in the county.]*

Return of seizure as above.

S— ss., —, 184--. (Date of sale.) The said debtor not being resident in said county of S., I caused a notice to be published in the —, a newspaper published at D., in said county, on the —, — and — days of —, being three weeks before the sale of said shares, that said shares would be sold at —, in said D., on the — day of —, at — o'clock in the —noon; and on the — day of — I posted up notices, &c.: (proceed as in last form.)

*23. Form of notice.]*

NOTICE.

Taken by virtue of an execution in favor of —, of —, against —, of —, and to be sold at public auction, to the highest bidder, at the inn of —, in Dover, in the county of S—, on —, the — day of —, at — of the clock in the —noon, five shares in the capital stock of the — corporation, numbered —, &c.

E. H., Sheriff.

—, 184--.

If the shares were attached say, after "the property of the within named debtor," "the same having been attached on the original writ in this action." Instead of, "said shares would be sold," say, "said



shares, with the dividends accrued thereon since the — day of —, the date of said attachment, would be sold."

Say: "I sold the said five shares, with the dividends accrued thereon since said attachment."

If the shares are numbered, they may be described as "shares numbered 75, 76, 77, 78 and 79."

**24. Return of no property.]**

S— ss., — —, 184--. (Return day.) I have made diligent search, and have found no goods, chattels or estate of the within named debtor in my precinct. I therefore return this writ in no part satisfied.  
V. C., Sheriff.

**25. Return of a levy on real estate.]**

**JUSTICE'S CERTIFICATE.**

R— ss., — —, 184-. Then B. W., S. H. and J. L. personally appeared, and made oath that they would impartially appraise at its just value such real estate as should be shewn them as the estate of the within named debtor, to satisfy this execution.

Before me: J. P., *Justice of the Peace.*

**APPRAISERS' CERTIFICATE.**

We, the subscribers, having carefully examined a tract of land shewn to us as the estate of the within named debtor, bounded as follows: (Here insert a description of the estate:)

and appraised the same at its just value, do, upon our oaths say, that the same tract of land is of the value of — dollars, and no more; and we have set off the same land by metes and bounds as aforesaid, in satisfaction of the within execution.

B. W.  
S. H.  
J. L.

— —, 184-.

**RETURN.**

R— ss., — —, 184--. By direction of the creditor within named, I have extended this execution upon the tract of land above described, in manner following, to wit: I caused three appraisers to be appointed, that is to say, B. W., by the creditor within named; S. H., by the debtor within named, and J. L., by myself; the said B. W., S. H. and J. L., being all discreet and disinterested men, resident in the county; who, being duly sworn by a justice of the peace impartially to appraise such real estate as should be shown them as the estate of the debtor, upon their oaths said that the above described tract of land, shown them as the estate of the said debtor, was of the value of one hundred dollars, and no more; and the said appraisers set off the same land by metes and bounds as aforesaid, at that sum, in satisfaction of this execution and my fees; and I have delivered seizin and possession of the said tract of land to the said creditor. I therefore return this execution satisfied in full.

|                 |               |   |                               |
|-----------------|---------------|---|-------------------------------|
| <b>Fees.</b>    | Service,      | — | <b>F. S., Deputy Sheriff.</b> |
|                 | Travel,       | — |                               |
|                 | Poundage,     | — |                               |
| <b>Charges.</b> | Paid Justice, | — |                               |
|                 | " Appraisers, | — |                               |
|                 | " Surveyor,   | — |                               |
|                 | " Recorder,   | — |                               |
|                 | &c.           |   |                               |

— —, 184. I this day received seizin and possession of the above described tract of land, by F. S., Deputy Sheriff.

*26. If the debtor neglects to appoint.]*

Say : I caused three appraisers to be appointed, that is to say, J. L., appointed by myself; B. W., appointed by the creditor, and S. H. appointed by me for the debtor; the said debtor having been notified and requested to appoint an appraiser, and having neglected to appoint any, the said J. L., B. W. and S. H., being, &c.

*27. If the debtor resides out of the county, and more than twenty miles from the property.]*

Say : "and S. H., appointed by me for the said debtor, the said debtor not residing within this county, nor within twenty miles of the property to be appraised."

*28. If several debtors do not agree in appointing.]* say : "and S. H., appointed by me for the said debtors, the said debtors having been notified and requested to appoint an appraiser, and not agreeing in the appointment, and neglecting to appoint."

*29. If the property belongs to one of several debtors.]* say : and S. H., appointed by A. B., one of said debtors, and the owner of said property.

*30. If the debtors are a corporation.]* say : "and S. H., appointed by me for the debtors, the said debtors having been duly notified and requested to choose an appraiser on or before the — day of —, 184—, being the time appointed for making said levy, by a written notice given to the clerk (treasurer, &c.) of said corporation, on the — day of —, more than ten days before said levy, and neglecting to appoint."

*31. If one or more of the appraisers are previously sworn.]* say : on the — day of —, 184—, I caused two appraisers to be appointed, to wit., A. B. by the creditor, and C. D. by myself, both discreet and disinterested men, resident in said county, who were on the same day duly sworn by a justice of the peace impartially to appraise such real estate as should be shewn them as the estate of the debtors; and on the same day I notified and requested the said corporation to appoint an appraiser on or before the — day of —, 184—, being the time appointed for making said levy, being more than ten days before said — day of —, by a written notice given to the clerk of said corporation; and the said corporation having neglected to appoint an appraiser, I appointed E. F. an appraiser for said corporation, the said E. F. being a discreet and disinterested man, resident in said county, who was duly sworn by a justice of the peace impartially to appraise such real estate as should be shown to him as the estate of the said debtors; and the said A. B., C. D. and E. F. upon their oaths said, &c.

*32. If the debtor appoints after the others are sworn.]* Follow the preceding form to, "the estate of said debtors," where it first occurs; then say, "and on the — day of — the said debtor appointed E. F., being a discreet and disinterested man, resident in said county, an appraiser on his part; who was sworn by a justice of the peace

impartially to appraise such real estate as should be shown him as the estate of said debtor ; and the said A. B., C. D. and E. F. upon their oaths said, &c.

It is necessary that it should be stated that the appraisers are "*discreet and disinterested men, resident in the county.*" "*Reputable freeholders, resident in the county,*" which the law formerly required, would not now be sufficient. "*Disinterested and discreet men,*" which is the qualification required in Massachusetts, would be insufficient, unless "*resident in the county*" is added.

33. *If the estate is in common.]*

The appraisers' certificate should be as follows:

We, the subscribers, having carefully examined a tract of land situate, &c., bounded, &c. : (Here insert a description of whole tract :) shewn to us as the estate of the said debtor, the said debtor holding one undivided fourth part thereof in common with others, do upon our oaths say that one undivided fourth part of the same tract of land is of the value of — dollars, and no more ; and we have set off said one undivided fourth part thereof to the said creditor, in satisfaction of this execution and the fees and charges of levying the same.

— —, 184—.

34. *The officer's return is:]*

I have extended this execution upon one undivided fourth part of the tract of land above described : and instead of "*said tract of land,*" "*one undivided fourth part of said tract of land.*"

35. *If the estate cannot be divided, &c.]*

We, the subscribers, having carefully examined a lot of land situate in N—, in said county, bounded easterly on M. street, there measuring twenty feet, southerly on land of A. P. ; there measuring sixty feet, westerly on a passage ; there measuring twenty feet, and northerly on land of G. S. ; there measuring sixty feet, with the brick store standing thereon, shown to us as the estate of the said debtor, do, upon our oaths, say that in our judgment the said real estate cannot be divided and set out by metes and bounds without greatly impairing the value of the whole ; and that one half of said real estate is of the value of — dollars, and no more ; and we have, therefore, set off to the said creditor one undivided half of said lot and building, in full satisfaction of this execution and the fees and charges of levying the same.

— —, 184—.

*Note.* The share set off may be stated as "thirteen one hundred twelfth parts ;" or, "seven sixteenths of one undivided half ;" or the like.

*36. If the debtor is seized of a life estate.]*

We, the subscribers, having carefully examined a certain tract of land shewn to us as the estate of the said debtor for the term of his natural life, and no longer, situate, &c., bounded, &c., do upon our oaths say that the estate of the said debtor, for the term of his life only, in the said tract of land, is of the value of — dollars, and no more; and we have set off all the estate of said debtor therein to the creditor in full satisfaction of this execution and the fees and charges of levying the same.

—  
—  
—

— —, 184—.

*37. The officer's return is:]*

I have extended this execution upon the estate of the said debtor, for his own life only, in the tract of land above described.

*38. If the debtor's interest is a reversion.]*

We, the subscribers, having carefully examined a certain tract of land, shown to us as the estate of the said debtor, to hold from and after the decease of E. H., of, &c., widow, who is tenant of the same for her natural life, as her dower of the estate of J. H., deceased, situate, &c., bounded, &c., do upon our oaths say that the estate of said debtor in said tract of land is of the value of — dollars, and no more; and we have set off all the estate of the said debtor therein to the said creditor in full satisfaction of this execution and the fees and charges of levying the same.

*39. The officer's return is:]*

I have extended this execution upon the estate of the said debtor, being an estate in reversion, after the decease of E. H., in the tract of land above described.

*40. If the debtor is seized of a rent.]*

We, the subscribers, having carefully appraised at its just value a certain annual rent of ten dollars, issuing out of a certain tract of land situate, &c., bounded, &c., for the term of sixty-three years yet to come, part of an unexpired term of ninety-nine years in said premises, shewn us as the estate of said debtor, do upon our oaths say that the said annual rent for the term of three years next ensuing is of the value of — dollars; and we have set off the said annual rent for said term of three years to the creditor in full satisfaction of this execution.

*41. The officer's return is:]*

I have extended this execution upon a certain annual rent, issuing out of the real estate above described.

*42. If the levy does not satisfy the execution.]*

And the said appraisers set off the same land (or the undivided fourth part of the same land, &c.) by metes and bounds as aforesaid, at that sum; in part satisfaction of this execution and my fees and charges of levying the same; and I have delivered possession and seizin of the said tract of land to the said creditor. I therefore return

this execution satisfied in part, to wit., for the sum of — dollars, being the residue of said — dollars, the value of said land, after deducting my fees and charges, and for no more.

43. *Return of a writ of possession.*]

S— ss., — —, 184—. I have caused the within named A. B. to have full seizin and possession of the premises within described, as within commanded, and have received of the within named C. D. the cost within mentioned and my fees.

W. N., *Deputy Sheriff.*

Fees. Service, —  
Travel, —  
&c.

If the fees and costs are levied on personal property or real estate, after the words, "*as within commanded,*" proceed as in other cases of levies on execution; or a separate return of such levy may be made. This, perhaps, is the preferable mode.

44. *Return of a writ of possession of dower.*]

R— ss., — —, 184—. Personally appeared J. A., B. S. and C. D., and made oath that they would set off to said A. J., within named, her dower in the within described estate, equally and impartially, and as convenient as may be to the respective parties.

Before me: J. P., *Justice of the Peace.*

45. *Certificate of committee.*]

We, the subscribers, having carefully examined the within described estate, do upon our oaths say, that the following tract of land, (or parcels of said estate) namely, (here describe the part assigned for dower, by metes and bounds, as in case of an ordinary levy:) will produce a yearly income equal to one third part of the yearly income of the estate within described on the — day of —, and no more, and we do accordingly set off the said tract of land to said A. J. as her dower in said estate.

J. A.  
B. S.  
C. D.

— —, 184—.

46. *Return.*]

R— ss., — —, 184—. I have caused the tract of land (or the several parcels of real estate) in the above certificate described, to be set off and assigned to the within named A. J., as her dower in the estate within described, in manner following, to wit.: I caused three discreet and disinterested men, resident in said county, to be appointed, to wit., J. A., by the said A. J.; B. S., by the said R. D.; and C. D., by myself, who being sworn before a justice of the peace, equally and impartially, and as conveniently as might be to the parties, to be set off to the said A. J. her dower in the within described estate, upon their oaths said that the said tract of land (or parcels of real estate) would produce a yearly income equal to one third part of the yearly income of the real estate within described, on the — day of —, 18—, and no more; and they accordingly set off the said tract of land (or parcels of real estate) to the said A. J. as her dower in

said within mentioned estate ; and I have caused the said A. J. to have full seizin and possession of the said tract of land (or parcels of real estate) as tenant in dower ; and I have received of the within named R. D. the damages and costs within mentioned, and my fees.

*Fees.* Service, —  
 Travel, —  
 Justice's fees, —  
 Appraisers' fees, —  
 Surveyor's fees, —  
 My time, &c., —  
 Poundage, —  
 &c.

M. G., *Deputy Sheriff.*

This form may be varied precisely as the form in cases of ordinary levies. See forms 25 to 42.

47. *Return of sale of equity of redemption.]*

H— ss., —, 184—. I have taken all the right in equity of the within named debtor to redeem a certain tract of land, situate, &c., bounded, &c. : (Here describe the estate mortgaged :) the same being subject to a mortgage made by said debtor to one L. M., dated the — day of —, 184—, to secure the payment of — dollars, in two years, with interest ; and on the same day I gave to the said debtor (or left at the usual place of abode of said debtor) a notice in writing, that the said right in equity would be sold at public auction, at the house of —, in —, in said county, on the — day of —, 184—, at — o'clock in the —noon, and posted up like notices at the inn of — and at the inn of —, two of the most public places in said town of —, in which the said property is situate ; and on the said — day of —, 184—, I sold the said right in equity at the time and place appointed as aforesaid, at public auction, to T. P., he being the highest bidder, for the sum of — dollars, and made and delivered to him a deed of said right in equity in the form prescribed by law : and I have applied the said sum of — dollars, after deducting my fees and the charges of sale, in part satisfaction of said execution, to wit., for the sum of — dollars.

*Fees, &c.*

T. K. A., *Deputy Sheriff.*

See form of adjournment, page 173; form 8.

48. *After an attachment.]*

I have taken all the right in equity which the within named debtor had on the — day of —, 184—, when the said premises were attached on the original writ in this suit, to redeem a certain tract of land, &c.

49. *If the debtor resides out of the county, and not within twenty miles.]*

Proceed as in form 47, to the words, "*with interest ;*" then say : "and on the same day I posted up notices that the said right in equity would be sold at public auction, at the house of —, in —, in said county, on the — day of —, 184—, at — o'clock in the —noon, at the inn of —, and at the inn of —, being two of the most public places in the town of —, in which the said property is situate, and caused a like notice to be published in the —, a newspaper printed at —, in said county, in the vicinity of said town of —, on the —, — and — days of said —, and on the said — day I sold, &c.

50. *Return upon a second execution.]*

R— ss., — —, 184—. Having in my hands the sum of —, being the surplus of the proceeds of an equity of redemption sold by me this day, over and above what is sufficient to discharge the last mentioned execution, I have applied the sum of — dollars, being part of the said surplus, to the satisfaction of this execution, and my fees.

*Fees, &c.*

T. K. A., *Deputy Sheriff.*

51. *Form of notice.]*

## SHERIFF'S SALE, (OR, NOTICE.)

Taken by virtue of an execution in favor of A. B. against C. D., and to be sold at public auction on —, the — day of — next, at — of the clock in the — noon, at the house of —, in —, in said county, all the right in equity which the said C. D. had on the — day of —, the day on which the same was attached on mesne process, or now has of redeeming certain mortgaged real estate situate in —, bounded &c., containing — acres, more or less.

—, — —, 184—.

T. K. A., *Deputy Sheriff.*

*Note.* Where the officer has two or more executions, the safest mode is to give notice on each.

52. *Form of deed of equity of redemption.]*

KNOW ALL MEN BY THESE PRESENTS, that I, —, sheriff (or deputy sheriff) of the county of R., in the state of New-Hampshire, by virtue of an execution issued upon a judgment recovered by —, of —, against —, of —, at the court of common pleas holden at —, in the county of —, on the — Tuesday of —, A. D., —, and in consideration of the sum of — dollars to me paid by —, of —, do hereby sell and convey to said —, his heirs and assigns, all the right in equity which the said — had on the — day of —, 184—, of redeeming: (Here describe the property :) To have and to hold the said granted right in equity to the said —, his heirs and assigns forever, the same being subject for the term of one year next after the day of the date hereof to be redeemed by the said debtor, according to law. And I do hereby covenant with said — that I have observed all the requisitions of the law by virtue of which this conveyance is made.

*In witness whereof* I have hereunto set my hand and seal, this — day of —, A. D., 184—.

Signed sealed and delivered  
in presence of:

— — (Seal.)

## Acknowledgement in common form.

53. *Return of sale of a term.]*

C— ss., — —, 184—. I have taken all the right and interest of the within named debtor in a certain tract of land, situate, &c., bounded, &c., by virtue of a certain indenture of lease, made and executed by —, of —, to said debtor, of said tract of land for the term of fifty years, of which term twenty-one years are yet to come and unexpired; and on the — day of —, and more than thirty days before the sale, I gave notice, &c., as in form 47, (calling the debtor's interest "term of years," where the words, "equity of redemption", occur in that form.)

54. *If proceedings are stayed by injunction.*] Say: and on the — day of — a writ of injunction issued by the Hon. J. P., chief justice of the superior court of judicature, bearing date the — day of —, and enjoining me not to proceed in making said levy, was duly served on me by —, deputy sheriff for said county, a copy of which writ is hereunto annexed, and is made part of this return: Whereupon all further proceedings upon said execution were suspended until the — day of —, when said injunction was dissolved by order of the superior court of judicature, holden at —, on —: Whereupon on the — day of — 1, &c.

And then proceed with the levy as in common cases, except where a notice of sale has been given; in which case a new notice may be given, in the same manner as of the sale of personal property. *See form 5, p. 172.*

This clause may become necessary in any part of a return.

55. *Returns on executions against towns.*]

If the execution is levied on property of the town, the return is in the usual form.

*Return, if levied on property of selectmen.*]

R— ss., — —, 184—. No goods or estate of said town of — being found, on the — day of — last I left an attested copy of this execution with —, one of the selectmen of said town of —; and on the — day of —, the said execution being in no part satisfied, I levied the said execution upon —, the property of —, one of the selectmen of said town of —, and on the same day I advertised, &c. (as in form 5, page 172.)

Or: I caused three appraisers, &c. (as in form 25, page 178.)

56. *Return of levy on property of an inhabitant.*]

Proceed as above, to the end of the return of the levy on the property of the selectmen. Then add:

“and the goods and estates of the selectmen of said town being insufficient to satisfy said execution, I levied the same upon —, the property of —, one of the inhabitants of said town,” &c. (as in form 5, 25, &c.)

Payment of any execution against a county shall first be demanded of the treasurer; and if not satisfied within sixty days after such demand, it may then be levied upon the property of the county, or of any inhabitant thereof, who shall have his action therefor against the county, and may recover any sum so paid, with exemplary damages and double costs. *R. S. 76, § 4.*



## CHAPTER 17.

## OF IMPRISONMENT AND PRISON BONDS.

- |                                              |                                                                  |
|----------------------------------------------|------------------------------------------------------------------|
| 1. Any prisoner on execution may give bonds. | 8. Prisoner surrendered cannot again give bond.                  |
| 2. Form of bond and condition.               | 9. Judgment and execution on bond.                               |
| 3. Sureties, how to be approved.             | 10. Debtor discharged not liable to arrest for one year on same. |
| 4. Bond delivered to creditor—when.          | 11. No person detained for prison charges on civil process.      |
| 5. Surrender by prisoner, how made.          | 12. Plaintiff to secure prison charges.                          |
| 6. Notice, if two jails, how given.          |                                                                  |
| 7. Sureties may surrender, when.             |                                                                  |

§ 1. Any person arrested or imprisoned on execution, or detained in prison for want of bail after final judgment against him, or who shall be committed to prison by his bail or by the court upon a surrender by his bail after such judgment, shall be discharged upon giving bond as herein-after provided. *R. S. 398, ch. 199, § 1.*

§ 2. Such bond shall be given to the creditor, with two sufficient sureties, residents of the state, to be bound jointly and severally in at least double the sum for which such person is arrested or imprisoned, with a condition in substance as follows:—"The condition of the above obligation is, that if the said —, now a prisoner at the suit of said —, shall, within one year from the date hereof, apply to the proper authority, and be admitted to take, and shall actually take the oath or affirmation prescribed by law for the relief of poor debtors, or in default thereof shall surrender himself to prison as prescribed by law, then this obligation to be void." The blanks in the condition shall be filled as the case may require. *R. S. 398, § 2.*

§ 3. The sureties shall be deemed sufficient when they are approved in writing on the back of such bond, either by the creditor, his agent or attorney in the action, or by two disinterested justices of the quorum of the county in which such person is arrested or imprisoned. *R. S. 398, § 3.*

§ 4. Such bond shall be delivered by the officer to the creditor, upon request, and upon giving a proper receipt therefor. *R. S. 398, § 4.*

§ 5. If the debtor giving such bond shall not, within one year from the date thereof, take the oath or affirmation prescribed by law for the relief of poor debtors, or be otherwise discharged, he shall, on the day next after the expiration of said year, unless the same shall be Sunday, and in that case on the Monday following, surrender himself up to the keeper of the jail in the county where he was originally arrested or committed, and remain at said jail from twelve o'clock at noon till three o'clock in the afternoon of said day, and his sureties on such bond shall be thereby discharged. —*R. S. 398, § 5.*

§ 6. If there is more than one jail in the county, the person making the surrender shall cause notice in writing to be given to the creditor or his attorney, or left at the usual place of abode of one of them, if either lives in the state, stating at which of said jails the surrender will be made, at least ten days prior thereto. *R. S. 399, § 6.*

§ 7. The sureties in any such bond may take the body of the principal, and surrender him at such jail in the manner and for the purpose aforesaid. *R. S. 399, § 7.*

§ 8. In the case of such surrender, the creditor may cause such debtor to be arrested on his execution and committed to jail, where he shall remain in close confinement, and shall not be again discharged on giving bond as aforesaid. *R. S. 399, § 8.*

§ 9. On condition broken, the creditor shall recover by action on such bond, his just debt or damages, and costs thereof, with ten per cent. interest from the time of the arrest, with costs, and the clerk shall certify on the execution therefor that it was issued on such bond; and any person arrested or committed in any suit thereon shall be kept in close jail, and shall not be discharged on giving such bond. —*R. S. 399, § 9.*

§ 10. If any debtor shall be discharged from jail, by reason of the neglect of the creditor to levy his execution upon his body within thirty days after judgment rendered, he shall not be liable to arrest in any action of debt upon such judgment at any time within one year afterwards. *R. S. 399, § 10.*

§ 11. No person committed on civil process shall be detained in prison for the non-payment of prison charges; but such charges shall be a debt against the prisoner, if he is of ability to pay the same. *R. S. 399, § 11.*

§ 12. The person at whose suit any person is committed to jail, shall give bond to the jailer, with satisfactory security, or such as may be approved by a justice, to pay the prison charges in case of the prisoner's inability; otherwise such prisoner shall be discharged. *R. S. 399, § 12.*

## CHAPTER 18.

### OF THE RELIEF OF POOR DEBTORS.

- |                                                          |                                                         |
|----------------------------------------------------------|---------------------------------------------------------|
| 1. Person imprisoned may petition.                       | 9. Person of debtor discharged.                         |
| 2. Order of notice, how made.                            | 10. In wilful trespass or neglect, no bond to be taken. |
| 3. Justices may adjourn, when.                           | 11. In such case not discharged, unless.                |
| 4. Petitioner examined on oath.                          | 12. Persons disqualified to testify may take oath.      |
| 5. Property to be appraised and assigned, in what cases. | 13. Costs taxed for creditor, when.                     |
| 6. Oath to be taken—form of.                             | 14. No new application till prior costs paid.           |
| 7. Form of oath may be changed.                          |                                                         |
| 8. Certificate of oath, form of.                         |                                                         |

§ 1. Any person arrested or committed to jail on any execution, or who has given bond as provided by law, may immediately apply to any two justices of the peace and of the quorum, by petition, setting forth that he had not at the time of his arrest, or at any time afterwards, estate to the value of twenty dollars, excepting goods and chattels by law exempted from attachment, and praying to be admitted to take the oath hereinafter prescribed. *R. S. 400, ch. 200, § 1.*

§ 2. Either of the justices may make an order on such application, appointing a time and place for hearing and considering such application; and the debtor shall cause the creditor or his attorney to be served with a copy of such application and order of notice thereon, at least fifteen days before the day of hearing. *R. S. 400, § 2.*

§ 3. Said justices, or either of them, on receiving satisfactory evidence that due notice has been given to the creditor,

may adjourn the hearing on such petition, not exceeding ten days. *R. S. 400, § 3.*

§ 4. The person so applying may be examined under oath, on motion of the creditor or his attorney, and any other evidence produced by either party shall be heard; and if it shall appear that such person has been guilty of any fraud, deceit, or falsehood in relation to his property, his application shall be refused. *R. S. 400, § 4.*

§ 5. If it shall appear or shall be alleged that the person applying had any property at the time of his commitment, over and above the property exempted by law, his interest in the same may be by him assigned to the creditor, at the discretion and appraisement of the justices, in case the parties do not agree; and on his refusal or neglect forthwith to make such assignment, his application shall be refused.—*R. S. 400, § 5.*

§ 6. If no sufficient objection is made, said justices shall administer to the debtor the following oath :

“ You, A. B., do solemnly swear (or affirm) that you have not any estate, real or personal, or any right thereto, to the amount of twenty dollars, excepting goods and chattels by law exempted from attachment, and that you have not at any time, directly or indirectly, sold, leased or otherwise conveyed any part of your property, or intrusted any person therewith, with any intent or design to secure the same, or to receive or expect any profit or advantage therefrom; nor have caused or suffered any thing else whatever to be done whereby any of your creditors may be defrauded. So HELP YOU GOD,” (or, “ THIS YOU DO UNDER THE PAINS AND PENALTIES OF PERJURY.”) *R. S. 400, § 6.*

§ 7. If the creditor or his attorney shall not accept any property of the debtor, an assignment whereof as aforesaid has been tendered, the form of the oath shall be altered accordingly, so as to except such property which shall belong to such debtor. *R. S. 401, § 7.*

§ 8. The said justices shall make a certificate of such oath when administered, substantially in the form following :

### The State of New-Hampshire.

*R—ss.* On the — day of —, A. D., —, at —, in said county, —, A. B., of —, heretofore a prisoner at the suit of C. D. of —, took the oath prescribed by law for the relief of poor debtors, the said C. D. (or the attorney of the said C. D.) having been duly notified, did (or did not) attend; before

—*R. S. 401, § 8.*

— —, } *Justices of the peace*  
— —, } *and of the quorum.*

§ 9. The person of the debtor shall be thereafter forever

discharged from arrest or imprisonment on the debt or demand on which he was so arrested or imprisoned; but his estate shall always remain liable therefor, and a new execution may at any time issue against such estate. *R. S. 401, § 9.*

§ 10. If the cause of action, in any action of trespass or trespass on the case, has arisen from the wilful and malicious act or neglect of the defendant, the court or justices before whom the action is tried shall cause a certificate thereof to be made on the back of the execution issued in such action, and the defendant shall not be discharged on giving bond as provided in the preceding chapter. *R. S. 401, § 10.*

§ 11. In such case the defendant shall not be entitled, as a matter of right, to be discharged upon taking the poor debtor's oath; but if the justices to whom application is made shall think proper, he may be discharged upon such terms and conditions as they may impose. *R. S. 401, § 11.*

§ 12. Any person disqualified to testify as a witness, may be admitted to take the oath prescribed by law. *R. S. 401, § 12.*

§ 13. If the application of any person to take such oath shall not prevail, costs shall be taxed for the creditor, in the same manner as in actions in the court of common pleas, and judgment rendered and execution issued by the justices therefor. *R. S. 401, § 13.*

§ 14. No application of any person to take the poor debtor's oath shall be allowed, until the costs which have been adjudged against him on all former applications have been paid. *R. S. 401, § 14.*

## FORMS OF PROCEEDINGS.

### 1. *Form of return of arrest and commitment.*]

M— ss., —, 184—. I arrested the body of the within named J. D., and have committed him to the jail at H., in said county, and at the same time I left with the keeper of said jail an attested copy of this writ and of this my return thereon.

|              |                                            |   |                               |
|--------------|--------------------------------------------|---|-------------------------------|
| <i>Fees.</i> | Service,                                   | — | <i>J. P., Deputy Sheriff.</i> |
|              | Poundage,                                  | — |                               |
|              | Travel,                                    | — |                               |
|              | Copy,                                      | — |                               |
|              | Expense of conveying }<br>prisoner to H. } | — |                               |

2. *Form of return of arrest and discharge on bond.]*

M— ss., — —, 184—. I arrested the body of the within named J. D., and detained him in my custody until he gave bond to the said J. P., the creditor, with two sufficient sureties, residents of the state, jointly and severally bound in the sum of — dollars, with a condition in the form prescribed by the second section of the 199th chapter of the Revised Statutes, and upon receipt of said bond I discharged said J. D. from said arrest. J. P., *Deputy Sheriff.*

*Fees.* Service, —  
Poundage, —  
Travel, —  
Expense, —

3. *Form of return of discharge on bond by a jailer.] (Made on copy.)*

M— ss., — —, 184—. I detained the within named J. D. in my custody in the jail in H., until on this day he gave bond, &c., as above.

*Note.* Some returns on writs are equally applicable to executions ; as, *non est inventus*, form 66, p. 77 ; *sick*, form 67, p. 77 ; *discharge by two justices*, forms 77 to 81, p. 79 and 80 ; *discharge by court*, form 84, p. 81.

4. *Form of prison bond.]*

KNOW ALL MEN BY THESE PRESENTS, that we, P. D., of —, in the county of —, as principal, and A. B. and J. S., both of said —, as sureties, are holden and firmly bound to J. C., of —, in the county of —, in the sum of — dollars (*at least double the execution, interest and fees*), to be paid to said J. C., to which payment we hereby jointly and severally bind ourselves and our heirs by these presents. Sealed with our seals, and dated the — day of —, 184—.

*The condition of the above obligation is,* That if the said P. D., now a prisoner at the suit of said J. C., shall, within one year from the date hereof, apply to the proper authority, and be admitted to take, and shall actually take, the oath or affirmation prescribed by law for the relief of poor debtors ; or in default thereof shall surrender himself to prison, as prescribed by law, then this obligation to be void.

Signed sealed and delivered  
in presence of

P. D. (*Seal.*)  
A. B. (*Seal.*)  
J. S. (*Seal.*)

5. *Certificate of approval by creditor.]*

I hereby approve of the within named sureties.

J. C.

6. *Certificate of approval by two justices.]*

H— ss., — —, 184—. The subscribers, justices of the peace and of the quorum for the county of H—, having met and duly considered their sufficiency, do hereby approve of the sureties within named.

J. P.  
J. Q.

7. *Receipt for the bond.]*

— —, 184—. Received of J. M. R., deputy sheriff for the county

of Hillsborough, a bond, dated the — day of —, 184—, executed jointly and severally by P. D., late a prisoner at my suit, as principal, and A. B. and J. S., as sureties, for the sum of — dollars, with a condition in due form of law, that said P. D. shall take the oath prescribed by law for the relief of poor debtors, or surrender himself to prison according to law. J. C.

*Note.* The day of the surrender is to be computed thus: The date of the bond is to be excluded, agreeably to the 25th § of ch. I. of the Revised Statutes. "When time is to be reckoned from any day, date, act done, or time of any act done either by force of law or by virtue of any contract hereafter made, such day, date, or the day when such act is done, shall not be included in such computation."

The year then terminates on the same day of the month as the date of the bond, and the surrender is to be made the next day. Thus a bond is dated Dec. 31, 1842; the year begins with Jan. 1, 1843, and closes with the end of Dec. 31, 1843, and the surrender is to be made Jan. 1, 1844.

The party is bound to state to the jailer the object of his attendance at the jail.

8. *Form of notice of surrender, where there are two jails.]*

To J. C., of —, in the county of —.

Take notice, that on the — day of —, 184—, being the day following the expiration of one year from the date of my bond to you, conditioned to take the poor debtor's oath or surrender myself to jail, I shall surrender myself up to the keeper of the jail at P., in the county of R., in discharge of said bond.

— —, 184—.

P. D.

To be served ten days before the day of surrender, exclusive of the day of service.

9. *Notice by the sureties.]*

To J. C., of —, in the county of —.

Take notice, that on the — day of —, 184—, being the day following the expiration of one year from the date of a bond to you by P. D., and by the subscribers as sureties, conditioned that said P. D. should take the poor debtor's oath, or surrender himself to the jail: We shall surrender up the said P. D. to the keeper of the jail at P., in the county of R., in discharge of said bond.

— —, 184—.

A. B.

J. S.

10. *Form of bond to pay prison charges.]*

KNOW ALL MEN BY THESE PRESENTS, That we, T. P., of, &c., as principal, and A. B. and T. S., of, &c., as sureties, are held and firmly bound to N. D., of —, in the county of —, deputy keeper of

the jail in —, in the sum of — dollars, to be paid to said N. D., to which payment we jointly and severally bind ourselves and our heirs by these presents. Sealed with our seals, and dated the — day of —.

*The condition of this obligation is such, That if said T. P. shall pay to said N. D. all the prison charges attending the imprisonment of P. D., of —, committed to said jail at the suit of said T. P., in case of the inability of said P. D. to pay the same, then this obligation shall be void.*

T. P. (Seal.)

A. B. (Seal.)

T. S. (Seal.)

*11. Form of discharge by jailer, for want of bond.]*

H— ss., — —, 184—. I kept the said J. D. in my custody in the jail at A., in said county, until this day, when the said J. P., at whose suit he was committed, having neglected to give to me a bond, with satisfactory security, or a bond approved by a justice, to pay the prison charges in case of the prisoner's inability, I discharged the said J. D. from his imprisonment.

N. D., Deputy Jailer.

*12. Form of discharge by jailer, thirty days after judgment.*

H— ss., — —, 184—. I kept the said J. D. in my custody in the jail at A., in said county, until this day, when thirty days having expired since the rendition of such judgment for the within named J. P. against said J. D. in this action as execution might issue upon, and no execution being delivered to me, authorizing me longer to detain him, I discharged him from said imprisonment.

N. D., Deputy Jailer.

*13. Form of petition to take poor debtor's oath.]*

To J. W. and S. C. B., Justices of the Peace and of the Quorum for the County of M.

Shews P. D., of C., in said county, laborer, that on the — day of —, 184—, he was arrested by a deputy sheriff of said county of M., upon an execution recovered by T. P., of, &c., (describe creditor, as in the execution) and gave bond, as provided by law, that he had not at the time of his arrest, nor at any time afterwards, estate to the value of twenty dollars, excepting goods and chattels by law exempted from attachment. He therefore prays to be admitted to take the oath prescribed by the 200th chapter of the Revised Statutes.

Dated at —.

*14. Form of order of notice.]*

Merrimack ss., — —, 184—.

Upon the application aforesaid, it is ordered, that the said debtor (or P. D.) give notice to the said creditor (or T. P.) to appear at the office of S. C. B., in C., in said county, on the — day of —, at — o'clock, in the —noon, to shew cause, if any he have, why the said debtor (or P. D.) should not be admitted to take the said oath, by giving to the said creditor (or T. P.) or to his attorney, or leaving at his usual place of abode, or at the usual place of abode of his attor-



ney, a copy of the said application, with a copy of this order thereon, at least fifteen days previous to the said — day of —.

\_\_\_\_\_, } *Justices of the peace and*  
 \_\_\_\_\_, } *of the quorum.*

15. *Form of certificate on the copy.*]

We certify that the above is a true copy of the original application and order thereon.

\_\_\_\_\_, } *Justices of the peace and*  
 \_\_\_\_\_, } *of the quorum.*

16. *Form of return of service.*]

M— ss., —, 184--. I gave to the within named T. P. a copy of the within petition and order of notice, by me attested.

J. P., *Deputy Sheriff.*

17. *Form of certificate of service.*]

I certify that on the — day of —, 184--., I gave to the within named T. P. a copy of the within petition and order of notice, attested by the justices within named. A. C.

M— ss., —, 184--. Personally appeared A. C., and made oath that the above certificate by him subscribed is true. Before me,

J. P., *Justice of the Peace.*

18. *If notice is left with the attorney.*]

Insert, before the words, "*the within named T. P.,*" "*D. A., attorney of —.*"

19. *If notice is left at the usual place of abode.*]

Commence: "I left at the usual place of abode of the within named T. P. (or of D. A., attorney of the within named T. P.) a copy," &c.

*Note.* It may be preferable to give personal notice when it is practicable.

20. *Form of adjournment.*]

M— ss. At the office of S. C. B., in C., in said county, satisfactory evidence being received by us that due notice has been given to the creditor within named: It is ordered, that the hearing be adjourned to the — day of —, at — o'clock in the — noon, at this place.

J. W., } *Justices of the peace*  
 S. C. B., } *and quorum.*

21. *Form of examination.*]

Examination of P. D., on motion of T. C.

Interrogatory 1.

Answer.

Sworn to before, &c.

22. *Form of appraisement.*]

M— ss., —, 184--. We have appraised the following articles, which are disclosed by the said P. D. to have been in his possession at the time of his commitment (or arrest) over and above the property exempted by law, as follows:

(Here enumerate the property and prices.)

**23. Form of entry of refusal to assign.]**

Add to last form, "and the said P. D. refusing (or neglecting) forthwith to make an assignment of all his interest in said property, at said appraisal, to the said creditor, his application to take the said oath is refused. It is, therefore, considered that said J. P. recover against said P. D. his costs, taxed at —.

Attest : J. W., } *Justices of the peace*  
S. C. B., } *and quorum.*

**24. Form of oath.] See § 6, page 189.**

If the creditor refuses to accept the property appraised, insert in the oath, after the words "*exempt from attachment*;" "and the property appraised by the justices and refused by the creditor."

**25. Form of the certificate of oath.] See § 8, page 189.**

*If the case has been adjourned:* Say, after the words, "*in said county:*" "by adjournment from the — day of —, 184—, at — o'clock in the —noon, at the same place."

**Note.** If notice is served on the attorney of the creditor, it is advisable that evidence from the records of the court, or by affidavit, that the person served was attorney of the creditor in that case, should be laid before the justices.

Costs are taxed as in ordinary cases, (see page 145,) if the petition is refused.

**26.** The execution is in the usual form of executions issued by justices, except that before the words, "recovered judgment," there should be inserted, "upon the petition of said P. D. to be admitted to take the oath prescribed by the 200th chapter of the Revised Statutes."

The record of the proceedings to be made by the justices includes the petition, order of notice, proof of service, entry of adjournment, if any; examination; appraisal, if any; refusal of application, and taxation of costs, or the certificate of the oath.

## CHAPTER 19.

## OF THE LIABILITY OF BAIL, AND SCIRE FACIAS AGAINST THEM.

- |                                                           |                                                         |
|-----------------------------------------------------------|---------------------------------------------------------|
| 1. Bail, how must be notified.                            | 6. Bail may surrender on scire facias.                  |
| 2. Bail may produce body of debtor.                       | 6. Costs to be paid by bail, how.                       |
| 3. Bail not charged unless notice returned as duly given. | 8. Scire facias must be served on bail within one year. |
| 4. Bail discharged by committing debtor to jail, when.    | 9. Bail, how discharged before justice.                 |
| 5. Scire facias issued, in what case.                     | 10. Copy of process left with jailer.                   |

§ 1. Creditors, intending to charge the bail on the execution, shall endorse thereon the names and places of abode of the bail; and the officer, at least fifteen days before the return day thereof, shall deliver to each of the persons intended to be charged as bail, or leave at his usual place of abode, a notice in writing, stating that such execution is in his hands, the amount thereof, and when it is returnable, and keep such execution until the return day thereof. *R. S. 402, ch. 201, § 1.*

§ 2. If the bail so notified shall, at any time before the return day, produce the body of the debtor to the officer, so that he may arrest him, and pay the reasonable charges for such notice, they shall be forever discharged. *R. S. 402, § 2.*

§ 3. The bail shall not be charged upon any return of *non est inventus*, unless the officer shall certify in such return that notice was given as aforesaid to the bail. *R. S. 402, § 3.*

§ 4. Bail shall be discharged at any time before judgment against them, by committing the principal to the common jail of the county in which the arrest was made, or in which the action is pending, and giving to the creditor, or his attorney in the action, within fifteen days after, notice in writing of the time when and place where the principal is so committed, and causing the board of the principal to be paid or secured to the jailer until the expiration of seven days after notice given to the creditor or his attorney, unless

he shall be sooner discharged by giving bond according to law. *R. S. 402, § 4.*

§ 5. If the officer shall make return on the execution against the principal, that he has made diligent search, and has not been able to find the principal in his precinct, and that he gave notice to the bail as herein prescribed, the creditor may have a writ of scire facias against the bail, and judgment and execution against him for the amount of such execution and interest, and for costs. *R. S. 402, § 5.*

§ 6. If the bail shall, at any time before judgment against them, bring into the court the body of the principal, and move to be discharged, they shall be discharged, and the court shall order the keeper of the prison to receive him into custody; and he shall be holden in the same manner as if he had been committed on the writ for want of bail. —*R. S. 403, § 6.*

§ 7. The bail shall not be discharged, by committing his principal and notice to the creditor as aforesaid after notice given to the bail as aforesaid, without paying the officer, creditor or his attorney, the cost of such notice, and the cost which has arisen in any action which has been commenced against such bail. *R. S. 403, § 7.*

§ 8. No scire facias against bail shall be supported, unless the same shall be served on the bail within one year after the final judgment against the principal. *R. S. 403, § 8.*

§ 9. The bail, in actions before justices, may commit the principal to jail at any time before judgment against them, and shall be discharged upon producing to the justice a certificate thereof from the jailer, in the same manner and upon payment of the like cost as if he were surrendered in court. *R. S. 403, § 9.*

§ 10. The bail, on committing their principal to jail, shall in all cases leave with the jailer an attested copy of the writ or process on which the arrest was made, and of the officer's return thereon, with a certificate of such commitment; and the jailer shall detain such principal in his custody in the same manner as if he were committed for want of bail, —*R. S. 403, § 10.*

## FORMS OF PROCEEDINGS.

### 1. *Form of endorsement of bail on an execution.*]

A. B., of —, } in the County  
J. S., of —, } of M.

Bail for said P. D.

A. B., of —, in the County of M.  
J. S., of —, in the County of H.

Bail for said P. D.

### 2. *Form of notice to bail.*]

C— ss. To A. B., of —, in the county of M—; and J. S. of —, in the county of H.

Take notice, that I have in my hands a writ of execution, issued by J. P., a justice of the peace for the county of C—, in favor of T. P., of &c., against P. D., of, &c., dated —, 184—, for the sum of — dollars damages, and costs taxed at —, returnable on the —, on which your names and residence are endorsed as the bail for said P. D. on the original writ. — —, *Deputy Sheriff.*

Notice, —

Travel, —

Service, —

### 3. *Form of return of notice to the bail.*]

C— ss., —, 184—. (*Return day.*) On the — day of —, 184—, I gave to (or left at the usual place of abode of) A. B., of, &c., and J. S., of, &c., whose names were endorsed on this execution as the bail for said P. D., on the original writ, each a notice in writing, in the words following: (Here insert the notice:)

and having kept the said execution in my hands until this return day thereof, and neither the said A. B. nor the said J. S. having produced to me the body of said P. D., so that I could arrest him, and having made diligent search and not being able to find the said P. D. in my precinct, I return this execution wholly unsatisfied.

*Fees.* Notice, — — —, *Deputy Sheriff.*

Travel, &c., —

### 4. *Form of return, where principal is produced.*]

C— ss., —, 184—. The said A. B. and J. S. having produced to me the body of the said P. D., and paid to me the sum of — cents, being my reasonable charges for serving upon them notice that I had said execution in my hands, I took the body of the said P. D. and committed him to the jail in L., in said county, and left with the keeper of said jail an attested copy of this writ, and of this my return thereon. — —, *Deputy Sheriff.*

*Fees.* Service, —

Travel, —

Poundage, —

Copy, —

Expense, &c., —

5. *Form of return, where debtor gives bond.*]

Proceed as in last form to the words, "*I took the body of said P. D.;*" then add: "and detained him in my custody till he gave bond to T. P., the creditor, with two sufficient sureties, residents of the state, jointly and severally bound in the sum of — dollars, with a condition in the form prescribed by the second section of the 199th chapter of the Revised Statutes, when I discharged said P. D. from said arrest."

*Fees.* Service, — — —, *Deputy Sheriff.*  
 Travel, &c., —  
 Poundage, —

6. *Form of return of discharge by the creditor.*]

Proceed as in last form but one, to the words, "*I took the body of said P. D.;*" then add: "and detained him in my custody until, by order of T. P., the creditor, I discharged him from said arrest."

*Fees, &c.* — — —, *Deputy Sheriff.*

7. *Form of power of attorney by bail to arrest the principal.*]

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of —, in the county of —, do constitute J. R., of —, my attorney, in my stead and behalf to take, arrest and commit to the jail in —, in the county of —, P. D., of, &c., for whom I am bail upon the original writ of which, and of the officer's return thereon the within is a true copy, (if written on the writ, or of which and of the officer's return thereon the annexed is a true copy,) and to employ such assistants as may be necessary for that purpose, and of the said commitment to give notice to T. P., the creditor in said action, and to do all such acts as may be necessary and proper for effecting my discharge as bail in said action.

In witness whereof I have hereunto set my hand and seal, the — day of —, 184--.

A. B. (*Seal.*)

Signed, sealed and delivered  
 in presence of:

8. *Form of certificate of commitment, on the copy of the writ.*]

—, 184--. I certify that I have this day committed the within named P. D. to the jail in —, in the county of —, in discharge of my liability as bail for the said P. D. in the within mentioned action.

A. B.

If by attorney, he signs: A. B., by his attorney, J. R.

9. *Form of notice to the creditor, of the commitment.*]

To T. P., of —, in the county of —.

Take notice, that I have this — day of —, 184--., committed to the jail in —, in the county of —, P. D., of —, in said county, in discharge of my liability as bail for said P. D. upon a writ in which you are plaintiff and said P. D. is defendant, returnable at the court of common pleas for the county of —, on —.

A. B.

Or: A. B., by his attorney, J. R.

10. *Form of bond for board.*]

See form No. 10, page 192, for the body.

*The condition of this obligation is such, that if said A. B. shall pay to said N. D. all charges for the board of said P. D., committed by said T. P., in discharge of his liability as bail for said P. D., in a cer-*

tain action in which T. P. is plaintiff and said P. D. is defendant, returnable at the court of common pleas for the county of —, on —, until the expiration of seven days after notice shall be given by said A. B. to said T. P., or his attorney, of said commitment, unless said P. D. shall be sooner discharged by giving bond according to law, then this obligation shall be void.

A. B. (*Seal.*)

Signed, &c.

11. *Form of scire facias against bail.*]

**The State of New-Hampshire.**

M— ss. *To the Sheriff of said County, or his Deputy, or to any Constable of any Town in said County.*

[**L. S.**] Whereas T. C., of C., in said county, physician, before me, J. P., a justice of the peace for said county of M., at the office of —, in C., in said county, on the — day of —, 184—, at — o'clock in the —noon, by the consideration of said justice recovered judgment against C. O. E., of said C., painter, for the sum of — dollars, and costs taxed at — dollars, as appears of record; and whereas W. H. M., of S., in the county of M., became bail for said C. O. E., by endorsing his name on the original writ on which said C. O. E. was arrested: And on the — day of —, 184—, a writ of execution for the damages and costs aforesaid issued on said judgment, returnable on the — day of —, on which the name and place of residence of the said W. H. M. as bail was endorsed, and was delivered to —, then and ever since a deputy sheriff of said county of —, to be executed. And the said deputy sheriff, on the same day, at — aforesaid, being more than fifteen days before the return day of said execution, gave to the said W. H. M. a notice in writing that he held in his hands said execution, and the amount thereof, and when it was returnable; and having kept said execution in his hands until the return day thereof, then returned said writ to said justice, with his return thereon, as follows: (here copy the return;) as by the record thereof appears; and the said C. O. E., while said writ of execution was in force, did avoid, so that he could not be taken or arrested thereon; and did not pay or satisfy the said debt and costs; and said judgment remains in force, not satisfied, reversed or annulled, as we are informed:

We command you, therefore, to summon the said W. H. M. to appear before me, the said justice, at —, in —, in said county, on the — day of — next, at — o'clock in the —noon, to shew cause, if any he has, why the said T. C. should not have execution against him, the said W. H. M., for the amount of such execution, and interest, and for costs. And make return of this writ, and your doings therein.

Dated the — day of —, A. D., 184—.

J. P., *Justice of the Peace.*

12. *Forms of returns.*]

See forms 1 to 6, pages 61 and 62.

13. *Form of plea.*]

H— ss. Before J. P., Justice of the Peace, at M—, — —, 184—.

T. C. *vs.* W. H. M.

And the said W. H. M. comes and defends, &c., when, &c., and

says he is not chargeable as bail, as in the scire facias is alleged, and thereof puts himself on trial.

By D. A., his attorney.

And the said T. C. likewise: By D. C.

By the rule of the court of common pleas, "In scire facias against bail and against endorsers of writs, the general issue shall be: *Not chargeable as bail*; or, *Not chargeable as endorser, as in the scire facias is alleged.*" 6 N. H. R. 578.

#### 14. Form of judgment for pl.]

H— ss., &c., as in form 1, page 151.

T. C., of, &c., pl., vs. W. H. M., of, &c.

In a scire facias for that T. C.: (here recite the scire facias, from "whereas," to the words, "as we are informed.")

The pl. appears, and the said def. comes and defends, &c., when, &c., and says that he is not chargeable as bail, as in the said scire facias is alleged, and thereof puts himself on trial, by D. A., his attorney; and the pl. doth the like by D. C., his attorney; and after hearing and considering the allegations, evidence and arguments of the parties, it appears to me that the said W. H. M. is chargeable as bail, as is alleged in the scire facias: It is, therefore, considered by me, the said justice, that the said T. C. recover against said W. H. M., the sum of — dollars, and costs, taxed at —.

*Note.* The forms of judgment in scire facias may be varied in the same manner as in other cases. See forms, pages 151 to 155.

#### 15. Form of surrender in court and order of commitment.]

M— ss. Court of Common Pleas, — Term, 184--.

Present: J. P., Presiding Justice.

B. W., } Justices.  
A. W., }

*A. B. vs. C. D., as bail of E. T., upon a scire facias of which the within is a true copy.*

The said C. D. appears in court, and brings with him the said E. F., for whom he became bail as alleged in said scire facias, and moves to be discharged; and it appearing to the court that the costs which have arisen in said suit, and the costs of notifying said C. D., as bail, have been paid:

It is, thereupon, ordered that said E. F. be committed to the custody of the keeper of the jail, so that he may be taken in execution, and detained in prison until he shall be discharged in due course of law; and that the said C. D. be discharged.

Attest: S. C. B., Clerk.

#### 16. Form of order of discharge of bail on scire facias before a justice.]

H— ss. Before J. P., Justice of the Peace, at M—, —, 184--.

*A. B. vs. C. D., as bail of E. F. upon a scire facias.*

The said C. D. appears in court, and produces the certificate of the keeper of the jail at A—, in said county, as follows:

(Here insert the jailer's certificate, form 17;)



and it appearing to the court that the costs which have arisen in said suit, and the costs of notifying said C. D. as bail, have been paid: It is, therefore, ordered that said E. F. be detained in prison until discharged by due course of law, and that the said C. D. be discharged.

Attest: J. P., *Justice of the Peace.*

17. *Form of jailer's certificate.*]

H— ss.,— —, 184--. E. F. has this day committed to my custody in the jail at A—, in said county, C. D., of, &c., in discharge of his liability as bail for said C. D., upon an original writ in favor of A. B., of, &c., against said C. D., returnable before J. P., justice of the peace, at —, on —, and has left with me an attested copy of the said original writ on which the arrest was made, and of the officer's return thereon, with a certificate of such commitment, and has secured to me the board of said C. D. until the expiration of seven days after notice given to the creditor or his attorney, unless he shall be sooner discharged, by giving bond according to law.

N. D., *Jailer.*

The order of court may be written on the jailer's certificate; in which case, instead of reciting the certificate, it may be referred to as *the above*; or, *within written certificate.*

## CHAPTER 20.

SCIRE FACIAS AGAINST ENDORSERS, AND  
ON JUDGMENTS.

- |                             |                              |
|-----------------------------|------------------------------|
| 1. Writs shall be endorsed. | 4. Scire facias on judgment. |
| 2. Endorser's liability.    | 5. Form of scire facias.     |
| 3. Remedy against endorser. |                              |

§ 1. All original writs shall, before they are served, be endorsed on the back thereof by the plaintiff, his agent or attorney, being an inhabitant of this state; and if the plaintiff is not an inhabitant of the state, by some responsible person who is such inhabitant. *R. S. 365, ch. 183, § 17.*

§ 2. The person so endorsing any writ shall be liable, in case the plaintiff shall live out of the state, upon return of *non est inventus* or that such execution as may have issued against the plaintiff is unsatisfied, to pay to the defendant all such costs as he may recover against the plaintiff. *R. S. 365, § 18.*

§ 3. Such defendant shall have his remedy by writ of scire facias against such endorser, which shall be served upon the endorser before the second term of the court, after final judgment is entered against the plaintiff, or within one year after final judgment is so rendered before a justice, and not afterwards. *R. S. 365, § 19.*

§ 4. The court may award execution on any judgment after the expiration of said two years, upon scire facias, for the amount then due, with interest. *R. S. 388, ch. 193, § 7.*

§ 5. The forms of writs shall be in substance as follows, in the following cases:

## SCIRE FACIAS.

## The State of New-Hampshire.

R— ss. *To the Sheriff of any County in this State, or his Deputy.*  
[L. S.]

Whereas A. P., of —, by the consideration of the justices of the court of —, holden at —, in said county, on the — day of —, recovered judgment against A. D., of —, for the sum of — dollars, and costs taxed at —, as appears of record, and execution thereof remains to be done:

We command you, therefore, to summon the said A. D. to appear

before the justices of the court of —, to be holden at —, in said county of —, on the — Tuesday of —, to show cause, if any he has, wherefore the said A. P. should not have execution against him for the sums aforesaid. And make return of this writ and your doings therein.

Witness J. P., Esquire, the — day of —, A. D., —.

R. G., *Clerk.*

—R. S. 364, ch. 183, § 16.

## FORMS OF PROCEEDINGS.

### 1. *Form of scire facias against endorser.*]

#### **The State of New-Hampshire.**

R— ss. *To the Sheriff of said County of R—, or his Deputy, or to any Constable of any town in said County.*  
[L. S.]

Whereas A. B., of —, in said county, yeoman, before me, C. D., a justice of the peace for said county, at —, in —, in said county, on the — day of —, 184—, at — o'clock in the —noon, by the consideration of said justice recovered judgment against E. F., of, &c., for the sum of — dollars, and costs taxed at — dollars, as by the record thereof appears; and the said A. B., on the — day of — sued out a writ of execution on said judgment and delivered the same to G. H., then and since a deputy sheriff for said county, to be executed, who returned the same to said justice on the return day thereof, with his return thereon, as follows:

(Here insert the return;)

and the said E. F. has avoided, so that he cannot be taken or. said execution, and the said judgment remains in force and not satisfied: And whereas J. K., of —, before the service of the original writ in said action endorsed his name on the back thereof as attorney of said C. D., and thereby became chargeable to pay said costs to the said A. B., who was the defendant in that suit:

We command you, therefore, to summon the said J. K. to appear before me, the said justice, at —, in —, in said county, on the — day of — next, at — o'clock in the —noon, to shew cause, if any he has, why the said A. B. should not have his execution against him, the said J. K., for his costs aforesaid. And make return of this writ, with your doings therein.

Dated the — day of —, A. D., 184—.

J. P., *Justice of the Peace.*

For the forms of returns, see pages 60, 61, forms 1 to 6:

For the form of plea and judgment, see pages 200, 201, forms 13, 14.

2. *Form of scire facias on a judgment before a justice.*]**The State of New-Hampshire.**

R— ss. *To the Sheriff of said County, or his Deputy, or to any Constable of any Town in said County.*  
[L. S.]

Whereas A. P., of —, &c., before me, J. P., a justice of the peace for the said county of R—, at —, in —, in said county, on the — day of —, 184—, at — o'clock in the —noon, by the consideration of said justice recovered judgment against A. D., of —, &c., for the sum of — dollars, and costs taxed at — dollars, as appears of record, and execution thereof remains to be done :

We command you, therefore, to summon the said A. D. to appear before me, the said justice, at —, in —, in said county, on the — day of —, at — o'clock in the —noon, to show cause, if any he has, wherefore the said A. P. should not have execution against him for the sums aforesaid. And make return of this writ, with your doings therein. Dated the — day of —, A. D., 184—.

J. P., *Justice of the Peace.*

3. *Scire facias by administrator.*]

Say : Whereas A. P., of, &c., deceased, in his lifetime, before me, J. P., a justice of the peace for the said county of R—, at —, in —, in said county, on the — day of —, 184—, at — o'clock in the —noon, by the consideration of said justice recovered judgment against A. D., of —, &c., for the sum of — dollars, and costs taxed at — dollars, as appears of record, and execution thereof remains to be done : And afterwards the said A. P. died intestate, and administration of the goods and estate which were of said A. P. was duly committed to S. P., of —, &c., as we are informed :

(or died, having before his death made and published his last will and testament, and appointed S. P., of —, &c., executor thereof, who has since his death duly proved the said will, and taken upon himself the execution thereof, as we are informed :)

We command you, therefore, &c.

4. *Scire facias against administrator.*]

Proceed as in form 2, above, to "*whereof execution remains to be done*;" then add : And afterward the said A. D. died intestate, and administration of the goods and estate which were of said A. D. was duly committed to J. D., of —, as we are informed : (or died testate, having first made his last will and testament, and appointed J. D. executor thereof; who has, since his death, duly proved the said will, and taken upon himself the execution thereof, as we are informed :) Then proceed as in same form, describing the defendant "*as administrator (or executor) as aforesaid.*"

5. *Scire facias by husband and wife.*]

Proceed as in form 2, above, to "*whereof execution remains to be done*;" then add : And afterwards the said A. P. intermarried with J. N., and since has been and still is the wife of said J. N., as we are informed. Then proceed as in same form, except husband and wife are both named, thus : "to show cause, &c., why said J. N., and A. N. his wife, should not have execution," &c.

6. *Scire facias against husband and wife.*]

The marriage is alleged as in last form. Husband and wife are both named as defs., thus: Summon A. D., and J. his wife, to show cause, &c.

7. *Scire facias upon subsequent breaches.*]

**The State of New-Hampshire.**

H— ss. *To the Sheriff of said County, or his Deputy, or to any Constable of any Town in said County.*

[L. S.] Whereas A. P., of —, &c., before me, J. P., a justice of the peace, at —, in —, in said county, on the — day of —, at — o'clock in the —noon, impleaded A. D., of —, &c., in a plea of debt upon a certain writing obligatory, dated the — day of —, and sealed with the seal of said A. D., whereby said A. D. acknowledged himself to be held and firmly bound to said A. P. in the sum of — dollars, to be paid to said A. P.; and such proceedings were thereupon had that it was considered by the said justice that said A. P. ought to recover against said A. D. the sum of —, being the whole penalty in the bond aforesaid, and execution was thereupon awarded to said A. P. for the sum of — dollars, being the amount justly due at that time, and costs taxed at —: And whereas the said penalty was designed to secure the performance of several things to be done at different times, and whereas in the condition of said bond it was agreed that said A. D. should pay to said A. B. the sum of — dollars and interest, on the — day of —, now past, and the said A. D., though requested, has never paid the same, whereby the said sum and interest is now equitably due to the said A. P., as we are informed:

We command you, therefore, to summon the said A. D., if to be found in your precinct, to appear before me, the said justice, at —, in —, in said county, on the — day of —, at — o'clock in the —noon, to show cause, if any he has, why said A. P. should not have execution against him for the sums aforesaid. And make return of this writ, with your doings therein.

Dated the — day of —, A. D., 184--.

J. P., *Justice of the Peace.*

8. *Scire facias upon a bond given upon restoring property attached.*]  
[See Revised Statutes, 371, § 27; ante, p. 54, § 32.]

**The State of New-Hampshire.**

C— ss. *To the Sheriff of said County, or his Deputy, or to any Constable of any Town in said County.*

[L. S.] Whereas A. P., of —, &c., before me, J. P., a justice of the peace for said county of C—, at —, in O—, in said county, on the — day of —, 184--, by the consideration of said justice recovered judgment against J. D., of —, &c., for the sum of —, and costs taxed at —, as appears of record, whereof execution remains to be done; and whereas certain goods and chattels of said J. D. were attached upon the original writ in said action, by J. S., a deputy sheriff for said county, and upon request of said J. D. were appraised and restored by the said officer to said J. D., upon his giving bond to the said sheriff in the sum of — dollars, with sureties; and whereas the said J. D., and O. P. and R. S., both of —, &c. as his sureties,

by their writing obligatory, dated the — day of —, sealed with their seals and duly returned with said original writ to said justice, as by the record thereof appears, jointly and severally acknowledged themselves to be indebted to —, sheriff of said county of C—, in the sum of — dollars, the said writing obligatory being subject to the condition that the said J. D. should well and truly pay to the said sheriff the sum of — dollars, being the appraised value of the said goods and chattels, or so much thereof as should be necessary to pay and satisfy any executions for the payment of which the said property or its proceeds was or might be by law holden; and whereas, on the — day of —, a writ of execution issued on the judgment aforesaid, and was delivered to —, then and still a deputy sheriff for said county, to be executed, and the said deputy sheriff then and there demanded of said J. D. the payment of the sum of —, being the sum necessary for the satisfaction of the execution aforesaid, for the payment of which the said property and its proceeds were by law holden, and the said J. D. did then and there neglect and refuse to pay the same, as we are informed:

We command you, therefore, to summon the said J. D., O. P. and R. S. to appear before me, the said justice, at, &c., on, &c., to show cause, if any they have, why the said A. P. should not have execution for the amount of said judgment and costs. And make return of this writ, and your doings therein.

Dated the — day of —, A. D., 184--.

J. P., *Justice of the Peace.*

#### 9. *Pleas in scire facias.*]

The def. may plead, *No such record*—form 150, p. 117; *Payment*—F. 152, p. 117; *Satisfaction*—F. 107, p. 112; *Release*—F. 111, p. 112; and generally any matter of defence arising since the judgment was rendered.

#### 10. *Judgment in scire facias.*]

The forms do not materially differ from those given in p. 151, &c.

## CHAPTER 21.

### OF REVIEWS.

In the case mentioned in chapter 7, sections 8, 9 and 10, (R. S. 375, § 7, 8 and 9) a review may be brought before a justice.

- |                                           |                                      |
|-------------------------------------------|--------------------------------------|
| 1. Plaintiff in review to produce copies. | 4. Judgment for costs, how rendered. |
| 2. Case, how tried on review.             | 5. Costs limited, when.              |
| 3. Judgment, how rendered.                |                                      |

§ 1. The party bringing any action of review shall produce in court attested copies of the writ, pleadings, judgment, and all papers used and filed at the former trial; otherwise a nonsuit shall be entered. *R. S. 386, ch. 192, § 8.*

§ 2. Every case shall be tried upon review in the same manner as if no judgment had been rendered therein, and any new or further evidence may be produced therein.—*R. S. 387, § 9.*

§ 3. If the amount of property, debt or damages recovered by the original plaintiff, is increased on review, he shall recover judgment for the excess and costs: if such amount is reduced, the original defendant shall recover judgment for the amount of such reduction and costs. *R. S. 387, § 10.*

§ 4. If the original plaintiff shall review, and shall not recover a greater amount of property, debt or damages, the defendant shall recover costs: if such review is brought by the defendant, and the amount of property, debt or damages is not reduced, the original plaintiff shall recover costs.—*R. S. 387, § 11.*

§ 5. No costs shall be recovered in an action of review, except those accruing upon such review; and the party bringing such review shall recover no more costs than the amount of the property, debt or damages he may recover therein, unless the original judgment shall be wholly reversed. *R. S. 387, § 12.*

## FORMS OF PROCEEDINGS.

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### 1. *Writ of review.*]

#### The State of New-Hampshire.

R— ss. *To the Sheriff of said County of R., or his Deputy, or to any Constable of any Town in said County.*

[L. S.] We command you to summon J. S. of —, &c. (if to be found in your precinct) to appear before me, J. P., a justice of the peace for said county of R., at my office in —, in said county, on —, the — day of —, at — o'clock in the —noon, to answer to J. D., of —, &c., in a plea of review of a plea of the case wherein the said J. S. was pl. and the said J. D. was def.: for that, &c.: (here insert the original declaration) to the damage of the said J. S., as he said, the sum of thirteen dollars, which action was commenced and entered before said justice on the — day of —; and upon suggestion of the pl. that no personal service was made on the def., by reason that he resides out of the state, it was ordered by said justice that said action should be continued to the — day of —, and that notice of the pendency of said suit should be given by posting up a copy of said order at two of the most public places in said —, in which town said J. D. was last known to be an inhabitant of this state, forty days before the said — day of —; and upon said order being complied with, and said J. S. giving bond to said J. D. to respond the judgment which the said J. D. should recover upon a review of said action, judgment was rendered by said justice that said J. S. recover against said J. D. the sum of — damages, and costs of suit, taxed at —; which judgment the said J. D. says is wrong and erroneous, and ought to be reversed, because he says that the said judgment ought to have been rendered for the defendant for his costs, to the damage of the said J. D., as he says, the sum of thirteen dollars. Wherefore, for reversing said judgment the said J. D. brings this suit,

And make return of this writ, with your doings therein.

Dated the — day of —, A. D., 184—.

J. P., *Justice of the Peace.*

### 2. *Return of service.*] See forms 1 to 6, after chapter 6.

#### 2. The form of judgment.

1. H— ss. (See forms of judgments, page 151.)

2. J. S., of —, def. in review, *vs.* J. D., of —, pl. in review.

3. In a plea of review, &c., (reciting the declaration down to "his damage, as he says, the sum of thirteen dollars.")

4. The original pl. appears, and the said original def. comes and defends, &c., when, &c., and says that he never promised the pl. as he has declared against him, and thereof puts himself on trial: by J. H., his attorney; and the original pl. doth the like, by D. A., his attorney; and after hearing the allegations, evidence and arguments of the parties, and their counsel, learned in the law, it appears to me



that the said original def. did promise the pl., as he has declared against him.

5. It is, therefore, considered by me, the said justice, that said original pl. recover against said original def. his costs, taxed at —.

*J. P., Justice of the Peace.*

4. Or: It appears to me, the said justice, that said original def. did not promise said original pl., as he has alleged against him.

5. It is, therefore, considered that said original def. recover against said original pl. the sum of —, and costs taxed at —.

4. Or: It appears to me, the said justice, that said original def. did promise the pl., as he has declared against him, and that the said original pl. has sustained damage to the amount of —, and no more.

It is considered by me, the said justice, that said original def. recover against said original pl. the sum of — damages, and costs taxed at —.

The other proceedings are similar to those in original actions.

## CHAPTER 22.

### OF REPLEVIN.

- |                                      |                                     |
|--------------------------------------|-------------------------------------|
| 1. Beasts impounded, how replevied.  | 4. Suits, where to be brought.      |
| 2. Property claimed by third person. | 5. Plaintiff to give bond, how.     |
| 3. Property exempt from attachment.  | 6. Officer may seize property, how. |
|                                      | 7. Form of writ of replevin.        |
|                                      | <i>Forms of Proceedings.</i>        |

§ 1. Any person whose beasts are impounded, may at any time while they remain in the pound maintain replevin therefor against the impounder thereof. *R. S. 411, ch. 204, § 1.*

§ 2. When any goods or chattels, attached on any writ of mesne process, are claimed by any other person, he may maintain replevin therefor. *R. S. 411, § 2.*

§ 3. If any goods or chattels, exempted by law from attachment, are attached upon mesne process, and before they are taken on execution, the owner or person out of whose possession they were taken may maintain replevin therefor.—*R. S. 411, § 3.*

§ 4. If the value of property replevied does not exceed thirteen dollars and thirty-three cents, the action shall be brought before a justice; otherwise, in the court of common pleas. *R. S. 411, § 4.*

§ 5. The plaintiff in the writ, before the service thereof shall give bond to the sheriff of the county, with sufficient sureties, in a sum not less than double the value of the property replevied, conditioned to prosecute his suit and to pay all such damages and charges as may be awarded against him. *R. S. 411, § 5.*

§ 6. If any property attached as aforesaid is in the possession of any person for keeping or otherwise, the officer having the writ of replevin may demand the same; and on neglect or refusal to deliver such property, may enter any close or building and replevy the same. The delivery to or taking by such officer of any property shall exonerate the person having possession thereof, as aforesaid, from all liability therefor. *R. S. 411, § 6.*

§ 7. WRIT OF REPLEVIN.

### **The State of New-Hampshire.**

R— ss.

[**L. S.** *To the Sheriff of any County in this State, or his Deputy.*

We command you to replevy —, belonging to A. P., of —, wrongfully taken and detained, as it is said, by A. D., of —, and deliver the same to the said A. P., provided he give bond to the value of — dollars, with sufficient sureties, to prosecute his replevin at the court of —, to be holden at —, in the county of —, on the — Tuesday of —, and so from court to court until the cause be ended, and to pay such costs and damages as the said A. D. shall recover against him. And we command you to summon the said A. D. (if to be found in your precinct) to appear before the justices of the court aforesaid, at the time and place aforesaid, to answer to said A. P. in a plea of replevin, to the damage of the said A. P., as he says, the sum of — dollars. And make return of this writ, with your doings therein.

Witness J. P., esquire, the — day of —, A. D., —.

—*R. S. 363, § 14.*

*R. G., Clerk.*

## **FORMS OF PROCEEDINGS.**

### **1. Form of writ of replevin before a justice.]**

#### **The State of New-Hampshire.**

R— ss. *To the Sheriff of said County of —, or his Deputy, or to any Constable of any Town in said County.*

[**L. S.**] We command you to replevy one black gelding horse, belonging to A. P., of C., in said county, husbandman, wrongfully

taken and detained, as it is said, by A. D., of said C., yeoman, and deliver the same to the said A. P., provided he give bond to the value of twenty-four dollars with sufficient sureties to prosecute his replevin before me, J. P., a justice of the peace for the said county of R—, on —, the — day of —, A. D., 184—, at — o'clock in the —noon, at the office of —, in —, in said county, and so from court to court until the cause be ended, and to pay such costs and damages as the said A. D. shall recover against him. And we command you to summon the said A. D. (if to be found in your precinct) to appear before me, the said justice, at the time and place aforesaid, to answer to said A. P. in a plea of replevin, for that the said A. D. heretofore, to wit., on the — day of —, A. D., 184—, at —, in the county of R—, in a certain close there called —, took the said horse of the said A. P., of the value of — dollars, and unjustly detained the same, to the damage of the said A. P., as he says, the sum of — dollars.

And make return of this writ, with your doings therein.

Dated the — day of —, A. D., 184—.

J. P., *Justice of the Peace.*

*Note.* The place of taking may be described as “a certain tract of land, situate in —, bounded,” &c.; or, “a certain dwelling house, situate,” &c.

If the articles are very numerous, they may be described as “the goods and chattels in the schedule hereto annexed particularly mentioned.”

## 2. *Form of replevin bond.*]

KNOW ALL MEN BY THESE PRESENTS, That we, A. P., of, &c., as principal; C. D., of, &c., and E. F., of, &c., as sureties, are held and firmly bound to B. J., sheriff of the county of R., in the sum of — dollars, to be paid to said B. J., to the payment whereof we jointly and severally bind ourselves and our heirs firmly by these presents, sealed with our seals, and dated the — day of —, 184—.

*The condition of this obligation is such,* That whereas said A. P. has commenced an action of replevin against A. D., of, &c., for (here describe the property as in the writ) said to be wrongfully taken and detained, which action is to be heard and tried before J. P., a justice of the peace for the county of R., at —, in —, in said county, on the — day of —, at — o'clock in the —noon: Now if said A. P. shall prosecute his said action of replevin to final judgment, and pay all such costs, damages and charges as the said A. D. shall recover against him, and shall indemnify the said sheriff and his deputies against all loss, cost, damage or expense to which he or they may be subjected by reason of replevying the same, then this obligation shall be void.

A. P., (*Seal.*)

C. D., (*Seal.*)

E. F., (*Seal.*)

If the writ is served by a coroner or constable, the bond should be taken to them describing them as “*T. C., coroner of the county of R.;*” or, “*A. C., constable of C.*”

The clause relating to indemnifying the officer may be

omitted, and a separate bond taken, if preferred. See form 33, page 70. This clause does not impair the bond. 5 *N. H. R. 362, Whittemore v. Jones.*

3. *Return of a writ of replevin.*]

R— ss., — —, 1843. The said A. P. having given bond, with sufficient sureties, according to law, I have replevied the horse within mentioned, and delivered the same to said A. P., and have summoned the said A. D. as within commanded, by giving to him (or leaving at his usual place of abode) an attested copy of this writ; (or by reading to him this writ.) E. F., *Deputy Sheriff.*

*Fees, &c.*

4. *Receipt for property replevied.*]

Received of E. F., deputy sheriff, the within described horse : (or goods and chattels.) A. B.

— —, 184—.

5. *Return, when goods are not found.*]

R— ss., — —, 1843. I have made diligent search, and the goods and chattels within mentioned are not found in my precinct.

E. F., *Deputy Sheriff.*

PLEAS IN REPLEVIN.

6. *General issue.*] (See form 49, page 104.)

And the said A. D. comes and defends, &c., when, &c., and says that he did not take the said horse (or goods and chattels, or any of them) in said declaration mentioned, as the said A. P. has above declared against him, and thereof puts himself on trial.

By G. H., his attorney.

And the pl. likewise, by, &c.

7. PLEA : *Taking in another place.*]

And the said A. D. comes and defends, &c., when, &c., and as bailiff of A. A. acknowledges the taking of the horse aforesaid, at the said time when, &c., in a certain place called —; and justly, because he says that the said place called —, long before and at the said time when, &c., was the soil and freehold of the said A. A.; and because the horse aforesaid at the time when, &c., was in the said place called —, doing damage there, the said A. D. as bailiff of the said A. A. took the said horse there, &c., and justly, without this, that he, the said A. D., took the said horse in a place called —, as the pl. has declared against him; and this he is ready to verify : Wherefore he prays judgment, and his damages, &c.

By, &c.

REP. : *Denying taking in another place.*]

And the pl. says that said A. D., as bailiff of said A. A., ought not to acknowledge the taking of the horse aforesaid justly, because he says that the said A. D. took the horse aforesaid in the said place called —, as the pl. by his declaration aforesaid has above alleged; and this he prays may be enquired of by the said justice.

By, &c.

9. PLEA: *Property in defendant.*]

And the said D. comes and defends, &c., when, &c., and says the pl. his action aforesaid thereof against him ought not to have and maintain, because he says that at the time when the taking of the said goods is alleged in said declaration, the said goods were the property of him, the said D., without this, that the said goods then were the property of the pl., as he has alleged, and this he is ready to verify: Wherefore he prays judgment, if the pl. his action thereof against him ought to have and maintain, and for his damages and costs.

10. REP.: *Property in the plaintiff.*]

And the pl. says he ought not to be barred from having and maintaining his action aforesaid against the said def., because he says that the said goods were the property of the pl., as he has in his declaration alleged, and this he prays may be enquired of by the said justice.

11. PLEA: *Property in a stranger.*]

Follow the preceding plea—instead of “were the property of him, the said D.,” say: “were the property of one J. S.”

12. PLEA: *Limitations.* See form 59, page 106.13. AVOWRY BY OWNER. *Horse taken doing damage, &c.*]

And the said A. D. comes and defends, &c., when, &c., and avows the taking of the said horse in the said close in which the same is alleged to be taken, and justly, &c., because he says that the said close in which, &c., now is and at the said time when, &c., was the close, soil and freehold of the said A. D.; and because the said horse was then in the said close eating the grass there growing, and doing damage there to the said A. D., the said A. D. took the said horse there as for distress for the said damage; and this he is ready to verify: Wherefore he prays judgment and his damages, by reason of the wrongful replevyng and delivery of the said horse to the pl., to be adjudged to him.

14. *Avowry by a tenant.*]

Begin as in last form to, “because he says;” then say: “that one A. C. was seized in fee of the said close in which, &c., and before the said time when, &c., to wit, on —, demised the said close to the said A. D., to hold to him, the said A. D., for the term of one year then next ensuing, by virtue of which demise the said A. D. then and there entered into said close, and was and still is possessed thereof, and because the said horse, &c., as in last form.

15. *Cognizance.*]

A cognizance differs from an avowry merely by striking out the phrase, “and avows the taking,” and inserting, “and as bailiff of A. A. acknowledges the taking,” &c., alleging the title in A. A., and the taking by himself, as “bailiff of A. A.” See next form and form 7.

16. PLEA: *Def. had the cattle in the place in which, &c., on the way to the pound.*]

And the said D., E. and F., come and defend, &c., when, &c., and

the said D. avows, and the said E. and F., as bailiffs of said D., acknowledge the taking said cattle in the said place in which, &c., and justly, &c., because they say that one A. C. was seized in fee of a certain close called —, (or bounded, &c.) in —, and being so seized thereof the said A. C., before the said time when, &c., to wit., on, &c., demised the said close called, &c., to the said D., to hold the same to the said D. for and during the term of one year thence next ensuing; by virtue of which demise the said D. then and there entered into the said close called, &c., and was and still is possessed thereof. And because the said cattle at the said time when, &c., were in the said close called, &c., eating up the grass and doing damage there, the said D. avows and the said E. and F. acknowledge the taking of the cattle in the said close called, &c., as a distress for said damage; and afterwards the said D., and E. and F., as bailiffs of said D., took and led away the same cattle from the said close to the said place in the said declaration called —, in which, &c., and at the said time when, &c., they had the same cattle there in the way from the said close called, &c., to the common pound in —, there to be impounded for the damage so done to the said close called, &c., and this they are ready to verify: Wherefore they pray judgment, and their damages and costs.

17. PLEA. *Cognizance: Def. not bailiff.*]

And the pl., protesting that the place where, &c., is not and at the said time when, &c., was not the soil and freehold of the said A. A., as the said D. has in pleading alleged, says that the said D. ought not to justify the taking of the said cattle in the place where, &c., because he says that at the time of the taking aforesaid, in the place where, &c., the said D. was not the bailiff of the said A. A., as the said D. has alleged, and this he is ready to verify: Wherefore he prays judgment, and for his damages and costs.

18. REPL.: *Def. was bailiff.*]

And the said D., as before says that he, the said D., at the said time when, &c., was the bailiff of the said A. A., as he has above in pleading alleged, and of this he puts himself on trial.

19. PLEA TO AN AVOWRY: *Cattle escaped through defect of fences.*]

And the pl. says the said D. ought not to avow the taking of the cattle aforesaid to be just, notwithstanding any thing in his plea alleged, because he says that at the time of the taking aforesaid one A. A. was seized of a certain close called B., lying contiguous with the close called C., in his demesne as of fee; and being so seized thereof before the same time when, &c., at, &c., demised the same close to the pl. to have to him at the will of the said A. A., by reason of which the pl. at the time of the taking aforesaid was possessed of the same close, and the said D. at the same time was seized of the said close called C., in his demesne as of fee; and the pl. being so possessed of the said close called B., by virtue of the demise aforesaid before the time when, &c., put his cattle aforesaid into the same close, to feed there; and because of the insufficiency and defects of the fence of the said D., which the said D. was then and there bound to maintain and keep in repair between the said closes, and of the want of repair thereof, the said cattle escaped from the said close and entered into the said close called C., at the time of the taking aforesaid; and the said cattle so being there the said D. then and there unjustly

took the same, as is in said declaration alleged. And this he is ready to verify : Wherefore he prays judgment and his damages, &c., to be adjudged to him.

20. REP. : *Fences sufficient.*]

And the said D. says that the said cattle, at the time of the taking alleged, violently broke through the fence aforesaid, then being sufficiently made and repaired, and entered into the said close called B., and depastured the grass then growing there, and did damage there : Wherefore the said D. then and there took the cattle aforesaid, as the said D. has above alleged, and this he is ready to verify : Wherefore he prays judgment and his damages, &c.

21. REP. : And the pl. says that the said fence, at the time of the taking alleged, was defective, insufficient and out of repair, as the pl. has alleged ; and this he prays may be enquired of by the justice.

22. PLEA TO AVOWRY. *No notice given.*]

And the said A. P. says that the said A. D. ought not, by reason of any thing in his avowry alleged, to avow the taking of said horse in the place in which, &c., and justly, &c., because he says that after the said A. D. had taken the said horse he impounded him in the common pound in —, to wit., on —, and suffered the said horse to continue and remain so impounded as aforesaid for more than twenty-four hours from the time of impounding the same, to wit., from — to —, being — hours ; he, the said A. D., well knowing the said horse to be the property of the said A. P., without causing to be delivered to the said A. P. in person, or causing to be left at the usual place of abode of the said A. P., a notice in writing, describing the creature impounded, stating his estimate of the damage done, and the time when and the place where the same was done, the amount of fees and charges then incurred, and the place of impounding, as by law he ought ; and so unjustly and against the form of the statute, the said A. D. detained the said horse so impounded as aforesaid, in said common pound in —, as the said A. P. has above complained against him ; and this the said A. P. is ready to verify : Wherefore, inasmuch as the said A. D. has above avowed the taking of the said horse in the place in which, &c., he, the said A. P., prays judgment for his damages, occasioned by the taking and unjustly detaining the said horse, to be adjudged to him, and for his costs. By, &c.

23. REP. : *Notice was given.*]

And the said A. D. says that by reason of any thing by said A. P. above pleaded, he ought not to be barred from avowing the taking of said horse in the place in which, &c., because he says that at said —, on —, and within twenty-four hours from the time of impounding the said horse he caused a notice in writing to be left at the usual place of abode of the said A. P., describing the said horse so impounded as aforesaid, stating his estimate of the damage done and the time when and place where the same was done ; the amount of fees and charges then incurred, and the place of impounding ; and thereof he puts himself on trial.

The form of the judgment is substantially as in the forms page 151, &c.

If the plaintiff fails in the action the def. recovers judgment for his *damages* and costs.

## CHAPTER 23.

## OF FOREIGN ATTACHMENT, OR THE TRUSTEE PROCESS.

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Trustee process, when brought.</li> <li>2. Trustee process, how brought.</li> <li>3. Service of trustee writs.</li> <li>4. New trustees inserted before service on defendant.</li> <li>5. Trustee, when defaulted.</li> <li>6. Continuance, when allowed.</li> <li>7. Liability of trustee, how tried.</li> <li>8. Trustee, when liable, and how.</li> <li>9. Not liable for earnings of wife.</li> <li>10. Liability for debt not yet due.</li> <li>11. Liability for goods in his hands.</li> <li>12. Liability for goods contracted.</li> <li>13. Creditor to be agent to receive.</li> <li>14. Liability for neglect to deliver.</li> <li>15. Liability for note, order, &amp;c.</li> <li>16. Liability for property under lien.</li> <li>17. Liability for refusal to deliver.</li> <li>18. Liability on negotiable note.</li> <li>19. Liability, how determined.</li> <li>20. Debtor refusing to appear, penalty.</li> <li>21. Answer not evidence on indictment, except for perjury.</li> <li>22. If property claimed by another.</li> <li>23. Corporation liable as trustee.</li> <li>24. If trustee dies before disclosure.</li> </ol> | <ol style="list-style-type: none"> <li>25. Commissioner appointed—when.</li> <li>26. If trustee about to leave the state, disclosure may be taken.</li> <li>27. Disclosure taken in vacation, how.</li> <li>28. Trial by jury allowed, how.</li> <li>29. Verdict of jury, judgment and costs.</li> <li>30. Judgment against trustee—what.</li> <li>31. If defendant has had no notice.</li> <li>32. If collusion between the parties.</li> <li>33. If trustee is fraudulent, costs.</li> <li>34. Holding property fraudulently, costs allowed, how.</li> <li>35. If delaying, creditor to pay costs.</li> <li>36. Answers of trustee to be several.</li> <li>37. Executions, how to be issued.</li> <li>38. Judgment against trustee, a bar.</li> <li>39. Trustee suits before a justice.</li> <li>40. Process, how to be directed.</li> <li>41. Plaintiff to file bond, when.</li> <li>42. Fees of trustee in such cases.</li> <li>43. Form of trustee writ.</li> </ol> |
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*Forms of Proceedings.*

§ 1. All personal actions may be commenced by the process of foreign attachment, or trustee process, in the manner hereinafter provided, except actions of replevin, actions on the case for malicious prosecution, or for slander or libel, and actions of trespass for assault and battery and false imprisonment. *R. S. 418, ch. 208, § 1.*

§ 2. All such actions shall be brought in the same county in which they would have been brought if no trustee were



summoned therein, except as is hereinafter provided. *R. S. 418, § 2.*

§ 3. The trustee writ shall be an attachment and summons, and shall be served upon the trustee and upon the principal defendant in the same manner as writs of summons, and the property of the principal defendant may be attached thereon. *R. S. 418, § 3.*

§ 4. The plaintiff may insert the names of as many persons as trustees as he may deem necessary, at any time before the process is served upon the principal defendant, but not after. *R. S. 418, § 4.*

§ 5. If such trustee do not appear at the term of the court to which such process duly served on him, is returnable, or if continued, at the term to which it shall be so continued, his default shall be recorded; and the charge of his having in his possession money, goods, chattels, rights or credits of the principal defendant, to the amount alleged in such process, shall be deemed to be true, and judgment shall be rendered and execution issue against the trustee, his proper goods and estate, for such amount as the plaintiff shall recover against the principal defendant in such process, but not exceeding the amount so alleged in such process as aforesaid. *R. S. 418, § 5.*

§ 6. If any trustee shall not be able to attend in person, at the term of the court to which said process is returnable or may be continued, or shall have other good and sufficient cause, a continuance may be granted upon such terms as the court may order. *R. S. 418, § 6.*

§ 7. Every person summoned as trustee as aforesaid may be put to answer interrogatories as to his liability as such trustee; which interrogatories and answers shall be in writing, and subscribed and sworn to in open court, or before some justice of the peace, if the parties agree; or the question of his liability may be tried by the jury, as the plaintiff may elect. *R. S. 419, § 7.*

§ 8. Every person summoned as trustee as aforesaid, having in his possession any money, goods, chattels, rights or credits of the principal defendant at the time of the service of such writ upon him, or at any time after such service and before his disclosure, shall be adjudged a trustee therefor. *R. S. 419, § 8.*

§ 9. No person summoned as trustee shall be charged as such on account of the personal services or earnings of the

wife of the debtor at any time, or on account of any labor performed by the debtor or any of his family after the service of the process, or within fifteen days prior to such service. *R. S. 419, § 9.*

§ 10. When the trustee is indebted to the principal defendant, and the time of payment has not expired, the court may suspend issuing execution against such trustee, as justice may require. *R. S. 419, § 10.*

§ 11. If the trustee has any goods or chattels of the principal defendant in his possession, not subject to any lien, judgment shall be rendered and execution issue against the trustee therefor, or for so much thereof as may be necessary to satisfy such execution. *R. S. 419, § 11.*

§ 12. If the trustee is under contract for the delivery of any specific article or articles to the principal defendant, or payment in any articles, judgment shall be rendered and execution issued against the trustee for such articles, or so much thereof as may be necessary to satisfy such execution, which shall be paid and delivered to the creditor according to such contract. *R. S. 419, § 12.*

§ 13. The creditor shall be the agent of the principal defendant for the purpose of receiving the goods, chattels or articles mentioned in the two sections preceding, and shall levy his execution thereon to the amount of his debt and cost, and no more; but if no division of such goods, chattels or articles can be made, the whole may be sold. The property unsold, and the overplus of the proceeds of the property sold, shall be retained by the officer, to be delivered to the debtor whenever he shall demand the same.—*R. S. 419, § 13.*

§ 14. If any person adjudged trustee for any goods, chattels, or other property whatever, shall refuse to expose the same so that the creditor may levy his execution thereon, the court shall, on return thereof made by any officer, grant a rule upon such trustee to show cause why execution should not issue against such trustee, his own goods and estate; and upon such rule being duly served, and no sufficient cause shown to the contrary, judgment shall be rendered and execution issued against him for such sum as the court may think just and proper. *R. S. 419, § 14.*

§ 15. If, upon the disclosure of any person summoned as trustee in the court of common pleas, or upon the trial of an issue between him and the plaintiff, it shall appear that

such person had in his possession, at the time of the service of the process upon him, or afterwards, any promissory note, order, receipt, bill of exchange, bond or other promise for the payment of money or the delivery of property belonging to the principal defendant, the court may appoint a receiver, whose duty it shall be, under the direction of the court, to collect and apply the proceeds to the payment of the debt and costs recovered by the plaintiff against the principal debtor, and to pay the surplus, if any, to such debtor. *R. S. 420, § 15.*

§ 16. If it shall appear as aforesaid that the person summoned as trustee had in his possession, at the time of the service of such process, or afterwards, any personal property of the principal defendant, and that the same is subject to any pledge, lien or mortgage, and at the time of the disclosure has not been sold by the trustee, the court may appoint a receiver, whose duty it shall be, under the direction of the court, to dispose of the same, if a greater amount than the sum due can be obtained therefor; and after paying the amount of such pledge, lien or mortgage, to apply the balance as aforesaid. *R. S. 420, § 16.*

§ 17. If the person so summoned as trustee shall refuse, in either of the cases specified in the two preceding sections, to deliver any such note, order, receipt, bill, bond, promise, or other property, on the order of the court, he shall be charged as trustee for the amount thereof, and judgment be rendered and execution issued accordingly.—*R. S. 420, § 17.*

§ 18. If any person, summoned as trustee as aforesaid, is indebted, at the time of the service of such process or afterwards, to such debtor by a negotiable promissory note made or payable in this state, or the parties to which at the time of making the same resided in this state, the court may make a rule requiring such debtor to appear and answer on oath all interrogatories respecting the possession, transfer or other disposition of such note, and a rule or order of notice to be served upon any individual or published in some newspaper, for the information of any person who may claim an interest in said note, so that such person may appear and show that the same was transferred to him in good faith, and for an adequate consideration, before the service of such trustee process; and the question whether the same was so transferred to him, shall be decided by the jury, if he or the plaintiff request it. *R. S. 420, § 18.*

§ 19. If it shall not appear that the note was so transferred, the promiser shall be charged as the trustee of such debtor, and the payment of the judgment rendered against him shall be a discharge from the note, or from such part thereof as is equal to the amount so paid by him, together with all costs taxed in his favor. *R. S. 420, § 19.*

§ 20. If any such debtor shall refuse to appear, upon such order of court, he may be arrested and brought into court upon a *capias*, and fined not exceeding fifty dollars; and if he shall refuse to answer, may be proceeded against as for a contempt of court. *R. S. 420, § 20.*

§ 21. No answer or disclosure of any person, or any other proceedings under the provisions of this chapter, shall be used in evidence upon any criminal prosecution against such person, except upon an indictment of the trustee for perjury in the making of such answer or disclosure. *R. S. 421, § 21.*

§ 22. If any person shall claim any money, goods, chattels, rights or credits, or other property as aforesaid, in the hands of any supposed trustee, by assignment from the debtor or otherwise, the court may permit or cause him to appear and maintain his right. The testimony of the debtor or of any competent witness may be taken in such manner as the court shall direct, and filed with or appended to the disclosure of the trustee, and the court may award such costs between such claimant, the creditor and trustee, as justice and equity may require. *R. S. 421, § 22.*

§ 23. Any corporation may be summoned as trustee, and may appear and answer by its treasurer, cashier, or such other officer or officers as such corporation shall appoint or the court shall direct; and the examination on oath of such officers shall be deemed to be the answer of the corporation. —*R. S. 421, § 23.*

§ 24. If any person summoned as trustee shall die before disclosure made or before judgment, his executor or administrator may come in or be summoned in to become a party to such action, as in other cases, and shall be liable in the same manner as if said action had been originally commenced against such executor or administrator. *R. S. 421, § 24.*

§ 25. Upon the motion of either party, the court may appoint a commissioner to take the disclosure of any trustee; and if upon due notice such trustee shall neglect or refuse

to appear before such commissioner, or to answer all proper interrogatories, on oath, the commissioner shall report such neglect or refusal to the court, who may thereupon enter judgment against such trustee as upon default, or order such further proceedings and upon such terms as may be just and reasonable. *R. S. 421, § 25.*

§ 26. If any person summoned as trustee is about to leave the state to be absent beyond the next term of the court to which the trustee process is returnable, or for other sufficient cause may not be able to attend court, and either party desires that his disclosure shall be taken, application in writing may be made to any justice of the peace for that purpose, stating the cause thereof. *R. S. 421, § 26.*

§ 27. Such justice shall, if he deems the cause sufficient, cause such notice to be given to the adverse party as is given in the case of depositions, and may, at the time and place of hearing, proceed to take such disclosure, which shall be by written interrogatories and answers, and signed and sworn to by said trustee. Upon the return of any such disclosure into court, judgment may be rendered thereon, or such further proceedings had as equity may require. *R. S. 421, § 27.*

§ 28. Upon disclosure made by any person summoned as trustee, the creditor may move the court that the question whether such person is trustee or not, be tried by the jury; and upon payment of the trustee's costs up to the time of filing such motion, unless the court shall restrict the same, an order shall be made and an issue framed for the trial of such question; and on such trial the disclosure so made, and any other competent evidence, may be offered, and judgment shall be rendered on the verdict, as in other cases against trustees. In any such case the debtor may be a competent witness. *R. S. 422, § 28.*

§ 29. If, on such trial, judgment shall be rendered against the trustee for a greater amount, or for other property than he would have been chargeable for on his disclosure, judgment shall be rendered against him for costs also, including costs so paid him as aforesaid; otherwise the trustee shall recover his costs. *R. S. 422, § 29.*

§ 30. When any person shall be adjudged a trustee of any debtor as aforesaid, except where it is otherwise specially provided, judgment shall be rendered and execution issue against such trustee, his own goods and estate therefor,

or for so much thereof as will satisfy the judgment obtained against the principal defendant, in the same manner as if such suit were brought against him personally; but no judgment shall be rendered against the trustee or against the principal defendant, unless such defendant has been duly summoned or notified of such suit. *R. S. 422, § 30.*

§ 31. If any person summoned as trustee is chargeable as such, and the principal defendant had no personal notice of such suit, the trustee may appear and defend such suit for such defendant, and may have a continuance for the purpose of notifying such defendant, upon such terms as the court shall order, and such costs shall be awarded for or against such trustee as equity may require. *R. S. 422, § 31.*

§ 32. If it shall appear to the court that there is fraud and collusion between the creditor and trustee, the court may refuse to admit such trustee to appear and defend as aforesaid, or may order such notice to be given to the debtor as will be most likely to be effectual, or proper security to be filed for the protection of the rights of such defendant, before judgment shall be rendered against him. *R. S. 422, § 32.*

§ 33. When real estate shall be attached on any such process, any person summoned as trustee in such process may be required to disclose the grounds of his claim, if any he have, to the same; and if it shall appear on the disclosure that it was conveyed to him to prevent its being seized on mesne process or execution against the principal debtor, or for the purpose of delaying or defrauding any creditor, or that he holds the same by a title apparently absolute, but which is in fact on any trust for such debtor or other person, judgment shall be rendered against such trustee for costs. —*R. S. 422, § 33.*

§ 34. Whenever it shall appear that any person summoned as trustee has received the property of the principal defendant, or holds any bill of sale or other conveyance from him, or has done any act in relation thereto with intent to aid him in defeating or delaying any creditor, costs shall be taxed against such trustee. *R. S. 422, § 34.*

§ 35. In all cases where the trustee has not been guilty of fraud or unnecessary delay, he shall be entitled to his costs; and the court may order the same to be deducted from the amount for which such trustee is adjudged chargeable, or may render judgment and issue execution therefor, or make such order touching the same as equity may require. *R. S. 423, § 35.*

§ 36. Two or more persons severally liable may be summoned as trustees in the same process; and their disclosures and all other proceedings shall be several; and judgment shall be rendered for such sum as the court shall order for or against each severally, and execution shall issue therefor accordingly. *R. S. 423, § 36.*

§ 37. Execution may be issued by the court against the principal defendant for any balance due to the plaintiff, on his judgment recovered against such defendant in any trustee suit, beyond the amount for which the trustee or trustees in such suit are chargeable; and further executions may be issued from time to time against such defendant, or any trustee, as the court may order, until such judgment shall be satisfied in full. *R. S. 423, § 37.*

§ 38. Any money, goods, chattels, rights or credits, or any property of any description of any debtor, taken by the provisions of this chapter out of the possession of any trustee, shall fully discharge such trustee, his executors or administrators, from all actions or causes of action in favor of such debtor, his executors or administrators; and if any such trustee shall be sued therefor, or for any thing done by virtue of the provisions of this chapter, he may plead the general issue, and give the special matter in evidence under it. *R. S. 423, § 38.*

§ 39. Any trustee process may be brought and maintained before any justice of the peace, where the sum demanded in damages shall not exceed thirteen dollars and thirty-three cents; and all the several provisions in this chapter contained, not restricted to the court of common pleas, so far as the same are applicable to and not inconsistent with process before a justice of the peace, shall be deemed to apply thereto. *R. S. 423, § 39.*

§ 40. If any trustee named in any such process resides out of the county in which the same is brought, the writ, and any execution issued against such trustee, shall be directed to the sheriff of any county in this state, or his deputy, or to any constable of the town in which such trustee resides. *R. S. 423, § 40.*

§ 41. When the trustee in any such suit resides out of the county in which the process is brought, the plaintiff shall file a bond, to be approved by the justice before whom the suit is brought, and in such sum as he shall order, running to such trustee, and conditioned to pay all costs which

such trustee may recover in such suit, which bond shall be filed with such justice, and a minute thereof made on such writ, and signed by him before the service of such writ on any such trustee. *R. S. 423, § 41.*

§ 42. The fees of every trustee in any court for actual necessary attendance as trustee, shall be the same as that of a witness. *R. S. 423, § 42.*

§ 43.

### TRUSTEE WRIT.

### **The State of New-Hampshire. \***

*R—ss. To the Sheriff of any County in this State, or his Deputy.*

[*L. S.*] We command you to attach the goods or estate of A. D., of —, &c., to the value of — dollars, and summon him (if to be found in your precinct) to appear before the justices of the court of —, to be holden at —, in said county, on the — day of —, to answer to A. P., of —, &c., in a plea of —, to the damage of the said A. P., as he says, the sum of — dollars. We also command you to attach the money, goods, chattels, rights and credits of the said A. D. in the hands and possession of E. T. to the value of — dollars, and summon said E. T. (if to be found in your precinct) to appear at said court, and show cause, if any he has, why execution should not issue against him for the damage which may be recovered by said A. P. against said A. D. And make return of this writ, with your doings therein.

Witness J. P., esquire, the — day of —, A. D., —.

*R. S. 364, § 15.*

*R. G., Clerk.*

## FORMS OF PROCEEDINGS.

### 1. *Form of trustee writ before a justice.*

### **The State of New-Hampshire.**

*R—ss. To the Sheriff of the County of R., or his Deputy, or to any Constable of any town in said County.*

[*L. S.*]

We command you to attach the goods or estate of A. D., of —, &c., to the value of — dollars, and summon him (if to be found in your precinct) to appear before me, J. P., a justice of the peace for said county, at —, in —, in said county, on —, the — day of —, at — o'clock in the —noon, to answer to A. P., of —, &c., in a plea of the case: (Here insert the declaration:) to the damage of the said A. P., as he says, the sum of thirteen dollars.

We also command you to attach the money, goods, chattels, rights and credits of the said A. D. in the hands and possession of E. T., of —, &c., to the value of — dollars, and summon said E. T. (if to be found in your precinct) to appear before me, the said justice, at the time and place aforesaid, to show cause, if any he has, why execu-



tion should not issue against him for the damage which may be recovered by said A. P. against said A. D. And make return of this writ, with your doings therein.

Dated the — day of —, A. D. 184—.

J. P., *Justice of the Peace.*

The names of parties are to be inserted as in pages 17 and 18.

If one or more of the trustees resides out of the county the writ may be directed "*To the Sheriff of any County in this State, or his Deputy, or to any Constable of the Town of — in the County of —.*"

The form of the officer's return of service on the trustee is the same as on writs of summons. *See forms 1, 2 and 3, page 61.*

The return of service on the principal is in the same form.

If the property of the principal is attached, the forms of returns of attachments are the same as those on writs of attachment. *See form 14, p. 64, and the following forms to page 77.*

### 2. *Affidavit of inability to attend in person.*]

I, E. T., of —, testify and say, that I am unable to attend in person before J. P., justice of the peace for the county of H., on —, the — day of —, to answer to the action of A. P. against me as trustee of A. D., by reason of (Here state the disease : as) a fever, by which I have been confined to my house for — days past.

Sworn to, &c. — — —.

*Note.* All the ordinary rules and proceedings may occur in trustee cases, as upon ordinary writs of attachment and summons. The case proceeds against the principal debtor precisely as if no trustee was summoned, except in those cases where the statute otherwise directs. And the suit against the trustee may be proceeded in to the point of final judgment precisely as if no other parties were concerned. Judgment of course cannot be entered against the trustee unless there is a recovery against the principal debtor.

### 3. *Plea of trustee.*] *See form 49, page 104.*

And the said E. T. comes and defends, &c., when, &c., and says that he had not, at the time of the service of the plaintiff's said writ, and has not at any time since, had any money, goods, chattels, rights or credits of said A. D. in his hands or possession, and thereof puts himself on trial.

By, &c.

And the pl. doth the like, and elects that said E. T. be put to answer interrogatories as to his liability as such trustee.

By, &c.

4. *Interrogatories.*]

Interrogatories proposed by A. P. to E. T., sued as trustee of A. D.

*Int.* 1. Had you, at the time of the service of the plaintiff's said writ upon you, or since, any money, goods, chattels, rights or credits of the said A. D. in your hands or possession?

*Answer.* I had not, unless I shall be adjudged chargeable under the following circumstances, &c.

H— ss., —, 184—. E. T. made oath that the answers to the foregoing interrogatories by him subscribed are true.

Before me: J. P., *Justice of the Peace.*

5. *Affidavit of claim.*]

I, H. C., of —, testify and say that on the — day of —, A. D., 184—, A. D., of —, by his deed of that date for the sum of — dollars, paid to him by me, bargained, sold and assigned to me the following goods, to wit., —, &c., which are now in the hands of E. T., who is sued by A. P., as trustee of A. D., and the said goods are my property.

H— ss., —, 184—. H. C. appeared and made oath that the above affidavit, by him subscribed, is true.

Before me: J. P., *Justice of the Peace.*

6. *Rule admitting claimant to defend.*]

H— ss. Before J. P., Justice of the Peace, at M., —, 184—.

*A. P. vs. A. D., and E. T. his trustee.*

On motion of H. C., and affidavit of his claim to the property in the hands of said trustee, it is ordered that said H. C. have leave to appear and maintain his right, (giving security by bond to the plaintiff to pay all such costs as the court may award against him.)

J. P., *Justice of the Peace.*

Death of parties and scire facias to executor or administrator—*See forms 21, 22, &c., pages 97, 98.*

7. *Application to a justice to take a disclosure.*

To J. P., a Justice of the Peace for the County of H.

A. P., of —, shows that an action in his favor against A. D., of —, and E. T., of —, his trustees, is now pending in the court of common pleas for said county of H.: That said E. T. is about to leave the state, to be absent beyond the next term of said court, and that he is desirous that the disclosure of said E. T. may be taken: Wherefore he prays that, due notice being given to said A. D., the disclosure of said E. T. may be taken before you, at such time and place as you may appoint.

—, 184—.

A. P.

8. *Order of notice.*]

Upon the foregoing application it is ordered that the disclosure of said E. T. be taken before me, the said justice, at —, in —, in said county, on —, at — o'clock in the —noon; and that said A. P. give notice of the said time and place of taking said disclosure, by giving to said A. D. and E. T., or leaving at their usual places of abode respectively, such notice as is by law required to be given in case of depositions.

J. P., *Justice of the Peace.*

9. *Form of notice.*]

To A. D., of —.

Take notice, that upon the application of A. P. to me, J. P., a justice of the peace for the county of H., setting forth that an action in his favor against you, and E. T., of —, as your trustee, is pending in the court of common pleas for said county of H.: That said E. T. is about to leave the state, to be absent beyond the next term of said court, and that he is desirous that the disclosure of said E. T. should be taken before me. It is ordered that the disclosure of said E. T. be taken before me, at —, in —, in said county, on —, the — day of —, 184—, at — o'clock in the —noon. You may attend at said time and place, if you think proper.

— —, 184—.

J. P., *Justice of the Peace.*

10. *Bond for costs to trustee out of the county.*]

KNOW ALL MEN BY THESE PRESENTS, That we, A. P., of —, as principal, and A. S. and A. B., both of —, as sureties, are holden to E. T., of —, in the county of —, in the sum of — dollars, to be paid to said E. T., to the payment whereof we jointly and severally bind ourselves and our heirs firmly by these presents, sealed with our seals, and dated the — day of —, 184—.

*The condition of this obligation is,* That whereas the said A. P. has commenced an action against A. D., of —, and E. T., of —, in the county of —, as his trustee: Now if said A. P. shall pay all costs which said E. T. may recover against him in such suit, then this obligation shall be void.

— —, (*Seal.*)

— —, (*Seal.*)

— —, (*Seal.*)

11. *Approval of justice.*]

I approve of the amount and sureties of this bond.

— —, 184—.

J. P., *Justice of the Peace.*

12. *Certificate on writ.*]

I certify that said A. P. has filed with me a bond in the sum of — dollars, with sureties approved by me, for the payment of the costs which said E. T. may recover against him.

J. P., *Justice of the Peace.*

## FORM OF JUDGMENTS IN TRUSTEE CASES.

The entry of judgment against the principal in trustee cases, is in no respect different from the usual forms in cases where no trustee is summoned. *See forms page 151, and after.*

13. *Trustee default.*]

2. S. P., of —, pl., *vs.* A. P., of, &c., def.; and J. T., of, &c., trustee of said A. P.

3. In a plea of, &c.

4. The pl. appears, and the said A. P. and J. T. do not appear, but make default.

5. It is, therefore, considered that said S. P. recover against said A. P. — dollars, and costs of suit taxed at — dollars.

6. It is further considered that said S. P. have execution against the said A. P. for the sum of —.

*14. Judgment by agreement.]*

4. The said S. P. and A. P. appear, and “agree that judgment be rendered for said S. P., for — dollars damages, and costs taxed at —.”

5. It is, therefore, considered, &c.

It is not safe, in general, to enter any judgment against a trustee by agreement, unless the principal debtor is a party to that agreement.

*15. Trustee discharged without costs.]*

4. The pl. appears, and the def. doth not appear, but makes default.

5. It is, therefore, considered, &c.

6. The said trustee does not appear, but is discharged upon suggestion of the pl., (or, by consent of parties) without costs.

*16. Trustee discharged with costs.]*

4. This action was entered — —, 184—, when the pl. appeared, and the said A. P. did not appear, but made default; and the said J. T. appeared, and the said action was continued from time to time to this day, when the said trustee was discharged with costs.

5. It is, therefore, considered, &c.

6. It is further considered, that said J. T. recover against said S.P. his costs, taxed at —.

*17. After death of trustee.]*

2. S. P., of, &c., vs. A. P., of, &c., and A. E., executor of the will of J. T., of —, trustee of said A. P.

4. This action was entered — —, 184—. The parties appeared, and the action was continued to the — day of —, 184—, at which day the pl. appeared, and the said A. P. did not appear, but made default: And the pl. suggested to said justice that since the last continuance the said J. T. has deceased: whereupon the said action was continued to the — day of —, at which time the pl. appeared, and A. E., executor of the will of said deceased, appeared, and the said trustee is discharged with costs.

5. It is, therefore, considered, &c. (as in last form.)

If the executor does not appear voluntarily, a scire facias may issue against him. *See form 22, page 97, and form 10, page 154.*

*18. Upon disclosure for pl.]*

4. The pl. and said trustee appear, and the said A.D. did not appear, but made default; and said trustee, at the election of the pl., made his disclosure; and the same being seen and examined, it appears to me, the said justice, that said J. T. is chargeable for the sum of — dollars, being the amount in his hands, after deducting his costs, taxed at —.

6. It is, therefore, considered that the pl. recover against said def. the sum of —, and costs of suit, taxed at —.

6. It is further considered, that said pl. have execution against said J. T. for the sum of — dollars.

19. *Upon disclosure for def.]*

4. As in last form to, "it appears to me, the said justice;" then proceed: that said J. T. is not chargeable as trustee of said A. D.

5. It is, therefore, considered, &c.

6. It is further considered, that said J. T. recover against said S. P. his cost, taxed at —.

20. *Upon disclosure of specific articles.]*

4. Proceed, as in other cases, to, "and said trustee, at the election of the pl., made his disclosure; and the same being seen and examined, it appears to the court that said J. T. is chargeable as trustee of said A. D. for one waggon and harness in his hands, as set forth in his disclosure.

5. It is, therefore, considered, &c.

6. It is further considered, that said J. P. have execution against said J. T. for the sum aforesaid, to be levied upon the said waggon and harness, or so much thereof as may be necessary.

It is further considered, that said J. T. recover against said J. P. his costs, taxed at —.

21. On this judgment the execution is against the trustee in common form, except that the trustee is described "*as trustee of A. D.*"

And instead of, "*of the goods, chattels or lands of the said debtor in your precinct,*" say, "*of one waggon and harness of said A. D., in the hands of said J. T.*"

Upon this execution the officer should demand of the trustee the articles enumerated in the execution; and if delivered to him, or if they are within reach, proceed and sell, as in other cases. If the trustee refuses to deliver them, he makes return of that fact.

22. *Demand of property.]*

To J. T., of —.

You are required forthwith to deliver and expose to me one waggon and harness, mentioned in a writ of execution issued upon a judgment recovered before J. P., justice of the peace for the county of —, by S. P., of, &c., against you as trustee of A. D., now in my hands for collection.

— —, 184—.

J. P., Deputy Sheriff.

23. *Return on execution.]*

M— ss., — —, 184—. I demanded of the within named J. T. the waggon and harness within described, that the said execution might be levied thereon; and the said J. T. then and there refused to deliver or expose to me the same: wherefore I return this execution in no part satisfied.

Fees, &c.

J. P., Deputy Sheriff.

**24. Rule on trustee to show cause, &c.]**

M— ss. Before J. P., Justice of the Peace, at C., — —, 184—.

*J. P. vs. A. P., and J. T., his trustee.*

Upon the return of J. P., deputy sheriff, that said J. P. upon request had refused to deliver or expose to him one waggon and harness, for which said J. T. was adjudged chargeable as trustee of said A. D., so that said S. P. could levy his execution thereon, on motion of the plaintiff:

It is ordered that said J. T. show cause on the — day of —, at —, why execution should not issue against the said trustee, his own goods or estate, and that a copy of this order be served on the said J. T. fourteen days before said — day of —.

*J. P., Justice of the Peace.*

**Affidavit of service, see form 20, page 97.**

**25. Entry of judgment against trustee.]**

On the — day of —, upon the return, &c. (Recite the order in the past tense.)

And now, on the said — day of —, satisfactory evidence being shown to me, the said justice, that said order has been complied with, and the said T. F. appearing, and no sufficient cause being shown against the same:

It is considered that said J. P. have execution against said J. T. his own goods or estate, for the sum of —.

**26. If the specific articles are to be delivered by the trustee upon a contract, the forms are substantially the same, (see form 20, p. 230,) the judgment being “that said J. T. is chargeable as trustee of said A. D. for one bureau, &c., to be delivered by said trustee upon the contract set forth in said disclosure.” The execution would be “of one bureau, &c., to be delivered by said trustee upon a contract with said A. D.”**

**27. Stay of execution.] See form 13, page 228.**

Add at the end: “and that execution be stayed until the — day of —, 184—.”

The following form of EXECUTION is recommended by good authority.

**28. Form of execution.]****The State of New-Hampshire.**

H— ss. To the Sheriff of said County of H., or his Deputy, or to any Constable of any Town in said County.

[L. S.]

Whereas J. S., of —, &c., on the — day of —, A.D. 184—, before J. P., a justice of the peace for the county aforesaid, by the consideration of said justice recovered judgment against A. D., of —, for the sum of — dollars, and costs taxed at —: and whereas in said action E. T. of, &c., was duly summoned as trustee of said A. D., and by the

consideration of said justice it was adjudged that said E. T. was trustee of said C. D., having in his hands and possession goods and chattels of the said A. D.; and whereas said E. T., by the consideration of said justice recovered judgment for his costs, taxed at — dollars, all which appears of record, whereof execution remains to be done :

We command you, therefore, that of the goods and chattels of the said C. D. in the hands of said E. T., to be shewn to you by said E. T., you cause to be levied and paid to the said E. T. the said sum of —; and in case the said goods are sufficient for that purpose, cause to be levied and paid to said creditor the aforesaid sums, for which he has recovered judgment as aforesaid, with lawful interest thereon, and — more for this writ and your own fees. And make return of this writ, with your doings thereon, to said justice within sixty days from the date hereof. Dated the — day of —, A. D. 184—.

Upon an execution in this form the demand and return of the officer must be general of “*all the goods and chattels of the said C. D. in his hands and possession.*”

29. The preceding form would be varied in case the trustee was adjudged chargeable upon a contract to deliver specific articles, by inserting, instead of “having in his hands and possession goods and chattels of said C. D.,” “being under contract for the delivery of certain goods and chattels to said C. D.”; and inserting, “of the goods and chattels so contracted to be delivered to the said C. D. by said E. T., and now by law to be delivered by the said E. T. to said A. D., and by him shewn to you,” instead of, “of the goods and chattels of the said C. D. in the hands of the said E. T., to be shewn you by said E. T.”

30. *Rule upon def., under § 18.]*

M— ss. Court of Common Pleas, September Term, 184—.

*H. D. vs. H. P., and J. J. his trustee.*

It appearing, from the disclosure of said trustee, that at the time of the service of the pl.'s writ, and afterwards, he was indebted to said P. by a negotiable promissory note, made in this state and dated the — day of —, 184—, for the sum of — dollars and interest :

On motion of W. & M. T., attorneys for the plaintiff, *it is ordered* that said H. P. appear at said court, to be holden at C., in said county of M., on —, and answer all interrogatories respecting the possession, transfer, or other disposition of such note, and that a copy of this order be served on the said defendant fourteen days before said term.

S. C. B., Clerk.

31. *Rule upon endorsee.]*

Follow the above form to, “dollars and interest.” Then add, “*and that D. E. claims an interest in said note.*”

On motion, &c.

It is ordered that said D. E. appear at the next term of said court,

to be holden at C., in said county of M., and show that the same note was transferred to him in good faith, and for an adequate consideration, before the service of said trustee process, and that a copy of this order be served on said D. E. fourteen days before said term.

S. C. B., *Clerk.*

### 32. *Order of publication.*]

Follow form 30 to, "it is ordered"; then add, "that notice be given for the information of any person who may claim an interest in said note, so that such person may appear and show that the same, if transferred, was transferred to him in good faith, and for an adequate consideration, before the service of said trustee process, by causing a copy of this order to be published three weeks successively in the —, a newspaper printed at —, the last publication to be at least thirty days prior to said — day of —."

S. C. B., *Clerk.*"

## CHAPTER 24.

### OF THE ACTION AGAINST TENANTS.

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Leases at will—how determined.</li> <li>2. Notice, what is sufficient.</li> <li>3. Notice on breach of condition.</li> <li>4. Notice to tenant holding over.</li> <li>5. Leases at will—what are deemed.</li> <li>6. Lessee may give notice to quit.</li> <li>7. Possession of premises, how recovered of lessee or occupant.</li> <li>8. Summons, form of in such case.</li> <li>9. Summons, how served.</li> <li>10. Judgment on default or issue for plaintiff, what to be.</li> <li>11. Writ of possession, form of.</li> <li>12. Judgment for defendant—when.</li> </ol> | <ol style="list-style-type: none"> <li>13. Evidence of title not admissible under the general issue.</li> <li>14. Recognizance on plea of title.</li> <li>15. Neglect to recognize—judgment.</li> <li>16. Action to be entered in court of common pleas.</li> <li>17. Either party may appeal—when.</li> <li>18. Recognizance of plaintiff—how.</li> <li>19. Recognizance of defendant—how.</li> <li>20. Proceedings on appeal.</li> <li>21. Judgment affirmed, when.</li> <li>22. Common law remedy not affected.</li> </ol> |
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*Forms of Proceedings.*

§ 1. Any lessor or owner of any lands or tenements may at any time determine any lease at will or tenancy at suffer-



ance, by giving to the tenant or occupant a notice in writing to quit the same at a day therein named. *R. S. 424, ch. 209, § 1.*

§ 2. If any tenant or occupant neglects or refuses to pay the rent due and in arrear, upon demand, seven days' notice shall be sufficient. If the rent is payable more frequently than once in three months, whether such rent is due or not due, thirty days' notice shall be sufficient, and three months' notice shall be sufficient in all cases. *Ibid., § 2.*

§ 3. If any lessee shall violate the condition of any written lease, notice to quit at the end of seven days shall be sufficient, and equivalent to an entry for condition broken. *Ibid., § 3.*

§ 4. If any lessee shall hold over after the expiration of a definite written lease, seven days' notice shall be sufficient. *Ibid., § 4.*

§ 5. Every tenancy or occupancy shall be deemed at will, and the rent payable upon demand, unless a different contract is shown. *Ibid., § 5.*

§ 6. Any lessee may terminate his lease by notice in writing, in the same manner as the lessor, and such notice shall have the same effect for all purposes as a notice by the lessor to the lessee. *Ibid., § 6.*

§ 7. The owner or lessor of any tenement or real estate may recover possession thereof against any lessee or occupant holding the same without right, after a notice to quit the same, in the manner herein prescribed. *Ibid., § 7.*

§ 8. A writ of summons may be issued, returnable before a justice, which shall set forth in substance that the plaintiff is entitled to the possession of the demanded premises, and that the defendant is in possession of the same without right, after notice in writing to quit the same. *Ibid., 425, § 8.*

§ 9. Such writ shall be served seven days before the return day thereof, in the same manner as other writs of summons should by law be served. *Ibid., § 9.*

§ 10. If the defendant shall make default, or if on trial it shall be considered by the justice that the plaintiff has sustained his complaint, judgment shall be rendered that the plaintiff recover possession of the demanded premises, and costs. *Ibid., § 10.*

§ 11. A writ of possession shall be thereupon issued by said justice, substantially in the form prescribed by law in

the case of like writs issued by the court of common pleas. —*Ibid.*, § 11.

§ 12. If the plaintiff shall neglect to enter his action, or to support the same, judgment shall be rendered for the defendant for his costs. *Ibid.*, § 12.

§ 13. Under the general issue, the defendant shall not be allowed to offer any evidence which may bring the title to the demanded premises in question. *Ibid.*, § 13.

§ 14. If the defendant shall plead any plea which may bring in question the title to the demanded premises, he shall recognize to the plaintiff, with sufficient sureties, in such sum as the justice shall order, to enter and prosecute said action at the next court of common pleas for the county, and to pay all rent then due, or which shall become due pending said action, and the damages and costs which may be awarded against him. *Ibid.*, § 14.

§ 15. If the defendant shall neglect or refuse so to recognize, judgment shall be rendered against him in the same manner as if he had refused to make answer to the suit. *Ibid.*, § 15.

§ 16. After the filing of such plea and the entry of such recognizance, no further proceedings shall be had before such justice; but the action may be entered and prosecuted in the court of common pleas, in the same manner as if it were originally commenced there. *Ibid.*, § 16.

§ 17. Any party aggrieved by the judgment of any justice, upon issue joined in such case, may, within two hours after the rendition of such judgment, appeal to the next court of common pleas for the county. *Ibid.*, § 17.

§ 18. The plaintiff, before his appeal is allowed, shall recognize to the defendant, with sufficient sureties, in such sum as the justice may order, to enter and prosecute his appeal and to pay such costs as may be awarded against him. *Ibid.*, § 18.

§ 19. The defendant, before his appeal is allowed, shall recognize to the plaintiff, with sufficient sureties, in such sum as the justice may order, to enter and prosecute his appeal, and to pay all rent then due or which may become due pending such suit, and such damages and costs as may be awarded against him. *Ibid.*, § 19.

§ 20. The party appealing shall produce certified copies of the whole case at the court appealed to, and either party may there offer any evidence in the same manner as if the

cause had been originally commenced there. *R. S. 426, § 20.*

§ 21. If the appellant shall neglect to enter his appeal, or to produce such copies, the court, on complaint of the appellee, shall affirm the former judgment, with additional damages and costs. *Ibid., § 21.*

§ 22. Nothing in this chapter shall be construed to prevent any landlord from pursuing his legal remedy at common law. *Ibid., § 22.*

## FORMS OF PROCEEDINGS.

### 1. *Notice to quit.*]

To T. T., of M., in the county of H.

Take notice, that you are required to quit and deliver up to me, on the — day of — next, the possession of the dwelling-house (or rooms and apartments, or lands and premises) with the appurtenances, which you now hold, or claim to hold of me, situate in M., in the county of H., known as No. 12, on E. street.

M., — —, 184—.

T. L.

### 2. *Affidavit of service.*] (Written on a copy.)

I certify that on the — day of —, 184—, I gave to T. T., above named, (or left at the usual place of abode of T. T., above named) an original notice, of which the above is a true copy. T. W.

H— ss., — —, 184—. Personally appeared D. S., and made oath that the above affidavit, by him subscribed, is true.

Before me: J. P., *Justice of the Peace.*

If non-payment of the rent is relied on, a formal demand of the rent should be made, in presence of a witness.

### 3. *Notice to quit by lessee.*]

To T. L., of M., in the County of H.

Take notice, that on the — day of —, 184—, I shall quit and deliver up the possession of the dwelling-house, &c., with the appurtenances, which I now occupy, (or which you may allege that I hold of you) situate in M., in the county of H.

M., — —, 184—.

T. T.

### 4. *Summons to a tenant.*]

## The State of New-Hampshire.

H— ss. To the Sheriff of said County of H., or his Deputy, or to any Constable of any Town in said County.

[L. S.]

We command you to summon T. T., of M., in said county of H., laborer, (if to be found in your precinct) to appear before me, J. P.,

a justice of the peace for said county of H., at —, in M., in said county of H., on the — day of — next, at — o'clock in the —noon, to answer to T. L., of said M., mason, in a plea wherein the said T. L. complains that on the day of the date of this writ he is entitled to the possession of a certain dwelling-house, situate in M., in said county, known as No. 12, on E. street, in said M., with the appurtenances now occupied by said T. T., and that said T. T., on the — day of —, 184—, at said M., was duly notified in writing by said T. L. to quit the same on the — day of — last. Yet the said T. T. has continued and still is in possession of the said premises without right, and to the damage of the said T. L., as he says, the sum of — dollars. And make return of this writ, and your doings therein.

Dated the — day of —, A. D., 184—.

J. P., *Justice of the Peace.*

Service and return of this process is to be made as of other writs of summons, except as to time. *See forms 1, 2 and 3, page 61.* The proceedings in these cases are in general similar to those in other actions. The General Issue is the same as in Trespass, *form 52, page 105.*

5. PLEA: *Soil and freehold of def.] Form 53, page 105.*

The said T. T. comes and defends, &c., when, &c., and says the pl. his action aforesaid thereof against him ought not to have and maintain, because he says that at the time alleged in said declaration, to wit., on —, the said demanded premises were and still are the soil and freehold (estate and freehold) of him, the said T. T., and this he is ready to verify: Wherefore he prays judgment if the plaintiff his action aforesaid thereof against him ought to have and maintain.

6. PLEA: *Tenant lessee of a third person.]*

The said T. T. comes and defends, &c., when, &c., and says the pl. his action aforesaid thereof against him ought not to have and maintain, because he says that on the — day of — one L. O. was seized of the demanded premises in his demesne as of fee; and being so seized thereof, on the said — day of —, at —, demised the same premises to said T. T., to hold at the will of said L. O., by reason whereof the said T. T. entered, and was and still is possessed of said premises: and this he is ready to verify: Wherefore he prays judgment if the pl. his action aforesaid thereof against him ought to have or maintain.

7. *Recognizance on filing plea of title.]*

H— ss. Be it remembered, that on the — day of —, 184—, before me, J. P., a justice of the peace for the county of —, came T. T., of —, J. S., of —, and B. S., of —, and severally acknowledged themselves to be indebted to T. L., of —, in the sum of — dollars each, to be levied of their goods and chattels, lands and tenements, if default be made in the condition following; which is, that whereas the said T. L. has brought before me, the said justice, his action against said T. T., wherein he complains that said T. T. is in possession, &c., (recite the declaration,) and the said T. T. has pleaded that said demanded premises are his soil and freehold: Now if said T. T. shall

enter and prosecute said action at the next court of common pleas for said county, and pay to said T. L. all rent now due or which shall become due pending said action, and the damages and costs which may be awarded against him, then this recognizance shall be void.

Attest : J. P., *Justice of the Peace.*

8. Recognizances are usually entered into verbally, thus : The justice calls the principal and sureties by name, and upon their answering, he repeats :

You severally acknowledge yourselves indebted to T. L. in the sum of — dollars, to be levied of your goods and chattels, lands and tenements, if default be made in the condition following, which is, that if you, the said —, (principal) shall enter and prosecute this action at the next court of common pleas for the county of H., and shall pay to said T. L. all rent which is now due, or which shall become due pending this action, and the damages and costs that may be awarded against you, then this recognizance shall be void. Are you content ? To which they answer, "content."

The entry of these proceedings on the justice's docket may be thus :

"Def. pleads title.

Recognizes with A. B. } Sureties in \$120."  
and C. D. }

The full record of the recognizance is completed afterwards.

9. The Entry of Judgment and Appeal are in the same form as in other cases, (*see page 151, &c.*) except where judgment is rendered for the plaintiff. The entry is :

5. It is, therefore, considered by me, the said justice, that said T. L. recover against said T. T. a certain dwelling-house, with the appurtenances, situate in the town of —, known as, &c., and costs taxed at —.

10. The Recognizance upon Appeal is in the same form to the word "whereas ;" then add :

The said T. T., on the said — day of —, 184—, before me, the said justice, recovered judgment against said T. L. for his costs taxed at — dollars, from which judgment said T. L. prays an appeal. Now if said T. L. shall enter and prosecute said appeal at the next court of common pleas for the county of —, and shall pay all such costs as may be awarded against him, then this recognizance shall be void.

11. Or, The said T. L., on the said — day of —, 184—, before me, the said justice, recovered judgment against said T. T. for possession of a certain dwelling-house, with the appurtenances, situate in —, in said county, and costs taxed at —, from which judgment said T. T. prays an appeal. Now if said T. T. shall enter and prosecute his said appeal at the next court of common pleas for said county of —, and shall pay said T. L. all rent now due or which shall become due pending said action, and all damages and costs

which shall be awarded against him, then this recognizance shall be void.

12. *Form of writ of possession.*] See page 159.

### **The State of New-Hampshire.**

H— ss. *To the Sheriff of said County of H., or his Deputy, or to any Constable of any Town in said County.*

[L. S.] Whereas T. L., of, &c., on the — day of —, 184—, before me, J. P., a justice of the peace for the county of H., by the consideration of said justice recovered judgment against T. T., of, &c., for a certain dwelling-house, with the appurtenances, situate in the town of —, known as, &c., and costs, taxed at —, as appears of record :

We command you, therefore, that without delay you cause said T. L. to have possession of the said premises. We also command you that of the goods, chattels or lands of the said debtor in your precinct, you cause to be levied and paid to the said creditor the aforesaid sum, with lawful interest thereon, and — more, for this writ and your own fees, and in default thereof to arrest the said debtor, and commit him to jail; and the keeper of the jail is required to detain him in custody till he pay the same, with your fees, or until he is discharged by the creditor or otherwise, according to law. And make return of this writ, and your doings therein, to me, the said justice, within sixty days from the date hereof.

Dated the — day of —, A. D. 184—.

J. P., *Justice of the Peace.*

Return of Writ of Possession, *see form 43, page 182.*

## CHAPTER 25.

OF REFERENCES OF DISPUTES BY CONSENT,  
AND CONFESSIONS OF DEBT BEFORE A  
JUSTICE OF THE PEACE.

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| <ol style="list-style-type: none"> <li>1. References, when allowed.</li> <li>2. Form of agreement to refer.</li> <li>3. Agreement to be acknowledged.</li> <li>4. Reference of specific demand, mode.</li> <li>5. Reference of all demands, mode.</li> <li>6. Submission not to be revoked.</li> <li>7. Hearing may be fixed by parties.</li> <li>8. Award, how to be made.</li> <li>9. Powers of referees, and oaths.</li> <li>10. Report returned to court, how.</li> <li>11. Award, when to be made public.</li> </ol> | <ol style="list-style-type: none"> <li>12. Report accepted by court or recommitted, and proceedings.</li> <li>13. Powers of the court in such case.</li> <li>14. Fees of justices, referees, &amp;c.</li> <li>15. Costs, how allowed by referees.</li> <li>16. If amount under \$200, justice may issue execution on report.</li> <li>17. Confession of debt regulated.</li> <li>18. Record to be made by justice.</li> <li>19. Executions therefor, how served.</li> </ol> <p style="text-align: right;"><i>Forms of Proceedings.</i></p> |
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§ 1. All controversies which may be the subject of a personal action, may be submitted to one or more referees, in the mode prescribed in this chapter. *R. S. 426, ch. 210, § 1.*

§ 2. The parties may appear personally or by attorney before any justice of the peace in the county in which either of the parties resides, and there sign and acknowledge an agreement in substance as follows :

"KNOW ALL MEN BY THESE PRESENTS, That —, of —, in the county of —, and state of —; and —, of —, in the county of —, and state of —, have agreed to submit the demand made by the said — against the said —, which is hereto annexed, (or, "and all other demands between said parties," as the case may be,) "to the determination of —, the report of whom, or the major part of whom, being made as soon as may be to the court of common pleas for the said county of —, judgment thereon shall be final. And if either party shall neglect to appear before said referees, after proper notice given to them of the time and place appointed by the referees for hearing the parties, the referees may proceed in his absence.

Dated this — day of —, in the year 18—." *R. S. 427, § 2.*

§ 3. Said agreement, having been signed by each of the

parties, shall be acknowledged by them or their attorneys as their free act and deed, before the same or some other justice; and any referee, being a justice, may take said acknowledgment. *R. S. 427, § 3.*

§ 4. If a specific demand only is submitted, it may be inserted in the agreement, or the same shall be signed by the party making it, and annexed to the agreement; and such demand shall be as particular in stating the substance of the claim in controversy, as the nature of the case will admit. *Ibid., § 4.*

§ 5. If all demands between the parties are submitted to the referees, no specific demand need be annexed to the agreement. *Ibid., § 5.*

§ 6. Neither party shall have power to revoke the submission, without the consent of the other. *Ibid., § 6.*

§ 7. The parties, if so disposed, may agree upon and fix in said agreement the time and place for the hearing, for making an award thereon, and may vary the form accordingly. *Ibid., § 7.*

§ 8. All the referees must meet and hear the parties, unless the parties otherwise agree; but a majority may make an award, and their report shall be as valid as though signed by all the referees. It shall appear on the face of the award, or by the certificate of the dissenting referee, that all of them attended and heard the parties, unless the parties shall waive the same in writing on said agreement.—*Ibid., § 8.*

§ 9. The referees shall have the same authority as those appointed by rule of court, and any one of them may administer an oath to witnesses in the cause. *Ibid., § 9.*

§ 10. The report of the referees shall be delivered by one of the referees to the court to which the same is to be returned, according to the agreement; or it shall be sealed up by them and transmitted to such court, and remain sealed until opened by the clerk in open court. *Ibid., § 10.*

§ 11. If the parties agree, the referees may make known their determination prior to its being returned to the court as aforesaid; and if the parties agree to settle their dispute accordingly, said report need not be returned to court.—*Ibid., § 11.*

§ 12. The court to which any such report is made, may accept, reject or recommit the same for further consideration; and the referees, upon any recommitment, shall ap-



point a time and place for a new hearing, and give the parties notice thereof, and the proceedings thereupon shall be the same as in the original hearing. *Ibid.*, § 12.

§ 13. The court shall have the same cognizance of any such report of referees as they would have if such report were made by referees appointed under a rule from said court in a case pending therein, and may render judgment and issue execution thereon. *R. S. 428*, § 13.

§ 14. The fees of the justice for making and taking the acknowledgment of such agreement shall be fifty cents, to be paid by the party making the demand, and charged in the bill of costs. The entry and all other fees shall be the same as in suits in the same court. *Ibid.*, § 14.

§ 15. The referees may allow such costs as they may deem reasonable, unless restricted by the submission, and subject to the revision of the court for good cause shown. —*Ibid.*, § 15.

§ 16. In any case contained in the first section of this chapter, the parties may enter into an agreement to submit the same to referees as herein-before provided, and that the report of such referees shall be made to such justice, and judgment by him rendered thereon, in which case the form of said agreement may be varied accordingly. The referees shall proceed in the manner and possess the same powers as is herein-before provided, and the justice, upon receiving such report, shall render judgment and issue execution thereon for damages and costs. *Ibid.*, § 16.

§ 17. Any person may voluntarily appear before any justice of the peace in the county in which he resides, and confess that he is indebted to any other person in a sum not exceeding two hundred dollars, and consent that a record thereof be made and execution issue accordingly, or be stayed, as said parties shall agree; and the justice shall make a fair record of ~~such~~ confession and agreement, which shall be signed by the debtor and the creditor or his agent, and shall enter up judgment and issue execution thereon. —*Ibid.*, § 17.

§ 18. Every justice to whom any confession of debt or report of referees is made as aforesaid, shall keep a full and true record thereof, signed and certified by himself. *Ibid.*, § 18.

§ 19. Every execution issued by any justice as aforesaid, may be served in the same manner as if issued by the court of common pleas. *Ibid.*, § 19.

## FORMS OF PROCEEDINGS.

---

### 1. *Form of acknowledgment.*]

H— ss., — —, 184--. The above named A. B. and C. D. personally appeared, and acknowledged the above instrument to be their free act.  
J. P., *Justice of the Peace.*

### 2. *Form of demand annexed.*]

A. B., of, &c., demands against C. D., of, &c., the sum of one hundred dollars, being the price of a horse sold and delivered by said A. B. to said C. D. A. B.

Or: being the amount of the account hereunder written, namely.  
(Set out the account.)

### 3. *Agreement returnable before a justice.*]

Instead of the words in the form prescribed by the statute, "*as soon as may be, to the court of common pleas for the said county of —*," insert: "*to J. P., a justice of the peace for said county of —, at his office in —, in said county, on the — day of —, 184--, at — o'clock in the —noon.*"

If the rule is made returnable before a justice, and no day is fixed by the agreement for the return, no judgment can be rendered until a day of hearing is appointed, and the parties have been notified of it. *French vs. Shackford, 5 N. H. Rep. 143.*

### 4. *Agreement fixing day of hearing before the referees.*]

Erase, in the last clause of the statute form, the words, "*by the referees,*" and add at the end, before the date: "*It is further agreed, that the hearing be had before said referees on —, the — day of —, 184--, at — o'clock in the —noon, at the dwelling house of —, in —, in said county, without further notice.*"

Instead of the words, "*by said referees,*" may be inserted, "*by said E. F.*"

### 5. *Notice by the referees.*]

To A. B., of, &c.

We have appointed the — day of —, 184--, at — o'clock in the —noon, at the dwelling house of —, in —, in the county of —, the time and place for hearing the parties in the case submitted to us by C. D. and yourself.

E. T., }  
G. H., } *Referees.*  
J. K., }

— —, 184--.

### 6. *Notice by the chairman.*]

To A. B., of —, &c.

I have appointed the — day of —, 184--, at — o'clock in the —

noon, at the dwelling house of —, in —, in the county of —, the time and place for hearing the parties in the case submitted to G. H., J. K. and myself, by C. D. and yourself.

—, 184--.

E. T.

*7. Form of award.]*

The arbitrators named in the annexed agreement, having given to the parties due notice of the time and place of hearing, and having all heard, examined and considered the allegations, evidence and witnesses of both parties, do award that the said A. B. recover of the said C. D. the sum of — dollars, and costs of reference taxed at —.

E. T.,  
G. H., } *Referees.*  
J. K., }

—, 184--.

*8. Order of notice by justice, when no time of return of the report is fixed by the rule.]*

H— ss. Before J. P., Justice of the Peace, at M., —, 184--.

A. B. vs. C. D.

Upon the return of the award of E. T., G. H. and J. K., arbitrators appointed by A. B. and C. D., by agreement, acknowledged before me, and the award thereon made returnable before me :

*It is ordered*, that the parties be heard upon the acceptance of said award, on the — day of —, at — o'clock in the —noon, at my office in —, in said county, and that notice be given to said parties by giving to them, or leaving at their respective places of abode, a copy of this order, fourteen days before said — day of —.

J. P., *Justice of the Peace.*

*9. Certificate of service.]*

I certify that on the — day of —, 184--, I left at the usual place of abode of (or gave to) said A. B. a copy of the above order. X. Y.

H— ss., —, 184--. Personally appeared X. Y., and made oath that the above certificate by him subscribed is true.

Before me :

J. P., *Justice of the Peace.*

*10. Record of judgment on award.]*

R— ss. BE IT REMEMBERED, that on the — day of —, A. D., 184--, at — o'clock in the —noon, at the office of —, in —, in said county, A. B., of, &c., and C. D., of —, &c., on the — day of —, 184--, appeared, and signed and acknowledged an agreement in writing as follows : (Here copy the agreement :) and the demand annexed to said agreement is as follows : (Here copy the demand :) And afterwards, on the — day of —, 184--, the said arbitrators made their report to the said justice, which report is as follows, &c. (Here copy the award.)

[and thereupon it was ordered by me, the said justice, that the parties be heard upon the acceptance of said award, on the — day of —, 184--, at — o'clock in the —noon, at my office in —, in said county, and that notice thereof be given to said parties, by giving to them, or leaving at their respective places of abode respectively, a copy of said order, fourteen days before said —day of — ; and satisfactory evidence being produced to me that said order has been complied with :]

After duly considering the same, and no objection being made :  
*It is considered by me*, the said justice, that the said award be accepted, and that said A. B. recover of the said C. D. the sum of — dollars, and costs of reference taxed at —.

J. P., *Justice of the Peace.*

If a time is fixed in the agreement for the return of the award, the part in brackets may be omitted.

11. *Execution upon a judgment on an award.]*

**The State of New-Hampshire.**

R— ss. *To the Sheriff of said County of R., or his Deputy.*

Whereas A. B., of —, &c., on the — day of —, 184—, before me, J. P., a justice of the peace for said county of R., recovered judgment against C. D., of —, &c., *upon an award of arbitrators, returned before me*, for the sum of — dollars, and costs of reference taxed at — dollars, as appears of record, whereof execution remains to be done :

We command you, therefore, that of the goods, chattels or lands of said C. D. in your precinct, you cause to be levied and paid to the said creditor the aforesaid sums, with lawful interest thereon, and — more for this writ and your own fees. And make return of this writ, with your doings thereon, to me, the said justice, within sixty days from the date hereof.

J. P., *Justice of the Peace.*

Dated the — day of —, A. D., 184—.

If the judgment is for less than \$13.33, the execution may be also directed, “*and to the Constable of any Town in said County.*”

12. *Arbitration bond.]*

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of —, &c., am held and firmly bound to C. D., of —, &c., in the sum of — dollars, to be paid to said C. D., to which payment I bind myself and my heirs firmly by these presents, sealed with my seal, and dated the — day of —, 184—.

*The condition of this obligation is*, That if said A. B. shall perform the award of E. T., of —, G. H., of —, and J. K., of —, arbitrators, mutually chosen to adjudge and determine concerning all demands existing between the parties, so as said award is made in writing, ready to be delivered to the parties on or before the — day of —, then this obligation shall be void.

A. B. (*Seal.*)

The words, “*all demands,*” are sufficient to include any thing ordinarily included in the verbiage of the common bond. *Shep. Touchstone, 343.*

13. *Confession of debt.]*

To J. P., a Justice of the Peace for the County of —.

I, A. B., of, &c., do confess that I justly owe and stand indebted to C. D., of, &c., in the sum of — dollars; and we, A. B. and C. D., do consent and agree that a record thereof be made, and judgment

rendered by you in favor of said C. D. against said A. B., for the said sum of — dollars, and that execution be stayed till the — day of — next.

— —, 184--.

A. B.  
C. D.

14. *Record of judgment.*]

R— ss. BE IT REMEMBERED, that on this — day of —, 184--., voluntarily appeared before me, J. P., a justice of the peace for the county of R., the above named A. B., and C. D., and subscribed the foregoing agreement :

It is, therefore, considered by me, the said justice, that the said C. D. recover against the said A. B. the sum of — dollars, upon the confession aforesaid.

J. P., *Justice of the Peace.*

The execution is like form 11, page 245, except that instead of the words, "*upon an award of arbitrators returned before me,*" is inserted, "*upon the confession of said A. B.*"

15. *Bond with authority to enter a confession of judgment.*]

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of, &c., am held and firmly bound to C. D., of, &c., in the sum of — dollars, to be paid to said C. D.; to which payment I bind myself and my heirs firmly by these presents, sealed with my seal, and dated the — day of —, 184--.

*The condition of this obligation is,* That if said A. B. shall pay to said C. D. the sum of — dollars, and interest, on the — day of — next, this obligation shall be void.

And I hereby authorize any attorney of the court of common pleas to appear for me, in any proper court, in an action of debt to be there brought against me at the suit of said C. D., and confess judgment therein for the sum of — dollars, and interest, and costs of suit, and I hereby release all errors in such judgment.

Signed, sealed and delivered  
in presence of :

A. B. (*Seal.*)

16. *Separate warrant of attorney to confess a judgment.*]

BE IT KNOWN, That I, A. B., of, &c., do hereby authorize any attorney of the court of common pleas to appear for me, in any proper court, in an action of debt to be there brought at the suit of said C. D., and confess judgment therein for the sum of — dollars and interest, and costs of suit, and I hereby release all errors in such proceedings and judgment.

Witness my hand and seal, the — day of —, 184--.

Signed, sealed and delivered  
in presence of :

A. B. (*Seal.*)

Such power of attorney is not revocable. *Paley on Agency*, 184.

## CHAPTER 26.

## OF PENALTIES AND PENAL ACTIONS.

- |                                                                                                                                                                                                          |                                                                                                                                                                                                                                        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Penalties and forfeitures, how recovered.<br>2. Penalties and forfeitures, how appropriated.<br>3. Time of neglect, how reckoned.<br>4. Trial, where to be had.<br>5. Justice, when qualified to sit. | 6. General issue may be pleaded, effect.<br>7. If private prosecutor neglects to prosecute, how prosecuted.<br>8. Limitation of prosecutions.<br>9. If a penalty belongs to a town, suit, how brought.<br><i>Forms of Proceedings.</i> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

§ 1. All penalties and forfeitures may be recovered by action of debt, before a justice of the peace, if such penalty or forfeiture do not exceed thirteen dollars thirty-three cents; otherwise before the court of common pleas, by any person who will sue for the same, unless otherwise provided by law. *R. S. 429, ch. 211, § 1.*

§ 2. Every such penalty and forfeiture shall be, one half for the use of the county in which the offence is committed, the other half for the use of the prosecutor, unless otherwise limited by law. *Ibid., § 2.*

§ 3. When any penalty shall be imposed by any law for any neglect for any period of time, such neglect may be alleged to have commenced at any specified time, and shall be reckoned from the time so alleged. *Ibid., § 3.*

§ 4. All actions, informations and indictments, founded on any penal statute, shall be brought within the county in which the offence is committed, and not elsewhere. *Ibid., § 5.*

§ 5. In actions for the recovery of any penalty before any justice, it shall be no cause of exception that such justice resides or has property within the town in which the offence was committed, or that the penalty or any part thereof may belong to such town. *R. S. 430, § 6.*

§ 6. The defendant in any such action may plead the general issue, and under it give any special matter in evidence. *Ibid., § 7.*

§ 7. If a fine or forfeiture, or any part thereof, is given by any statute to any prosecutor, and no person shall pro-

secute therefor within the time limited by such statute; an information may be filed or an indictment be found therefor, within one year after such limitation shall expire, and the penalty shall accrue to the use of the county. *Ibid.*, § 8.

§ 8. All suits or prosecutions founded upon any penal statute, which are wholly or in part for the use of the prosecutor, shall be brought within one year; and all other suits or prosecutions on such statute, within two years after the commission of the offence, unless otherwise specially provided. *Ibid.*, § 9.

§ 9. When any penalty, or forfeiture, or any part thereof, shall be given to any town by any penal statute, the selectmen may sue therefor in the name of such town which shall be entitled to the benefit, and shall defray the expenses of such prosecution, and the selectmen may remit any such penalty or forfeiture. *Ibid.*, § 10.

As but a small number of actions for penalties are within the jurisdiction of a justice, a few forms only are given.

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## FORMS OF PROCEEDINGS.

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### 1. *For selling by unsealed weights.*

To answer to J. P., of M., in said county, yeoman, who sues this action as well for the use of the town of M., in said county, as for himself, in a plea of debt, for that the said T. D., at said M., on the — day of —, 184—, did unlawfully and knowingly sell to one A. B. fourteen pounds of sugar by a scale beam and weights not proved and sealed by the sealer of weights and measures for said town of M., one R. S. then and there being the sealer of weights and measures for said town of M., duly elected, sworn and qualified, contrary to the form of the statute in such case made and provided; whereby an action has accrued to said J. P. to have and recover of said T. D. a sum not less than one dollar nor more than ten dollars, one half for the use of said town of M., in which said offence was committed, and the other half to his own use. Yet the said T. D., though requested, has never paid the same.

### 2. *For keeping gunpowder contrary to law.*

To the town of N., in the county of H., who sue this action by

the firewards of said town, in a plea of debt, for that the said T. D., at said N., on the — day of —, did knowingly and unlawfully keep, in a certain store occupied by him, situate in the compact part of said town of N., a quantity of gunpowder greater than twenty-five pounds, to wit., of the weight of fifty pounds, for the space of two days, to wit., from the hour of noon of said — day of —, till the hour of noon on the — day of —, contrary to the form of the statute in such case made and provided; whereby an action has accrued to the said town of N. to have and recover of said T. D. a sum not more than five dollars nor less than one dollar, for each day the said gunpowder was so kept as aforesaid. Yet the said T. D., though requested, has never paid the same.

### 3. *For rudeness in a house of public worship.*]

To T. P., of —, &c., one of the police officers of the town of D., in said county of S., who sues this action for the use of the said town of D., in a plea of debt, for that said T. D., at said D., on the — day of —, 184—, being the Lord's day, did behave rudely and indecently within the walls of the meeting-house of the — Society in said D., then and there being a house of public worship, in the time of the public service therein, by making a great noise therein, and wilfully interrupting and disturbing the people of said society then and there assembled in said meeting-house for public worship, contrary to the form of the statute in such case made and provided; whereby an action has accrued to said T. P. to have and recover of said T. D. a sum not exceeding six dollars nor less than one dollar, for the use of said town of D. Yet the said T. D., though requested, has never paid the same.

### 4. *For leaving a nuisance in the street.*]

To the town of K., in the county of C., who sue this action by the health officers of said town, in a plea of debt, for that said T. D. at said K., on the — day of —, did unlawfully place and leave in a certain public street in said town of K., called — street, the dead carcass of a horse, being a substance liable to become putrid and offensive, contrary to the form of the statute in such case made and provided; whereby an action has accrued to said town of K. to have and recover of said T. D. a sum not more than ten dollars nor less than one dollar. Yet, though requested, said T. D. has never paid the same.

### 5. *For cutting trees.*]

To T. P., of —, &c., in a plea of debt, for that the said T. D. at said —, on the — day of —, 184—, did unlawfully and wrongfully cut, fell and destroy one rock maple tree, of the diameter of one foot, of the value of two dollars; and two black birch trees, of less than one foot in diameter, of the value of one dollar each, then standing on land of which the said T. P. was then and there the owner, situate in said —, bounded, &c., the said T. D. having no right there, and without leave from said T. P., contrary to the form of the statute in such case made and provided; whereby an action has accrued to the plaintiff to have and recover of said T. D. the sum of five dollars for said first mentioned tree, and two dollars each



for said last mentioned trees, being three times the value thereof, amounting in the whole to the sum of nine dollars. Yet the said T. D., though requested, has never paid the same.

6. *For cutting timber trees.*]

To T. P., of, &c., in a plea of debt, for that the said T. D. at said —, on the said — day of —, 184—, did unlawfully and wilfully cut, fell and destroy one pine timber tree, of the value of two dollars, then standing and growing on land of which the said T. P. was then and there the owner, situate in said —, without leave of the said T. P., contrary to the form of the statute in such case made and provided; whereby an action has accrued to the said T. P. to have and recover of the said T. D. the sum of ten dollars, being five times the value of the said tree so cut, felled and destroyed. Yet the said T. D., though requested, has never paid the same.

The General Issue in these actions is in the form given page 105, form 51.

The Judgment is, with few exceptions, in the common form. See pages 151 to 157.

The name of the plaintiff is stated as in the writ; and in cases where the penalty is divided the entry is—

5. It is, therefore, considered by me, the said justice, that said — recover against said — the sum of — dollars, one half for his own use, and the other half for the use of the county of —, (or, of the town of —) and costs taxed at —.

## CHAPTER 27.

### OF FORFEITURES OF PERSONAL PROPERTY.

- |                                        |                                           |
|----------------------------------------|-------------------------------------------|
| 1. Seizure of property forfeited, how. | 6. Property appraised and restored, when. |
| 2. Libel to be filed, when and where.  | 7. Mode of trial and decree.              |
| 3. Warrant thereon, how issued.        | 8. Costs on trial, how allowed.           |
| 4. Notice of libel to be given.        | 9. Appeal and proceedings thereon.        |
| 5. Property may be sold, how.          | <i>Forms of Proceedings.</i>              |

§ 1. Where any personal property shall be forfeited for any violation of law, any sheriff, deputy sheriff, constable, or any

person by law authorized to seize the same, may take and retain such property until he shall deliver it to a proper officer having a warrant to detain the same. *R. S. 431, cā. 212, § 1.*

§ 2. The person making or directing such seizure, shall, without unnecessary delay, file a libel before a justice, if the property does not exceed in value thirteen dollars thirty-three cents, otherwise in the office of the clerk of the court of common pleas, stating the cause and praying for a decree of forfeiture. *Ibid., § 2.*

§ 3. Upon the filing before or after seizure of any libel for a forfeiture, a warrant shall be issued to the proper officer, requiring him to take such property into his custody, and detain the same until legally disposed of. *Ibid., § 3.*

§ 4. Notice of such libel shall be issued by the court or justice to the owner, if known; otherwise notice shall be published in some newspaper printed in the vicinity, that all persons interested may appear at the time and place appointed for trial, and show cause why a decree of forfeiture should not be passed. *Ibid., § 4.*

§ 5. If any person interested shall appear and claim such property, the same may be sold by consent of parties; or it may in any case be sold, upon examination and a certificate of its perishable or expensive character, in the same manner as property attached may be examined and sold. *Ibid., § 5.*

§ 6. If such claimant shall request it, such property shall be appraised in the same manner as property attached may be appraised; and it shall be delivered to such claimant upon his giving bond to pay to the persons entitled thereto the appraised value thereof and costs, in case a decree of forfeiture is made. *R. S. 432, § 6.*

§ 7. The case may be tried by a jury, if in the court of common pleas, upon the request of either party, otherwise by the court; and the cause of forfeiture alleged being proved, the court or justice who shall try the same shall make a decree for the forfeiture and disposition of such property according to law. *Ibid., § 7.*

§ 8. Costs may be awarded to the libellant, if a reasonable cause of seizure appear, in which shall be included the necessary expenses of the seizure and detention of the property—otherwise reasonable costs and damages shall be awarded to the claimant. *Ibid., § 8.*

§ 9. An appeal may be claimed by either party from any decree made by a justice of the peace, in the same manner as in civil actions; and the like proceedings may be had therein as in case of libels originally filed in the court of common pleas. *Ibid.*, § 9.

## FORMS OF PROCEEDINGS.

### 1. *Libel or complaint for shipping beef not inspected.*]

To J. P., a Justice of the Peace for the County of R.

C. D., of, &c., complains that E. F., of, &c., on the — day of —, in the year of our Lord one thousand eight hundred and forty—, at P., in said county of —, put and shipped for exportation from this state, on board of the ship Nancy, now lying in the harbor of P. aforesaid, one barrel of salted beef, of the value of eight dollars, not inspected and branded as by law is required, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the state; whereby the said barrel of beef has become forfeited. Wherefore the said C. D. prays that said beef may be seized and secured for trial, and that a decree of forfeiture may be passed against the same.

C. D.

R— ss. On the — day of —, A. D. 184—, C. D. appeared and made oath that the above complaint by him subscribed is in his belief true.

Before me: J. P., *Justice of the Peace.*

2. If the beef has been previously seized, proceed as in last form, to "dignity of the state;" then add, "Whereby the said barrel of beef became forfeited; and the said C. D. then being a deputy sheriff of said county of R., (or, constable of the town of P., or, an inspector of beef and pork,) on the — day of — did seize and take, and now retains the same; wherefore said C. D. prays that a warrant may be issued to a proper officer, requiring him to take and detain the same until legally disposed of, and that a decree of forfeiture may be passed against the same."

### 3. *If the shipper is unknown,*

The allegation may be, "that some person unknown to this complainant, on" &c.

### 4. *Form of warrant.*]

## The State of New-Hampshire.

R— ss. To the Sheriff of said County of R., or his Deputy, or to any [L. S.] Constable of any Town in said County.

Whereas C. D., of —, &c., has exhibited to me, J. P., a justice of the peace for the said county of R., his complaint upon oath, that E. F. of, &c. (Here insert the whole complaint.)

We command you to seize and take into your custody the said

barrel of beef, and safely detain the same until it shall be legally disposed of. Dated the — day of —, A. D. 184—.

J. P., *Justice of the Peace.*

5. *Order of notice—personal.*]

R— ss. Before J. P., Justice of the Peace, at P., — —, 184—.

C. D., complainant, *vs.* One Barrel of Beef.

Upon the filing of the foregoing libel and complaint, It is ordered that notice be given to the said E. F., to appear before me, J. P., a justice of the peace for said county, on the — day of —, 184—, at — o'clock in the —noon, at my office in P., in said county, and show cause, if any he has, why a decree of forfeiture should not be passed against said barrel of beef, by giving to (or leaving at the usual place of abode of) said E. F. a copy of said libel and of this order, fourteen days before said — day of —.

J. P., *Justice of the Peace.*

6. *Order of notice by publication.*]

Proceed, as in last form, to "It is ordered": then say, that notice be given to all persons interested, to appear before me, J. P., a justice of the peace for said county, on the — day of —, 184—, at — o'clock in the —noon, at — in P., in said county, and show cause, if any they have, why a decree of forfeiture should not be passed against said barrel of beef, by causing a copy of said libel to be published in the —, a newspaper printed at said P., three weeks successively before said — day of —.

J. P., &c.

7. *Claim of property seized.*]

R— ss. Before J. P., Justice of the Peace, at P., — —, 184—.

C. D., complainant, *vs.* One Barrel of Beef.

And now E. F., of, &c., appears here in court, and claims the said barrel of beef, in said complaint mentioned, as his property.

By his attorney, J. B.

8. *General issue.*]

And said E. F. comes and defends, &c., when, &c., and says that the said barrel of beef, in said complaint mentioned, did not become forfeited, as in said complaint is alleged, and of this he puts himself on trial.

By his attorney, J. B.

And the said complainant doth the like,

By, &c.

9. *Record of judgment.*]

R— ss. Be it remembered, that before me, J. P., a justice of the peace, at P., in said county, on the — day of —, 184—, came C. D., of, &c., and on oath complained that: (here copy the complaint or libel;) whereupon a warrant was issued, as follows: (here copy the warrant;) and it was ordered, (here copy the order of notice;) and on the said — day of — E. T. appeared and filed his claim, as follows: (Here copy the claim, then copy the general issue and joinder.)

And after hearing and considering the allegations, evidence and arguments of the parties, it appears to me, the said justice, that the

said barrel of beef has become forfeited, as in said complaint is alleged:

It is, therefore, decreed by me, the said justice, that said barrel of beef be adjudged forfeited, and that the said C. D. recover against said E. F. his costs, including the necessary expenses of the seizure and detention of said property, taxed at —.

And because it appears to me, the said justice, by the return of S. W., deputy sheriff, upon the warrant issued to take and detain the said barrel of beef, that the same has been sold by him by consent of parties, (or upon an examination and certificate of its perishable character) for the sum of — dollars, it is decreed that the said sum of — dollars be paid to said C. D.

10. If the property has been delivered to the claimant on bond, say:

And because it appears to me, the said justice, by the return of S. W., deputy sheriff, upon the warrant issued to take and detain the said barrel of beef, that the said barrel of beef has been appraised and delivered to said E. F., upon his giving bond to pay the appraised value thereof to the person entitled thereto, it is decreed that the said appraised value be paid to said C. D.

11. If the property remains in the hands of the officer, add, after the words, "*adjudged forfeited*,"

and that the said barrel of beef be delivered by the said deputy sheriff (his lawful fees and charges being first paid) to the said C. D.

12. If the property is not decreed forfeited, say:

It appears to me, the said justice, that the said barrel of beef has not become forfeited, and that the same be restored to said E. F., (or, the proceeds of the sale of the said barrel of beef be restored to said E. F.; or, that the bond given by said E. F. to said C. D. be returned to said E. F.)

It is further considered, that said E. F. recover against C. D. his costs, taxed at —.

The same forms, with slight modifications, may be adapted to the case of Butter, Hops, Potash and Shingles. *See Revised Statutes.*

The returns of seizure and sale by consent, and on examination and appraisal, need not greatly differ from those given *pages 71 to 76.*

13. *In case of gunpowder.*]

To J. P., a Justice of the Peace for the County of M.

C. D., of C., in said county, yeoman, complains that a certain two horse waggon, upon which there then was a greater quantity of gunpowder than twenty-five pounds, to wit., five casks of gunpowder, of the weight of twenty-five pounds each, the property of E. F., was unlawfully stopped, placed, left and permitted to stand, in the public street called Main Street, in said C., near to, to wit., within sixteen feet of the dwelling-house of one —, in the compact part of said town of C., for a long space of time, to wit., for the space of six

hours, contrary to the form of the statute in such case made and provided; whereby the said five casks of gunpowder became forfeited. Wherefore, &c., as in forms 1 and 2.

The entry of an appeal is in the same form as in page 156, form 19.

## CHAPTER 28.

### OF THE ADMINISTRATION OF OATHS OF OFFICE,

- |                                                           |                                                  |
|-----------------------------------------------------------|--------------------------------------------------|
| 1. Oath to support the constitution of the United States. | 7. Affirmation instead of oath—when.             |
| 2. Oaths to be taken by all officers.                     | 8. Ceremony in swearing.                         |
| 3. Oath of allegiance.                                    | 9. Oaths, by whom administered.                  |
| 4. Oath of office.                                        | 10. Justice to record oaths.                     |
| 5. Persons scrupulous may affirm.                         | 11. Oaths to town officers—by whom administered. |
| 6. No officer to act till sworn.                          | 12. Oath of town officers.                       |
- Forms.*

§ 1. By the constitution of the United States, Art. VI., "all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this constitution." *R. S. 11.*

§ 2. By the constitution of New-Hampshire, Part 2, § 84, Any person chosen governor, counsellor, senator or representative, military or civil officer, (town officers excepted,) accepting the trust, shall, before he proceeds to execute the duties of his office, make and subscribe the following declaration, viz.:

§ 3. 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.  
—*R. S. 37.*

§ 4. I, A. B., do solemnly and sincerely 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.

§ 5. Any person having taken and subscribed the oath of allegiance, and the same being filed in the secretary's office, he shall not be obliged to take said oath again. Provided, always, when any person chosen or appointed as aforesaid shall be of the denomination called Quakers, or shall be scrupulous of swearing, and shall decline taking the said oaths, such person shall take and subscribe them, omitting the word "*swear*," and likewise the words, "*So help me God*," subjoining instead thereof, "*This I do under the pains and penalties of perjury*." R. S. 38.

§ 6. No person chosen or appointed to any public office under any law of this state, shall exercise such office, or shall perform any act therein, until he shall have taken the oath of office therefor. R. S. 69, § 4.

§ 7. If any person is conscientiously scrupulous of swearing, the word "*affirm*" may be substituted for "*swear*," in the form of the oath; and the words, "*this you do under the pains and penalties of perjury*," instead of, "*So help you God*." Such affirmation shall, for all purposes, be and constitute an oath. *Ibid.*, § 5.

§ 8. No other ceremony shall be deemed necessary in swearing than holding up the right hand. *Ibid.*, § 6.

§ 9. Official oaths may be administered as follows: To the clerk of any court, by any two justices thereof; to all military officers, above the rank of field officers, and to all other officers appointed by the governor and council, by any two members of the council, or by any member of the council with a justice of the peace, or by any two justices of the peace, one of whom shall be of the quorum; and to all other officers by any justice of the peace within his county. *Ibid.*, § 7.

§ 10. Every justice of the peace shall keep a record of every such oath by him administered, in a book to be kept for that purpose, and shall make return to the office of the secretary of state of every oath by him administered to any officer appointed by the governor and council, within six months after such oath is administered. *Ibid.*, § 8.

§ 11. Every town officer shall take the oath of office by law prescribed, before the moderator, the town clerk, one of the selectmen, or a justice of the peace, who are hereby authorized to administer such oath. R. S. 97, § 1.

§ 12. The form of the oath to be administered to town officers shall be :

“ You do solemnly swear, that you will faithfully and impartially discharge and perform all the duties incumbent on you as a —, according to the best of your abilities, agreeably to the rules and regulations of the constitution and laws of the state of New-Hampshire. So HELP YOU GOD.” *Ibid.*, § 2.

1. *Certificate of oaths.*]

In all cases where the oath is required to be certified to the secretary of state, the oath of allegiance, § 3, should be written at length and signed; then the oath of office, § 4, and signed; then add :

STATE OF NEW-HAMPSHIRE :

H— ss. On the — day of —, 184—, the said — — took and subscribed the above oaths, before us :

Or : — —, } *Justices of the Peace and*  
               — —, } *of the Quorum.*  
               — —, } *Justice of the Peace and Quorum.*  
               — —, } *Justice of the Peace.*

Printed forms are usually sent by the secretary with the commission.

2. *Record of oath.*]

H— ss. On the — day of —, 184—, R. R. took and subscribed the oath of allegiance and oath of office, as a justice of the peace and quorum.

Before — —, } *Justices of the Peace and*  
               — —, } *Quorum.*

Attest : — —, *Justice of the Peace.*

The oath of office, when administered by one justice, is in similar form, except that it is signed merely

J. P., *Justice of the Peace.*

3. If several take the oath together the record may be :

H— ss. On the — day of —, 184—, the following persons respectively took and subscribed the oath of allegiance and oath of office, namely :

C. C., as Captain ;  
 L. L., as Lieutenant ;  
 E. E., as Ensign ;  
 L. C., as Clerk, &c.,

of the First Company of Light Infantry in the Ninth Regiment of New-Hampshire Militia.

Before J. P., *Justice of the Peace.*

The certificate to be returned to the town clerk is a certified copy of the record of the oath.



## CHAPTER 29.

### OF THE POWERS OF JUSTICES RELATING TO MARRIAGES.

- |                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Banns must be published.</li> <li>2. Certificate of publishment given.</li> <li>3. Who may solemnize marriages.</li> <li>4. Fees for solemnizing marriages.</li> <li>5. Certificates of marriage to be returned to town clerk.</li> </ol> | <ol style="list-style-type: none"> <li>6. Penalty for not returning such certificate.</li> <li>7. Penalty for solemnizing a marriage not authorized.</li> <li>8. Penalty for solemnizing marriage by person not authorized.</li> <li>9. Age of consent in females, 12; in males, 14.</li> </ol> <p style="text-align: center;"><i>Forms of Proceedings.</i></p> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

§ 1. All persons residing in this state, proposing to be joined in marriage, shall have their intention published on three several public meeting days, in the respective towns where the parties dwell, by the clerks of such towns. If either party lives in a town where there is no clerk, such publishment shall be made in some town next adjoining.—*R. S. 291, ch. 147, § 4.*

§ 2. Such town clerk shall give to either of said parties a certificate, under his hand, that the intention of marriage between said parties has been published as is above provided, which certificate shall be produced to the magistrate or minister who is to marry said parties, before such marriage is solemnized; for which certificate said clerk shall receive fifty cents. *Ibid.*, § 5.

§ 3. Marriages may be solemnized by any justice of the peace, within any county for which he is commissioned, and throughout the state by any minister of the gospel who has been ordained according to the usages of his denomination, and who resides within this state and is in regular standing with the denomination to which he belongs. *Ibid.*, § 6.

§ 4. The persons so joined in marriage by any minister or justice shall pay such minister or justice one dollar. *Ib.*, § 7.

§ 5. Every justice or minister shall make and keep a particular record of all marriages solemnized before them respectively. Every minister who solemnizes any marriage

out of the county in which he dwells, shall return to the clerk of the town in which such marriage is solemnized, within thirty days, and every other minister or justice, shall return to the clerk of the town in which he lives, in the month of March in each year, a copy of such record, containing the christian and surnames of all persons who have been joined in marriage by or before him since his last return, the place of abode of each, and the date of such marriage. *R. S. 291, § 9.*

§ 6. If any justice or minister shall neglect to make return of any marriage by or before him solemnized, according to the provisions of this chapter, he shall forfeit for each offence five dollars to any person who shall sue therefor.—*Ibid., § 11.*

§ 7. If any minister or justice of the peace shall, without a certificate of publishment, as herein-before provided; or shall, contrary to the provisions of this chapter, join any persons in marriage, he shall forfeit for each offence sixty dollars, to the use of the parent, master or guardian of either of the parties who will first sue therefor. *Ibid., § 12.*

§ 8. If any person, not authorized by this chapter to solemnize marriages, shall join any persons in marriage with or without publishment, he shall be punished by fine not less than one hundred nor more than three hundred dollars, one half to the use of the complainant and the other half to the use of the county in which the offence is committed.—*Ibid., § 13.*

§ 9. The age of consent shall be deemed to be, in the case of a female, twelve years, in the case of a male, fourteen years. *Ibid., § 15.*

*Note.* No particular marriage ceremony is required by law. Every clergyman adopts his own form, or that of his denomination. All that seems to be essential is, a declaration by the parties of their intention to be thus married, and the presence of a clergyman or magistrate, acting as such, on the occasion.

## FORMS OF PROCEEDINGS.

### 1. *The following form may be adopted.*]

The justice, addressing the man by name, may say :

J. M., do you take J. N. to be your wife? Do you promise to be to her a kind and faithful husband, so long as you both live?

To which the man answers, "I do;" or otherwise assents.

The justice may then address the woman :

J. N., do you take J. M. to be your husband? Do you promise to be to him a kind and faithful wife, so long as you both live?

To which she answers, "I do;" or otherwise assents.

The justice may then say :

I then declare you lawfully married.

### 2. *Record of a marriage.*]

H— ss. On the — day of —, 184—, at —, in said county, came J. H., of —, and J. W., of —, and were lawfully joined in marriage.

Before me : J. P., *Justice of the Peace.*

As one object of the law on this subject is to preserve evidence of the marriage, a form by which the signatures of the parties and of the witnesses present should be upon the record, might be thought by some an improvement. For example :

### 3. *To J. P., a Justice of the Peace for the County of R.*

T. H. and T. W., both of —, in said county, shew that we have contracted and do now agree to enter into the marriage covenant with each other, and faithfully to perform all the duties to each other resulting from the relation of husband and wife, so long as we shall both live. Our intention of marriage has been duly published, and we therefore request you to solemnize and record our marriage.

Witnesses :

A. H.

B. H.

C. W.

R. W., &c.

J. H.

J. W.

4. R— ss. On the — day of —, 184—, at —, in said county, personally came before me, J. P., a justice of the peace for the county of R., J. H. and J. W., both of —, in said county, and in my presence subscribed the foregoing application, and declared the same to be their deliberate act : Whereupon the said J. H. and J. W. were lawfully joined in marriage, in presence of the above named witnesses :

Before me : J. P., *Justice of the Peace.*

The justice is required to return to the town clerk a copy of his record of all marriages entered into before him for the year, whatever the form of his record may be. It should be certified, as a copy of record.

## CHAPTER 30.

OF THE POWERS OF JUSTICES AS TO STRAYS  
AND LOST GOODS.

- |                                                          |                                             |
|----------------------------------------------------------|---------------------------------------------|
| 1. Notice to be given to town clerk.                     | 8. Expenses adjusted by a justice.          |
| 2. Town clerk to record such notice.                     | 9. Owner liable for expense, if stray dies. |
| 3. Finder to post notices.                               | 10. Penalty for neglect of finder.          |
| 4. Appraisers to be appointed.                           | 11. Penalty for neglect of town clerk.      |
| 5. Appraisers' oath and return.                          | 12. Strays not to be taken up, when.        |
| 6. Finder to keep property not claimed for a year, when. | 13. Fees of finder, justice and clerk.      |
| 7. Owner entitled to property, on payment of expenses.   |                                             |

*Forms of Proceedings.*

§ 1. The person finding any money or goods, or finding and taking up any stray beast, the owner of which is unknown, shall give to the town clerk a notice in writing, describing the money, goods or beast, within six days after so finding or taking up the same. *R. S. 260, ch. 139, § 1.*

§ 2. The town clerk shall record such notice in a book to be by him kept for that purpose. *Ibid., § 2.*

§ 3. The finder of such property shall, within six days after finding or taking up the same, post up a notice describing the money, goods or beast, at two public places in the town where the same was found, and if the value thereof exceed five dollars, at some public place in each of two adjoining towns, or cause a copy of such notice to be published three weeks successively in some newspaper circulating in such towns. *Ibid., § 3.*

§ 4. If no owner shall appear within one month after notice given as aforesaid, the finder shall apply to a justice, who shall appoint three persons to appraise such property, unless the same be money. *Ibid., § 4.*

§ 5. The appraisers shall be sworn by the justice to the faithful discharge of their duty, shall appraise the property, and make a return of their appraisal to the justice. *R. S. 261, § 5.*

§ 6. If the owner of such property or beast shall not appear and claim the same within one year after notice given to the town clerk, the person finding or taking up the same

may keep the property for his own use, upon paying to the town treasurer the residue of such money, or of the appraised value of such property or beast, after deducting the fees and expenses incurred. *Ibid.*, § 6.

§ 7. The owner, within one year, upon paying or tendering to the finder a reasonable sum for the keeping, charges and fees incurred, shall be entitled to his property. *Ibid.*, § 7.

§ 8. Any justice shall adjust and determine the amount of the fees and charges of the finder, clerk, appraisers and justice, and the expense of keeping, on application of any person interested. *Ibid.*, § 8.

§ 9. The owner of any stray beast shall be liable to the person taking up the same, for such fees, charges and expenses, in case the beast should die without the fault or negligence of the finder. *Ibid.*, § 9.

§ 10. If any person finding any property, or taking up any beast, shall neglect to give notice to the town clerk, or to post up notices, as before prescribed, or to cause such appraisal to be made, he shall receive nothing for his services or expenses, and shall forfeit a sum equal to double the value of the property found or beast taken up. *Ibid.*, § 10.

§ 11. If any town clerk shall omit to record any notice as aforesaid, or if any person shall pull down or destroy any notice so posted, till the purpose thereof is answered, he shall forfeit the sum of thirty dollars. *Ibid.*, § 11.

§ 12. No beast, except horses and mules, shall be taken up as a stray, from the first day of April to the first day of November in any year, unless the same shall be found doing damage in some enclosure. *Ibid.*, § 12.

§ 13. The fees for notifying the clerk shall be twenty-five cents; for each advertisement, twenty-five cents; for recording the notice, ten cents; for appointing appraisers, twenty-five cents; for receiving and recording the appraisal, twenty-five cents; for adjusting the charges and expenses, twenty-five cents. *Ibid.*, § 13.

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## FORMS OF PROCEEDINGS.

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1. *Form of notice to town-clerk of goods found.*  
To the Town-Clerk of N., in the County of H.

Notice is hereby given that on the — day of —, 184—, I found in

the public highway in said town of N., one buffalo skin, marked "C. & J.", the owner of which is unknown to me.

N., — —, 184—.

P. F.

*2. Notice of beasts taken up as strays.]*

Follow last form to "184—"; then say: I found doing damage in my enclosure, in the town of N., and took up as an estray, one red heifer, about three years old, with a white spot on her left rump, the owner of which is to me unknown.

N., — —, 184—.

P. F.

If the animal is a horse or mule, the words, "*doing damage in my enclosure*," may be omitted, and the words, "*going at large*," may be inserted.

It may be advisable to make copies of the notice given to the town clerk, and of that posted up, and to have the town clerk make a minute of receiving notice; and some disinterested person make a like minute of serving the notices posted up. The matter may come in question long afterward, when it may be extremely difficult to prove the facts, unless some such precaution is taken.

*3. Notice to be published or posted up,]*

may be in the same form, except that instead of the address, "To the Town-Clerk", &c., may be inserted the word, "FOUND," or "STRAY."

*4. Application to justice for an appraisal.]*

To J. P., a Justice of the Peace for the County of H.

P. F., of N., in said county, shew that on the — day of —, 184—, I found going at large in said town of N., and took up as an estray, one black horse, with a switch tail and his right hind foot white, the owner of which is to me unknown; and on the same day I gave a written notice thereof, describing the same, to the town-clerk of said town of N., and posted up like notices at the tavern of A. B. and at the tavern of C. D., being two public places in said town of N., and at the tavern of E. F., a public place in the town of H., and at the post office, a public place in the town of N., said towns of H. and N. being adjoining towns to said town of N.: That more than one month has elapsed since said notices were given and posted up as aforesaid, and no owner has appeared to claim said horse; you are therefore requested to appoint three persons to appraise said horse.

N., — —, 184—.

P. F.

The first clause in the application will be in the same form as the notice.

*5. If notice is given by publication,]*

Say: "and caused a like notice to be published three weeks successively, on the —, — and — days of —, in the N. G., a newspaper published at said N., and circulated in the said town of N., and the adjoining towns of H. and N., in said county."

6. *Appointment of appraisers.*] (Written on the application.)  
To D. E., F. C. and L. Q., all of N., in the county of H.

[L. S.] Upon the foregoing application, you are appointed to appraise the horse mentioned in said application, being first sworn to the faithful discharge of your duty, and to make return of your doings to me. Dated the — day of —, 184—.

J. P., *Justice of the Peace.*

7. *Oath of appraisers.*]

H— ss., — —, 184—. Personally appeared D. E., F. C. and L. Q., and made oath that they would faithfully and impartially appraise the horse mentioned in the foregoing warrant, according to the best of their judgment. Before me: J. P., *Justice of the Peace.*

8. *Appraisal.*]

We have carefully examined and appraised the horse mentioned in this warrant, and do upon our oaths say that said horse is of the value of twenty dollars and no more.

D. E.,  
F. C., } *Appraisers.*  
L. Q., }

N., — —, 184—.

9. *Application to justice to adjust expenses.*]

To J. P., a Justice of the Peace for the County of H.

M. C., of —, shew that a black horse belonging to me has been taken up by P. T., of N., as an estray: That we are unable to agree upon the amount of fees, charges and expenses. I therefore request you to adjust and determine the amount of fees and charges of the said P. T., the finder, of the town clerk, appraisers and justice, and the expense of keeping said horse.

— —, 184—.

M. C.

10. *Order of notice.*]

H— ss., — —, 184—. Upon the foregoing application, it is ordered that said M. C. notify the said P. F. to appear before me, the said justice, on the — day of —, at — o'clock in the —noon, at the inn of —, in said N., by giving to him a copy of the said application and this order, that he may be heard thereon.

J. P., *Justice of the Peace.*

*Affidavit of service. See form 15, page 194.*

11. *Record of adjustment of expenses.*]

H— ss., — —, 184—. The said M. C. and P. C. appearing and being fully heard on the within application, I have adjusted and determined the said fees, charges and expenses, as follows:

|                                              |      |
|----------------------------------------------|------|
| Of the said P. F., for notifying clerk,      | .25  |
| for four advertisements,                     | 1.00 |
| For applying for and attending appraisement, | 1.00 |
| Of the town-clerk, for recording notice,     | .10  |
| Of the justice, for appointing appraisers,   | .25  |
| “ recording appraisal,                       | .25  |
| “ adjusting charges,                         | .25  |
| Of appraisers, for appraising,               | 1.50 |
| Expense of keeping, — weeks,                 | —    |

In the whole amounting to

J. P., *Justice of the Peace.*

12. *Application to adjust fees, &c., when no owner appears.]*

To J. P., &amp;c.

P. T., of —, shew that on the — day of —, 184—, I found going at large in N., and took up as an estray, a black horse, with a switch tail and white hind right foot, the owner of which is to me unknown: That I gave written notice thereof to the town-clerk, and posted up like notices thereof, according to law: That more than one year has elapsed, and no owner has appeared, to claim the same. I therefore request you to adjust and determine the fees and charges of the said finder, town-clerk, appraisers and justice, and the expense of keeping said horse.

N., — —, 184—.

P. F.

No notice can be given in this case.

## CHAPTER 31.

OF THE POWERS OF JUSTICES AS TO ANIMALS  
DISTRAINED.

- |                                                              |                                                                 |
|--------------------------------------------------------------|-----------------------------------------------------------------|
| 1. Cattle may be impounded—<br>when.                         | 10. Application for sale may be<br>made after four days.        |
| 2. Where cattle may be im-<br>pounded.                       | 11. Justice may order sale or ap-<br>praisal.                   |
| 3. Estimate of damages to be<br>left with the pound-keeper.  | 12. Surplus returned to owner, on<br>request.                   |
| 4. Notice to owner, what, and<br>how given.                  | 13. Creatures impounded treated<br>as strays.                   |
| 5. If owner unknown, notice—<br>how given.                   | 14. Creatures rescued may be re-<br>taken.                      |
| 6. If damages paid, creatures<br>discharged.                 | 15. Creatures impounded to be<br>fed.                           |
| 7. Appraiser may be appointed,<br>how.                       | 16. Pay for food regulated.                                     |
| 8. Appraiser to make report, ef-<br>fect.                    | 17. Fees of pound-keeper.                                       |
| 9. If appraised damages paid,<br>creatures to be discharged. | 18. Fees of persons impounding.<br><i>Forms of Proceedings.</i> |

§ 1. Any person may impound any swine, neat cattle, horses, sheep or other creatures that shall be found doing



damage in his enclosure, or any such creature found going at large in any highway or street, or on any common, in violation of the laws of the state or any by-laws of such town. —*R. S. 256, ch. 137, § 1.*

§ 2. Such creatures shall be impounded in the public pound, if there is any in the town, otherwise they may be impounded by the party taking up such creatures, in his own barn or enclosure. *Ibid., § 2.*

§ 3. The person impounding any creatures shall leave with the pound-keeper in writing an estimate of the damage done by such creatures, or of the penalty incurred by the owner, and the amount of the fees and charges incurred. *Ibid., § 3.*

§ 4. He shall, within twenty-four hours from the time of impounding, cause to be delivered to the owner or person who last had them in his possession or keeping, if known to him, or cause to be left at his usual place of abode, a notice in writing describing the creatures impounded, stating his estimate of the damage done, and the time when and the place where the same was done, or of the penalty incurred, the amount of fees and charges then incurred, and the place of impounding. *R. S. 257, § 4.*

§ 5. When the owner, or keeper of any creatures impounded, is not known, the person impounding the same shall, within the same time, post up a like notice in some public place in the town and in two adjoining towns. *Ibid., § 5.*

§ 6. If the owner or any party claiming such creatures shall pay the penalty or estimated damages and charges incurred, to the person impounding, or to the pound-keeper, the creatures impounded shall be forthwith discharged from such pound. *Ibid., § 6.*

§ 7. If the owner or party claiming such creatures, shall neglect for the space of forty-eight hours, or shall refuse to pay the damages estimated by the person impounding the same, either of said parties may apply to some justice of the peace, who shall notify the other party to appear before him at a time and place appointed, as early as practicable, and after hearing the parties shall appoint three disinterested persons to appraise such damages. *Ibid., § 7.*

§ 8. The appraisers so appointed shall notify the parties, and as early as practicable view the place where the damage is alleged to be done, and hear the parties and their

evidence, and report to the justice whether any damage was done by such creatures, at the time of their last being in such enclosure only, and the sum at which they estimate the same; and such report, signed by a majority of such appraisers, shall be conclusive upon the parties. *Ibid.*, § 8.

§ 9. Upon payment of the damages so appraised and the charges incurred, with the fees of the justice and appraisers, to be assessed by the justice, such creatures shall be discharged from the pound. *Ibid.*, § 9.

§ 10. If such creatures impounded shall remain in the pound for four days after the day of such notice being given or posted as aforesaid, the person impounding the same may apply to a justice for an appraisal of the damages, if no appraisal has been made, and for an order for the sale or appraisal of such property. *Ibid.*, § 10.

§ 11. The justice, after notice and hearing the parties, may order such creatures, or so many of them as may be necessary, to be sold at public auction by the person impounding the same, who shall give notice and proceed in such sale in the same manner as sheriffs are required to do in sales upon execution, or he may order them to be appraised in the same manner as damages are required to be appraised, in which case the person impounding shall take them to his own use at the appraised value. *Ibid.*, § 11.

§ 12. After payment of the penalty or damages, and all costs, the overplus of such sale or appraisal shall be paid to the owner upon request. *Ibid.*, § 12.

§ 13. If after four days no owner appears, or if after an appraisal or order of sale any of the creatures impounded shall remain unclaimed, the person impounding may take such creatures out of the pound, and proceed with them as strays. *R. S. 258*, § 13.

§ 14. The pound-keeper or person impounding, may retake within six days any creature directly or indirectly conveyed or delivered out of the pound without lawful authority, and again impound and detain the same until the damages and costs are paid, with the additional cost of such retaking, or the same is otherwise legally released. *Ibid.*, § 16.

§ 15. The pound-keeper, if there is any, otherwise the person impounding, shall cause the creatures impounded to be provided with food and drink suitable for such creatures, and upon neglect shall be liable to the owner for all damages arising therefrom. *Ibid.*, § 18.

§ 16. The sum to be allowed for sustenance of creatures impounded, shall be, for cattle and horses above one year old, fifteen cents per day; for all other creatures, seven cents per day each. *Ibid.*, § 19.

§ 17. The fees to be paid to the pound-keeper shall be five cents each for every creature impounded, except sheep, which shall be two cents each, including the putting in and letting out, and the same fees in case of creatures retaken after pound breach. *Ibid.*, § 20.

§ 18. The fees to the person impounding, shall be six cents a mile for travel from the place of taking to the pound, and four cents a head for driving, if more than one mile, otherwise two cents a head; for each notice, twenty-five cents, and four cents a mile for travel from the pound to the place where such notice shall be given or left; and the same fees in case of creatures retaken after pound breach. *Ibid.*, § 21.

## FORMS OF PROCEEDINGS.

### 1. *Estimate of damage, to be left with the pound-keeper.]*

To the Pound-Keeper of the Town of A.

I have this day taken up and impounded in the common pound in the town of A., one red cow, with a white face, belonging to W. J., of said A., then found doing damage in my enclosure in said A., lying on the road leading from said A. to N., known as the Brown Meadow. The damage done is estimated at two dollars, \$2-00

The fees and charges incurred are as follows:

|                                                    |   |   |   |    |
|----------------------------------------------------|---|---|---|----|
| Travel from said enclosure to the pound, one mile, | - | - | - | 6  |
| Driving said cow to pound,                         | - | - | - | 4  |
| Notice to owner,                                   | - | - | - | 25 |
| Travel to serve notice, two miles,                 | - | - | - | 8  |
| Keeping one day in pound,                          | - | - | - | 15 |
| Pound-keeper, for impounding,                      | - | - | - | 5  |

\$2-63

A—, —, 184—.

D. N.

2. *If the creature is taken up for violating a by-law of the town the form may be:*

To the Pound-Keeper of the town of A.:

I have this day taken up and impounded in the common pound in the town of A., one white horse, belonging to W. J., of said A., then found going at large in the public highway of said town of A., in violation of a by-law of said town, whereby said W. J. has incurred a penalty of one dollar. \$1-00

Fees, &c. (as in last form.)

3. *If the owner is unknown,]*

Say : the owner thereof, and the person who last had them in his possession and keeping, being to me unknown.

4. The notice to the owner may be in the same form, except it should be addressed *to him*.

5. The notice to be posted up may be in the same form, addressed, "*To whom it may concern:*" or some other suitable heading.

*Note.* Copies of the notices should be kept, and minutes made upon them, and signed by some disinterested person, of the time of the delivery and posting of them.

6. *Application to a justice for appraisal of damage.]*

To J. P., a Justice of the Peace for the County of H. :

D. N., of A., in said county, shews that on the — day of —, 184—, I took up and impounded in the common pound in said town of A., one red cow, with a white face, belonging to W. J., of said A., then found doing damage in my enclosure in said A., lying on the road leading from said A. to N., known as the Moore Meadow. The damage done is estimated by me at two dollars.

On the same day I gave to said W. J. a notice thereof in writing, and he has neglected, for the space of forty-eight hours after said notice, to pay said damage : wherefore you are requested to appoint three disinterested persons to appraise the damages done as aforesaid.

D. N.

If the owner, &c., is unknown, omit, "belonging to W. J., of said A.," and insert form 3, above.

If the creature is impounded for violation of a by-law, follow the form of the notice in that case, form No. 2, from "one white horse" to "one dollar," instead of "one red cow" &c., to "two dollars."

7. *Order of notice.]*

H— ss., — —, 184—. Upon the foregoing application it is ordered that notice be given to said W. J. to appear before me, the said justice, at —, in — in said county, on —, at — o'clock in the —noon, to show cause, if any he has, why appraisers should not be appointed, as is therein requested, by giving to him or leaving at his usual place of abode a copy of said application and of this order, three days at least before said — day of —.

J. P., *Justice of the Peace.*

8. If the owner is unknown no particular notice is prescribed, and the justice may order such notice as he thinks proper. Probably a notice posted up precisely as the notice of impounding is required to be posted, in such case would be free from any objection.

*Order of notice, when the owner is unknown.]*

H— ss., — —, 184—. Upon the foregoing application, it is order-

ed that notice be given to the owner of said (cow) to appear before me, the said justice, at —, in — in said county, on the — day of —, at — o'clock in the —noon, to show cause, if any he has, why appraisers should not be appointed as therein requested, by posting up a copy of said application and of this order at some public place in said town of — and in two adjoining towns.

J. P., *Justice of the Peace.*

9. *Appointment of appraisers.*] (Written on the application.)  
To A. B., C. D. and E. F., all of A., in the County of H.:

[L. S.] Upon the foregoing application, after hearing the parties, (or, on due proof that the foregoing order is complied with) you are appointed to appraise the damages, if any, alleged in the said application, being first duly sworn to the faithful discharge of your duties herein, and after giving due notice to the parties, and make return of your doings to me.

Dated the — day of —, 184—.

J. P., *Justice of the Peace.*

10. *Oath of appraisers.*]

H— ss., —, 184—. Personally appeared A. B., C. D. and E. F., and made oath that they would faithfully and impartially appraise the damages alleged in the foregoing application, if any, according to the best of their judgment.

Before me: J. P., *Justice of the Peace.*

11. *Notice of appraisal.*]

To W. J., of A., in the County of H.:

The subscribers, appointed by J. P., justice of the peace for said county of H., to appraise the damages alleged by D. N., of said A., to be done by a red cow belonging to you, in his enclosure in said A. called the Moore Meadow, for which said cow is now impounded, will attend at said meadow on the — day of —, 184—, at — o'clock in the —noon, to view the same and appraise said damage, when and where you may attend and be heard.

A—, —, 184—.

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

12. *Report of the appraisers.*]

Having given due notice to the parties of the time and place of hearing, we met at the meadow within mentioned, on the — day of —, 184—, and viewed the same, and having heard the parties and their evidence, we report that damage was done by said cow in said meadow on the — day of —, 184—, the time of her last being in said enclosure, and we estimate the damages done at that time only at the sum of two dollars.

A—, —, 184—.

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

13. *Assessment of justice's and appraisers' fees.*]

H— ss., —, 184—. I have assessed and determined the justice's and appraisers' fees as follows:

|                          |                        |   |   |   |      |
|--------------------------|------------------------|---|---|---|------|
| <i>Justice's Fees.</i>   | Appointing appraisers, | - | - | - | .25  |
|                          | Recording appraisal,   | - | - | - | .25  |
|                          | Adjusting charges,     | - | - | - | .25  |
| <i>Appraisers' fees,</i> | fifty cents each,      | - | - | - | 1.50 |

\$2.25

No justices' fees are prescribed by this act. *See ch. 30, § 13.*

*14. Application for an appraisal and sale.]*

This may be in the same form as the application for an appraisal of damages, (form 6) except that instead of "forty-eight hours," "four days" should be inserted; and at the end should be added, "and to make an order for the sale of said cow, according to law."

*15. Order of notice.]*

This is in the same form as Nos. 7 and 8, page 269, except that after the word "appointed" is inserted, "and an order made for the sale of said cow."

The appointment, oath and return of the appraisers are in the same form as numbers 9, 10, 11 and 12, page 270.

*16. Order of sale.]*

Follow form number 9. Add before the date :

It is further ordered that said cow be sold at public auction by said D. N., who shall give notice and proceed in such sale in the same manner as sheriffs are required to do in sales upon execution.

After the return of the appraisal the justice may issue a warrant for the sale.

*17. Form of warrant of sale.]*

To D. N., of A. in the County of H.

[L. S.] Upon your application to me, J. P., a justice of the peace for the county of H., setting forth that (here copy the application, from the word "shew" to the concluding words, "and to make an order for the sale of said cow, according to law") having appointed the — day of —, 184—, at — o'clock in the —noon, at — in A., in said county, and having heard the parties thereon, (or, having caused the parties to be duly notified thereof,)

It is ordered, that said cow be sold at public auction by you, the said D. N., and that you give notice and proceed in such sale as sheriffs are required to do in sales upon execution. You are, therefore, hereby directed to give notice and make sale of said cow as aforesaid, and make return of your doings therein to me, the said justice. Dated the — day of —, 184—.

J. P., *Justice of the Peace.*

18. The return of sale may be in form No. 5, page 172.

*19. Application for appraisal of damages and of the creature impounded.*

This application may be in form 6, except that instead of "forty-eight hours," "four days" should be inserted; and at the end, before the words, "the damages done as

aforesaid," the words, "the said cow and" should be inserted.

20. In the *appointment and oath of the appraisers*, forms 8 and 9, between the words "appraise" and "the damages," insert, "*the said cow and.*"

21. In the *notice of appraisal*, form 10, after the words, "*to appraise,*" insert the words, "the said cow and," in two places.

22. In the *report of the appraisers*, form 11, add, "and having carefully examined and appraised said cow, we do upon our oaths say that said cow is of the value of ten dollars and no more."

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## CHAPTER 32.

### OF THE POWER OF JUSTICES TO REMOVE ENCUMBRANCES IN HIGHWAYS.

- |                                      |                                                           |
|--------------------------------------|-----------------------------------------------------------|
| 1. Encumbrances may be re-<br>moved. | 3. Justice to view, may order<br>sale.                    |
| 2. Notice to remove given.           | 4. Sale made by surveyor.<br><i>Forms of Proceedings.</i> |

§ 1. The surveyor of highways may remove any timber, lumber, stones, or other thing whatever, placed or being in any highway or street to the encumbrance thereof. *R. S. 131, ch. 59, § 1.*

§ 2. Such surveyor may, if he choose, give reasonable notice to the owner, or person leaving any such encumbrance, to remove the same; and upon their neglect or refusal to remove the same, or if they are unknown, he may make complaint thereof to a justice of the peace. *Ibid., § 2.*

§ 3. Such justice shall cause notice to be given to the owner, or person leaving the same, if known, of the time appointed by him to view such encumbrance; and after

hearing such party may upon his own view issue his warrant to the surveyor to remove the same, so far as he shall judge necessary for the public convenience, and to sell so much thereof as may be necessary to pay the legal costs taxed by him and three times the price of the labor of removing the same, to be estimated by such justice. *Ibid.*, § 3.

§ 4. The surveyor shall have the same power and be governed by the same rules, in making such sale, as collectors of taxes in the sale of property distrained by them; and if the proceeds of such sale shall be insufficient to pay the sums specified in such warrant, the surveyor may recover the balance unpaid by action on the case against the person leaving the same. *Ibid.*, § 4.

## FORMS OF PROCEEDINGS.

### 1. *Notice to remove an encumbrance in the highway.*]

To A. B., of S.

You are hereby ordered to remove a pile of boards left by you in the highway, near your house in said S., without delay, as said highway is encumbered thereby.

S., — —, 184--.

J. W., *Surveyor of Highways.*

*Note.* The original notice should be left, and a copy preserved.

### 2. *Complaint for neglect to remove.*]

To J. P., a Justice of the Peace for the County of C.

J. W., of S., in said county, surveyor of highways for district No. 3, in said S., complains that A. B., of said S., &c., on the — day of —, 184--., at said S. with force and arms unlawfully did place a large pile of boards in and upon the highway in said district No. 3, in said town of S., leading from — to —, and though reasonable notice to remove the same was given by said J. W. to said A. B. on the — day of —, has thenceforth unlawfully left, and still leaves and suffers the same to remain in and upon said highway, to the encumbrance thereof, against the peace and dignity of the state; wherefore said complainant prays the said justice upon his own view of said encumbrance to cause the same to be removed, and the legal cost and expense of removal to be paid by sale of said boards, according to law. J. W.

3. C— ss., — —, 184--. The said J. W. made oath that the foregoing complaint by him signed is in his belief true.

Before me: J. P., *Justice of the Peace.*



4. *Order of notice.*]

C— ss., —, 184--.. Upon the foregoing complaint it is ordered that notice be given to said A. B. to appear before me, the said justice, at —, in — in said county, on the — day of —, at — o'clock in the —noon, and shew cause why the said encumbrance should not be removed, by giving to said A. B., or leaving at his usual place of abode, a copy of said complaint and of this order, on or before the — day of — next.

J. P., *Justice of the Peace.*

Certificate of service, *see form 15, page 194.*

5. *Warrant to remove encumbrance.*]**The State of New-Hampshire.**

C— ss. To J. W., *Surveyor of Highways for District No. 3, in*  
[L. S.] *the Town of S., in said County.*

Whereas complaint has been made to me, J. P., a justice of the peace for the county of C., as follows:

(Here insert the complaint.)

and the said A. B. having been duly notified to appear before me and show cause why said boards should not be removed, and not appearing, (or, not showing sufficient cause) and it appearing to me, the said justice, upon my own view of the same, that said boards are in and upon said highway to the encumbrance thereof:

We command you, therefore, forthwith to remove said boards from said highway to the distance of — feet from the centre of the travelled part of said highway, and to advertise and sell according to law so many of said boards as may be necessary to pay the legal costs upon said complaint, taxed by me at —, and also the sum of —, being three times the price of the labor of removing said boards, as estimated by me. Dated the — day of —, 184--.

J. P., *Justice of the Peace.*

The manner of proceeding in the sale is prescribed in § 6 and 7, of *ch. 45 of the Revised Statutes, page 110*, as follows:

§ 6. The collector shall keep the property distrained four days, at the cost of the owner. If the tax, cost and charges are not then paid, he shall post up, in two or more public places in the town where the sale is to be, twenty-four hours before the time of sale, a notice of the place, day and hour of sale, with a particular description of the property to be sold; and at the time and place appointed, which shall be in the town where the distress is made, between the hours of ten in the forenoon and six in the afternoon, and within forty-eight hours after the expiration of said four days, shall sell the same at public auction, to the highest bidder.

§ 7. A particular account in writing, of the taxes of the

delinquent, the collector's fees and the charges of keeping and sale, and the amount of sale of each article, with the overplus, if any, after deducting said taxes and charges, shall be delivered immediately upon such sale to the owner, or be ready to be delivered to him, upon request.

6. *Notice of sale.*]

**AUCTION.**

Taken by virtue of a warrant issued by J. P., justice of the peace for the county of C., — feet of boards, left in the public highway in district No. 3, in the town of S., to the encumbrance thereof, and will be sold at public auction, at —, in said —, on the — day of —, at — o'clock in the forenoon, to pay the legal costs and expenses of removal and sale.

J. W., *Surveyor of Highways*  
for District No. 3 in S.

— —, 184--.

7. *Account of sale.*]

To A. B., of S., &c.

By virtue of a warrant issued by J. P., justice of the peace for the county of C., I have taken and sold at public auction, — feet of pine boards, left in the public highway in district No. 3, in the town of S., to the encumbrance thereof, as follows:

|                       |        |
|-----------------------|--------|
| 500 feet to J. A. for | \$4.00 |
| 250 " to P. R. for    | 2.00   |

|                  |      |
|------------------|------|
| Amount of sales, | 6.00 |
|------------------|------|

I have applied the same to pay the legal costs taxed by  
said justice. 1.00

Three times the expense of removing said boards, as estimated by said justice, 3.00

Expenses of advertising and selling the same, 1.50

---

5.50

Balance to be delivered you on request, .50

J. W., *Surveyor of Highways*  
for District No. 3, in S.

— —, 184--.

8. *If the owner is unknown,*]

Say, in the complaint, instead of "A. B., of S.," &c., "some person to your complainant unknown," and omit the words, "*though reasonable notice to remove the same was given by said J. W. to said A. B. on the — day of —.*"

No order of notice is necessary.

9. Omit in the warrant, "And the said A. B. having been duly notified to appear before me, and shew cause why said boards should not be removed, and not appearing" (or, not showing sufficient cause.)

## CHAPTER 33.

### OF THE POWERS OF JUSTICES TO CALL TOWN AND CORPORATE MEETINGS.

- |                                                                                                                 |  |                                                                                                          |
|-----------------------------------------------------------------------------------------------------------------|--|----------------------------------------------------------------------------------------------------------|
| 1. On refusal of selectmen.<br>2. On failure of meeting.<br>3. Form of warrant.<br>4. Justice to preside, when. |  | 5. On failure of corporate meetings.<br>6. Form of warrant in that case.<br><i>Forms of Proceedings.</i> |
|-----------------------------------------------------------------------------------------------------------------|--|----------------------------------------------------------------------------------------------------------|

§ 1. If the selectmen shall unreasonably neglect or refuse to warn a meeting, or to insert any article in their warrant, a justice of the peace, upon application in writing of one sixth part of the voters of such town, may issue a warrant for such meeting. *R. S. 95, § 9.*

§ 2. If the annual meeting in any town shall not have been holden, or if there has never been any legal meeting of such town, a justice of the peace, on application of ten voters, or of one sixth part of the voters of the town, may issue a warrant for such meeting. *Ibid., § 10.*

§ 3. The warrant of a justice of the peace for a town meeting shall be under his hand and seal, directed to a constable of the town, if any there be, otherwise to one of the voters applying; shall specify the time, place and object of such meeting, and shall be served and returned in the same manner as warrants issued by selectmen.—*Ibid., § 11.*

§ 4. When there are no selectmen or town clerk of the town, it shall be the duty of the justice calling such meeting to attend and preside until a moderator is chosen.—*R. S. 95, § 2.*

§ 5. If any corporation other than a town shall fail to hold its annual meeting, or if no mode of calling a special meeting of such body politic or corporate is prescribed, the owner or owners of one twentieth part of the stock or property thereof may apply in writing to any justice of the peace, which application shall state the time, place and purposes of such meeting, to call a meeting of the members of said corporation. *R. S. 288, § 11.*

§ 6. Such justice shall thereupon issue his warrant, directed to any one of said applicants, requiring him to warn

a meeting of such corporation, to meet at the time and place, and for the purposes mentioned in such application, by publishing a copy of such application and warrant fourteen days, in the same manner as is provided for warning the annual meeting of said corporation; and such meeting and all business done thereat shall be as valid as if held and done according to the charter and by-laws of such body corporate. *Ibid.*, § 12.

## FORMS OF PROCEEDINGS.

### 1. *Request to call a town meeting.*]

To the Selectmen of the Town of M.

The subscribers, legal voters of said town, request you to warn a meeting of the inhabitants of said town, and to insert in the warrant for the same an article in substance as follows :

To see if the town will vote to set off the homestead farm of A. B. from school district number 1, and annex the same to school district number 2.

A. B.

C. D., &c.

M., — —, 184—.

### 2. *Request to insert an article.*]

To the Selectmen, &c., (as above.)

The subscribers, legal voters of said town, request you to insert in the warrant for the next (annual) meeting of the inhabitants of said town an article in substance as follows :

A. B.

C. D., &c.

To see, &c.

M., — —, 184—.

### 3. *Application to a justice to call a meeting.*]

To J. P., a Justice of the Peace for the County of B.

The subscribers, being one sixth part of the legal voters in the town of M., in said county, respectfully shew, that on the — day of — last application in writing was made by more than ten of the legal voters of said town, to the selectmen thereof, requesting them to warn a meeting of the inhabitants of said town, and to insert in the warrant for the same an article in substance as follows :

To see, &c.

But they have unreasonably neglected (and refused) to call such meeting. They therefore request you to issue a warrant for calling a meeting of said inhabitants, for the purpose specified in said application.

A. B.

C. D., &c.

M., — —, 184—.

### 4. *Application, on refusal to insert an article.*]

Follow last form to, "requesting them"; then say, to insert in the warrant for the next (annual) meeting of the inhabitants of said town an article in substance as follows :

To see, &c.

Yet the said selectmen, though a meeting of said inhabitants has been since warned by them, have neglected (and refused) to insert such article. They therefore, &c. (Conclude as in last form.)

5. *Form of warrant.*]

**The State of New-Hampshire.**

B— ss. To — —, a Constable of the Town of M., in said County.

[L S.] Whereas application has been made to me, J. P., a justice of the peace for said county of B., by one sixth part of the legal voters of the said town of M., to call a meeting of the inhabitants of said town to act upon the articles hereinafter mentioned, and it has been made to appear to me that the selectmen of said town, upon application in writing duly made to them for that purpose, have unreasonably neglected (and refused) to warn a meeting of the inhabitants of said town, to act on said articles, (or, have neglected to insert said articles in the warrant for a town meeting, issued next after said application to them,)

You are, therefore, required to warn the inhabitants of said town, qualified to vote in town affairs, to meet at — in said town, on the — day of — next, at — o'clock in the —noon, to act on the following subjects :

1. To choose a moderator, to preside in said meeting.
2. To see, &c.

And make return of this warrant to the town clerk or one of the selectmen of said town at said time and place of meeting.

Dated the — day of —, 184—.

J. P., Justice of the Peace.

6. *Form of return.*]

M., — —, 184—. I have notified the inhabitants of M., within mentioned, to meet at the time and place, and for the purposes within mentioned, by posting up an attested copy of this warrant at the place of meeting within specified, and a like copy at the tavern of —, being a public place in said town, on the — day of —, being fifteen days before said meeting.

D. C., Constable of M.

7. *Application to a justice, when the annual meeting has not been holden.*]

To J. P., a Justice of the Peace for the County of B.

The subscribers, legal voters of the town of M., in said county, represent that the annual meeting of the inhabitants of said town, required by law to be holden in March annually, has not been holden. They therefore request you to issue a warrant to call a meeting of the inhabitants of said town, to act on the following subjects :

1. To choose a moderator, to preside in said meeting.
2. To choose all necessary town officers.
3. To, &c.

A. B.

C. D., &c.

8. *Form of warrant.*]

**The State of New-Hampshire.**

B— ss. To — —, a Constable of the Town of M., in said County.

Whereas application has been made to me, J. P., a justice of the

peace for the said county of B., by more than ten of the legal voters of said town of M., to call a meeting of the inhabitants of said town qualified to vote in town affairs, to act upon the articles hereinafter mentioned; and whereas it appears to me that the annual meeting of said town has not been holden, according to law:

You are, therefore, required, &c., (as in form 5, page 278.)

**9. Application to a justice to call a meeting of a corporation.]**

To J. P., a Justice of the Peace for the County of G.

The subscribers, owners of one twentieth part of the stock and property of the — Company, represent that said corporation has failed to hold its annual meeting for the present year. They therefore request you to call a meeting of the members of said corporation, to be held at —, on —, for the purpose of acting on the following subjects:

1. To choose a chairman, to preside in said meeting.
2. To choose directors, a clerk, treasurer, and other officers of said corporation.
3. To, &c. A. B.
- —, 184—. C. D., &c.

**10. Warrant.]**

**The State of New-Hampshire.**

G— ss. To A. B., of —.

Whereas application has been made to me, J. P., a justice of the peace for said county of G., as above:

You are, therefore, required to warn a meeting of such corporation, to be held at the time and place, and for the purposes mentioned in said application, by publishing a copy of said application and warrant fourteen days, in the same manner as is provided for warning the annual meeting of said corporation. And make return of this warrant at said time and place of meeting.

Dated the — day of —, 184—.

J. P., Justice of the Peace.

# PROCEEDINGS IN CRIMINAL CASES.

## CHAPTER 34.

### OF CRIMINAL JURISDICTION OF JUSTICES OF THE PEACE.

- |                                                            |                                                                   |
|------------------------------------------------------------|-------------------------------------------------------------------|
| 1. Jurisdiction of justices.                               | 16. Fugitives, how arrested and remanded.                         |
| 2. Appeals allowed to court of common pleas, how.          | 17. Justice throughout the state, powers.                         |
| 3. Offenders, when to be committed.                        | 18. Proceedings before such justice.                              |
| 4. Copy of complaint, &c., to be made and lodged in court. | 19. Officers, their powers on warrants.                           |
| 5. Witnesses to be recognized.                             | 20. Recognizances forfeited, proceedings thereon.                 |
| 6. Refusing to recognize, committed.                       | 21. Costs on prosecutions, how paid.                              |
| 7. Examination may be postponed.                           | 22. Offender neglecting to perform his sentence, to be committed. |
| 8. Justice may apprehend on view, when.                    | 23. Fines, how to be appropriated.                                |
| 9. Justice may bind over to keep the peace.                | 24. Defendant, if guilty, to pay costs.                           |
| 10. Proceedings to be on complaint.                        | 25. Expenses of prosecution allowed.                              |
| 11. Fines, &c., to be paid over, how.                      | 26. Upon forfeiture of recognizance, complainant indemnified.     |
| 12. Search warrants in day time.                           | 27. Recognizances, how taken and prosecuted.                      |
| 13. Search warrants in night time.                         | 28. Justice's fees in criminal cases.                             |
| 14. Justice may authorize disinterment.                    | <i>Forms of Proceedings.</i>                                      |
| 15. Fugitives from justice, complaint.                     |                                                                   |

§ 1. Every justice is authorized to hear and determine prosecutions and actions of a criminal nature, arising within his county, where the punishment is by fine not exceeding ten dollars, and to issue a warrant to carry his judgment into effect, in case no appeal is taken. *R. S. 448, ch. 222, § 1.*

§ 2. Any person sentenced by a justice as aforesaid for

any offence may appeal from such sentence to the next court of common pleas to be holden in the same county, but such appeal must be claimed at the time of declaring the sentence; and the appellant shall enter into recognizance, with sufficient sureties, in a reasonable sum, not exceeding one hundred dollars, for his appearance at said court and to prosecute his appeal with effect, and to abide the order of court thereon, and in the mean time to be of good behavior; otherwise such appeal shall not be granted. *Ibid.*, § 2.

§ 3. Any justice may cause to be apprehended and committed to jail, or bound over with sufficient sureties, for trial by the court of common pleas in such county, all persons charged with offences committed in such county, exceeding his jurisdiction to try. *Ibid.*, § 3.

§ 4. In the cases mentioned in the two preceding sections, the justice shall make out a certified copy of the process and records in the cause, and file the same with the clerk of said court on or before the first day of the next term thereof. *R. S.*, 449, § 4.

§ 5. Whenever any justice shall commit or bind over any person for trial as aforesaid, he shall take the recognizance of all necessary witnesses who appear before him, for their appearance at said court of common pleas, in such sum as he may think reasonable. *Ibid.*, § 5.

§ 6. If any person, upon being ordered by any justice to recognize, shall neglect or refuse so to do, the justice may issue his warrant, and order such person to be committed to jail until he comply with such order. *Ibid.*, § 6.

§ 7. When any person is brought before any justice, charged with any offence, said justice may postpone the examination thereof, if necessary, to some future time; and may take the recognizance of the parties and witnesses, for their appearance at the time and place to which such examination is postponed. *Ibid.*, § 7.

§ 8. Every justice, upon the view of any breach of the peace, or other transgression of law proper for his cognizance, or when necessary for the preservation of the peace, may command any officer or other person to bring before him any such offender, to be kept until complaint can be made against him, and may order such offender to find sureties to keep the peace until the next term of the court of common pleas in the said county. If any person shall refuse



to obey any such command he shall be subject to the same penalty as for disobeying an officer. *Ibid.*, § 8.

§ 9. Any justice may order any person arrested for a criminal offence, or against whom a complaint under oath has been made by any other person fearing injury to his person or property, to find sureties to keep the peace until the next term of the court of common pleas for the same county, and to pay costs of prosecution, and may commit such person for neglect thereof. *Ibid.*, § 9.

§ 10. All proceedings before a justice shall be on complaint, duly signed and sworn to before some justice, who shall issue his warrant thereon. *Ibid.*, § 10.

§ 11. Every justice shall pay over to the town or county to which any fine or forfeiture accrues, every such fine or forfeiture by him received, within six months after the receipt of the same, or to the person to whom the same is payable, on demand, and on default thereof shall forfeit double the amount thereof to any person who will sue therefor. *Ibid.*, § 11.

§ 12. Any justice, upon complaint on oath made by any person, that he suspects that any personal property stolen, embezzled or falsely obtained, or any offender or the subject matter of any offence is concealed in any place or in one of several places therein specified, may grant a warrant for searching such place or places in the day time. *Ibid.*, § 12.

§ 13. Upon like complaint, and satisfactory evidence that any such property or thing, or any criminal is concealed in any particular house or place, and may escape or be removed before day, such justice may grant a warrant for searching such house or place in the night time. *R. S. 450*, § 13.

§ 14. Any justice, upon complaint made on oath by any person, setting forth that he has reasonable grounds for suspecting that any deceased person who has been interred came to his death by some unlawful means, may issue his warrant, requiring that such body shall be disinterred and examined, and may summon and examine witnesses in relation to the truth of such complaint. *Ibid.*, § 14.

§ 15. When any person against whom a warrant is issued for an alleged offence committed in any county in this state, shall not be found in such county, but shall be found in some other county in this state, any justice of the county in which such offender is found, upon application made to

him, and proof that such warrant issued from lawful authority, shall issue his warrant directed to all proper officers in his county, directing them to arrest such offender, and convey him to some justice in and for the county from which such warrant issued, for examination, or deliver him to the sheriff or his deputy of such county, to be by him conveyed to such justice for the purpose aforesaid. *Ibid.*, § 15.

§ 16. Any such offender may be arrested in any county in this state, by any officer to whom such warrant was originally directed, and carried before any justice in and for such county, who, upon proof that such process was duly issued, shall, by his warrant directed to such officer, send such offender into the county in which such original warrant issued, for examination according to law. *Ibid.*, § 16.

§ 17. Any justice of the peace throughout the state may receive a complaint for an offence committed in any county in this state, and may issue his warrant thereon, directed to the sheriff of any county in this state or his deputy, or any proper officer, authorizing such officer to apprehend such offender, and to bring him before such justice, or some justice in and for the county in which the offence was committed, for examination. *Ibid.*, § 17.

§ 18. Such justice may order such offender to recognize, with sufficient sureties, to appear at the court of common pleas next to be holden in and for the county in which the offence was committed, and to answer to said complaint, and to abide the order of court thereon, or may commit such offender to the jail in such county, as is herein-before provided. *Ibid.*, § 18.

§ 19. If any precept is directed to any officer by any justice, and, in the execution thereof, it shall be necessary for such officer to pass through any town or county in which such officer has no general authority to act, such officer may pass and convey any offender through such town or county, and shall be entitled to all the rights and subject to all the liabilities of an officer within such limits. *Ibid.*, § 19.

§ 20. If any person, under recognizance to appear before any justice, shall fail to appear accordingly, or to abide the order of such justice, the justice shall make a record thereof, and declare said recognizance to be forfeited, and shall file a copy of such recognizance and record of forfeiture thereon, with the clerk of the court of common pleas in such county, on or before the first day of the next term of said court. *R. S. 451*, § 20.

§ 21. All legal costs attending the arrest, examination or conveyance of any offender, shall be paid by the complainant, unless the same is directed by the counsel for the state, or allowed by the court of common pleas. *Ibid.*, § 21.

§ 22. If any person sentenced under any penal statute, shall refuse or neglect to perform such sentence, he shall be committed to the common jail, there to be imprisoned until such sentence is performed, or he is discharged by due course of law. *R. S.* 430, § 12.

§ 23. All fines arising in any manner shall be for the use of the county, and shall be paid over to the treasurer thereof, unless otherwise specially appropriated. *Ibid.*, § 13.

§ 24. If, upon any complaint or prosecution before any court or justice, the defendant shall be ordered to pay a fine, enter into a recognizance, or suffer any penalty, he shall also be ordered to pay costs of prosecution, or such part thereof as justice may require. *Ibid.*, § 14.

§ 25. If any service shall be performed by any person by direction of any court or justice, or of the attorney general or solicitor of the county, in bringing to justice any offender charged with a crime or high-handed misdemeanor, the justices of the court of common pleas shall allow a reasonable sum therefor, and draw their warrant for the same upon the treasurer of the county. *Ibid.*, § 15.

§ 26. If any recognizance shall be forfeited in any case in which, if such recognizer had been convicted, any sum might have been due to the complainant, or any other person, the justices of the court of common pleas may ascertain the just sum and costs that might be due, and draw their warrant therefor upon the treasurer of the county.—*Ibid.*, § 16.

§ 27. All recognizances shall be taken in the name of the state; and suits thereon may be brought and tried in the county in which they may be taken, unless the court, in their discretion, shall order the venue to be changed to some adjoining county. *R. S.* 431, § 17.

§ 28. Justices of the peace shall be allowed the following fees in criminal cases:

For drawing a complaint, fifty cents;

For a warrant, founded on a complaint for any offence, twenty-five cents;

For granting an appeal, seventeen cents;

For each recognizance, seventeen cents;

For taking bail of persons committed in criminal cases, for each offender, thirty-four cents;

For every examination, thirty-four cents;

For entry of complaint and judgment thereon, fifty cents;

For a warrant of commitment, and every other warrant except those before mentioned, fifty cents;

For every adjournment, seventeen cents. *R. S. 471, § 2.*

## FORMS OF PROCEEDINGS.

*Note.* The usual forms of the complaint, warrant, and other proceedings in criminal cases, are proposed to be given, with suggestions as to the manner of drawing them; and at the end the forms of complaints for such offences as are of most frequent occurrence.

### 1. *Form of complaint.*]

To J. P., a Justice of the Peace for the County of M.

T. C., of C., in said county of M., laborer, complains that J. R., of C. aforesaid, in the county aforesaid, blacksmith, on the — day of — in the year of our Lord one thousand eight hundred and forty—, at C. aforesaid, in the county aforesaid, with force and arms

[did make an assault upon the said T. C., and the said J. R. did then and there beat, bruise and ill treat, and other wrongs to the said T. C. then and there did]

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the state. Wherefore the said T. C. prays that the said J. R. may be held to answer to this complaint, and that justice may be done in the premises. T. C.

M— ss., —, 184—. T. C. personally appeared and made oath that the above complaint, by him subscribed, is in his belief true.

Before me: J. P., *Justice of the Peace.*

The name of the complainant and of the party complained against should be inserted at length, except that the initial letter of a middle name is sufficient, his place of residence, and his *addition*, as in civil cases. *See page 17.* The day on which the offence was committed, or is supposed to be committed, must be inserted in words at length. In the subsequent forms they will be inserted in figures, to save room, but for the purpose of reminding the transcriber that they should be written in full, they will be enclosed in brackets.

The place where the offence is charged, must be inserted,

*and the county.* The courts do not judicially take notice whether a town is all in one county or not. Cases are supposed to exist where a town lies partly in two counties.

The clause in brackets is the only part of a complaint which ordinarily varies in different cases. Except in cases where a difference of form is specially noticed, the commencement and conclusion of complaints is to be understood to be in the form here given.

"Contrary to the form of the statute," &c., is to be inserted in all cases when the offence is prohibited by any statute. It should be inserted in all cases except when its omission is mentioned.

"Against the peace and dignity of the state" is required by the constitution. *Pt. 2, cl. 88, R. S. p. 38.*

The certificate of the oath may be varied where the facts charged are within the knowledge of the complainant, by omitting the words, "in my belief."

In drawing a complaint it is suggested that the general form, No. 1, should be copied to the brackets. The form of complaint, as given hereafter for the particular offence, should then be copied in lieu of the part in brackets; and the residue of the general form, and certificate of oath, should be then copied.

## 2. Form of warrant.]

### The State of New Hampshire.

M—ss. To the Sheriff of said County of M., or his Deputy, or to  
[L. S.] any Constable of any Town in said County.

Whereas T. C., of C., in said county, laborer, has exhibited to me, J. P., a justice of the peace for said county of M., his complaint on oath, that J. R., of C. aforesaid, in the county aforesaid, blacksmith, &c., (proceed to copy the Complaint verbatim from these words to, "against the peace and dignity of the state.")

We command you, therefore, to take the said J. R. (if to be found in your precinct) and bring him before me, or some other justice of the peace for said county, to answer to said complaint.

And we further command you to summon the said T. C., and also M. N. and O. P., of said C., yeomen, to appear and testify what they know relating to said complaint, when and where you may have said J. R. before me or some other justice, for trial.

Dated the — day of —, 184—.

J. P., Justice of the Peace.

*Note.* The clause, "or some other justice of the peace for said county," may be omitted. So the clause re-

lating to summoning witnesses may be omitted, if thought unnecessary.

A usual mode has been to annex the warrant to the original complaint; in which case the warrant refers to the complaint, instead of reciting it, in this form :

3. "Whereas T. C., of C., in said county, laborer, has exhibited to me, J. P., a justice of the peace for the county of M., his aforesaid complaint upon oath, against J. R., of said C., blacksmith : We command you, therefore," &c., as in last form.

This course is of doubtful expediency, since, in case of the loss or destruction of the warrant, both the justice and the officer might be exposed to difficulties in defending against an action of false imprisonment. -

#### 4. *Form of officer's return.*]

M— ss., — —, 184--. I have taken the said J. R., and now have him before J. P., a justice of the peace for said county. And I have summoned the said M. N. and O. P., as within commanded.

A. C., *Constables of C.*

#### 5. *Form of warrant to detain for further examination.*]

Proceed as in form 2, page 286, to the words, "against the peace and dignity of the state;" then say :

Whereupon the said J. R. being afterwards, on the — day of —, 184--., brought by virtue of a warrant issued on the complaint aforesaid, before me, the said justice, it was ordered that said J. R. recognize with two sufficient sureties, in the sum of — dollars, to appear before me, the said justice, on the — day of — next, at — o'clock in the —noon, at — in said county, further to answer to said complaint, and in default thereof that he be detained in custody till said — day of —. And said J. R. having neglected to perform said order, we command you, therefore, to detain in your custody said J. R. till said — day of —, and then bring him before me, the said justice, at the time and place aforesaid, further to answer to said complaint.

Dated the — day of —, 184--.

J. P., *Justice of the Peace.*

If the justice shall judge it expedient the order may be, "that he be committed to jail till the — day of —," &c.

#### 6. And the warrant may be :

We command you, therefore, to commit the said J. R. to the jail in H., in said county; and the keeper of said jail is required to detain said J. R. in his custody therein till the said — day of —, and then to bring him before me, the said justice, further to answer to said complaint. Dated, &c.

#### 7. If the offence is not bailable, say :

It is ordered that said J. R. be detained in custody till the — day

of —, 184—, and be then brought before me, the said justice, at — in said C., at — o'clock in the —noon, to answer further to said complaint.

All offences areailable except those the punishment of which may be death. But the power to admit to bail should be exercised with great caution in cases where the punishment may be confinement to hard labor for life.

8. *Form of recognizance for further examination.]*

M—ss. BE IT REMEMBERED, That on the — day of —, 184—, before me, J. P., a justice of the peace for the county of M., came J. R., of — in said county, blacksmith, and J. S. and A. B., of said —, yeomen, and severally acknowledged themselves to be indebted to the state of New-Hampshire, the said J. R. as principal, in the sum of — dollars, and said J. S. and A. B. as sureties, in the sum of — dollars each, to be levied of their goods and chattels, lands and tenements, and in default thereof upon their bodies respectively if default be made in the condition following :

*The condition of this recognizance is such,* That whereas T. C. of C., in said county, laborer, has exhibited to me, the said justice, his complaint on oath, that J. R., of C. aforesaid, in the county aforesaid, blacksmith, &c., (proceed to copy the complaint from these words, verbatim, to the words, "dignity of the state.")

Whereupon the said J. R. being afterwards, on the — day of —, 184—, brought by virtue of a warrant issued on the complaint aforesaid, before me, the said justice, it was ordered that said J. R. recognize, with two sufficient sureties, in the sum of — dollars, to appear before me, the said justice, at — in said C., on the — day of — next, at — o'clock in the —noon, further to answer to said complaint, and in default thereof that he be detained in custody (or be committed to jail) till said — day of —. Now if said J. R. shall appear before me, the said justice, at — in said county, at the time aforesaid, and answer to said complaint, and there wait and abide the order of said justice, then this recognizance to be void.

9. Recognizances are usually entered into verbally, thus : The justice calls the principal and sureties by name, and upon their answering, he repeats :

You severally acknowledge yourselves indebted to the state of New-Hampshire as follows : J. R. as principal, in the sum of — dollars, and you, J. S. and A. B. as sureties, in the sum of — dollars each, to be levied of your goods and chattels, lands and tenements, and in default thereof upon your bodies, if default be made in the condition following, which is, that you, the said J. R., shall make your personal appearance before me at — in —, on the — day of — next, at — o'clock in the —noon, and there answer to the complaint of T. C. against you ; and there wait and abide the order of me, the said justice, then this recognizance shall be void. Are you content ?

To which they answer, "content," or otherwise assent.

If the respondent, or other person required to recognize,

is a minor or married woman, or otherwise incompetent to contract, others should recognize for them, and the order to recognize should be varied, as, that "said J. R., being a minor, &c., procure two persons of sufficient ability to recognize in the sum of — dollars, that said J. R. shall appear," &c.; and in the recognizance the parties recognize as principals, without joining the minor, &c.

The entry of the recognizance on the justice's docket is thus:

Continued to — —, 184—, at — o'clock, — M., at — in —.

J. R. recognizes in \$—. } Each for R.'s appearance.  
J. S. and A. B. in \$—.

The continuance for further examination may be either before or after the arraignment.

When the party is brought before the magistrate he ought to be cautioned that he is not bound either to accuse himself or confess his guilt; and that any confession or admission of that nature may be produced in evidence against him on his trial. 1 *Chitt. C. L.* 85.

#### 10. *Form of arraignment.*]

The justice calls upon the prisoner by name, and upon his answering, says, "Hearken to a complaint made against you upon oath by T. C."

He then reads the complaint, and at the close says—"What say you; are you guilty of the offence with which you here stand charged, or not guilty?" To which the prisoner usually answers, "Not guilty." If he declines answering, the trial will proceed as if he answered, 'Not guilty.' If he pleads guilty, the justice makes a record of the plea, and proceeds to pass sentence if the case is within his jurisdiction; or, if not, binds him over for his appearance at court, or commits him.

The entry on the justice's docket is:

Said J. R. pleads guilty, (or, not guilty.)

and this entry is usually made upon the complaint.

The form of the oath and affirmation of witnesses is the same as in civil cases, page 141, forms 13 and 14.

The forms of summons to witnesses and of the proceedings to compel their attendance, are similar to those in civil cases, pages 139 and 140, forms 1, 7, 8, 9 and 10.

#### 11. *Form of record of conviction.*]

M— ss. Be it remembered, that on the — day of —, [A. D. 184—,]



before me, J. P., a justice of the peace for said county of M., came T. C., of C., in said county, laborer, and on oath complained that J. R., of C. aforesaid, in the county aforesaid, blacksmith, &c., (here copy the complaint, verbatim, from these words, to "and dignity of the state.")

Whereupon the said J. R., being afterwards, on the — day of —, [A. D. 184—,] brought by virtue of a warrant issued on said complaint, before me, the said justice, and having heard the said complaint said that he was not guilty of the said offence; and thereupon, after hearing the evidence offered, as well on the part of said J. R. as on behalf of the state, it appears to me, the said justice, that said J. R. is guilty, as in said complaint is alleged. It is, therefore, considered that the said J. R. pay a fine of six dollars, for the use of the county of M., and costs of prosecution taxed at — dollars, and stand committed until this sentence is performed.

J. P., *Justice of the Peace.*

This is the usual form in cases where a fine only is imposed. In cases of assault and battery the judgment must be also that the respondent recognize to be of good behavior. In such case, before the words, "*and stand committed,*" &c., insert :

12. And recognize with sufficient surety or sureties, to keep the peace and be of good behavior until the next term of the court of common pleas to be holden in said county of M.

Or in such cases sentence of imprisonment not exceeding thirty days may be rendered as follows :

13. It is, therefore, considered that the said J. R. be imprisoned in the common jail of said county of M., at H., in said county, for the term of twenty days, and pay costs of prosecution taxed at — dollars, and recognize with sufficient sureties, &c. (as above) and stand committed until this sentence is performed.

J. P., &c.

#### 14. *Form of entry of appeal.*]

Say, at the close of form 11, &c., before the signature of the justice : "From which sentence the said J. R. then and there appealed to the court of common pleas, next to be holden at C., in said county of M., on the — Tuesday of —, [A. D., 184—,] and entered into recognizance with sufficient sureties in the sum of fifty dollars for his appearance at said court, and to prosecute his appeal with effect, and to abide the order of the court thereon; and in the mean time to be of good behavior.

For the manner of preparing and certifying copies, see page 157; the complaint and warrant occupying the place of the writ.

If witnesses are ordered to recognize, the order should be entered at the close of the record of conviction or examination, thus :

It is further ordered, that A. B., C. D., &c., recognize in the sum of — dollars each, for their appearance at the court aforesaid, to tes-

tify what they know relative to said complaint, and stand committed unless this order be performed.

15. *Form of recognizance on appeal.*]

M— ss. Be it remembered, that on the — day of —, 184—, before me, J. P., a justice of the peace for the county of M., came J. R., of C., in said county, blacksmith, and J. S. and A. B., of said C., yeomen, and severally acknowledged themselves to be indebted to the state of New-Hampshire, the said J. R. as principal, in the sum of — dollars, and the said J. S. and A. B. as sureties, in the sum of — dollars each, to be levied of their goods and chattels, lands and tenements, and in default thereof upon their bodies respectively, if default be made in the condition following: The condition of this recognizance is such, that whereas T. C., of C., in said county of M., laborer, has exhibited to me, the said justice, his complaint on oath, that J. R., of C. aforesaid, in the county aforesaid, blacksmith, &c., (here copy the complaint verbatim, from these words to “and dignity of the state.”)

And whereas the said J. R. was, on the — day of —, convicted of said offence, and sentenced by me, the said justice, to pay a fine of six dollars, for the use of the county of M., and costs of prosecution taxed at — dollars, &c., (as the sentence may be) and stand committed till said sentence be performed; from which sentence the said J. R. then and there appealed to the court of common pleas, next to be holden at C., in said county of M., on the — Tuesday of — [A. D. 184—:] Now if the said J. R. shall make his personal appearance at the said court of common pleas, and there prosecute his appeal with effect, and abide the order of said court thereon, and in the mean time be of good behavior, then this recognizance shall be void.

J. P., *Justice of the Peace.*

16. In taking this recognizance verbally, proceed as in form 9, page 288, to the words “which is that,” and then say, “You, the said J. R., shall make your personal appearance at the court of common pleas, next to be holden at C., in the county of M., on the — Tuesday of — next, and there prosecute your appeal with effect, and abide the order of said court thereon, and in the meantime be of good behavior, then this recognizance shall be void. Are you content?”

17. *Form of mittimus.*]

**The State of New-Hampshire.**

M— ss. *To the Sheriff of said County of M., or his Deputy, or [L. S.] to any Constable of any Town in said County.*

Whereas on the — day of —, A. D., 184—, before me, J. P., a justice of the peace for said county of M., came T. C., of C., in said county, laborer, and on oath complained that J. R., of C. aforesaid, in the county aforesaid, blacksmith, &c.

(Copy the complaint to the words, “peace and dignity of the state;”) then say—and whereas the said J. R. was, on the — day of —, 184—, convicted of said offence, and sentenced by me, the said justice, to pay a fine of six dollars, for the use of the county of M., and to pay costs of prosecution, taxed at — dollars, &c., (as the sentence may be) and stand committed till sentence be performed:

And whereas the said J. R. has neglected and refused to perform the sentence aforesaid,

We command you, therefore, to convey the said J. R. safely to the jail in H., in said county, and deliver him to the keeper thereof; and the said keeper is commanded to receive the said J. R. into his custody in said jail, and him there safely keep until he shall pay said fine and costs, or is discharged by due order of law.

Dated the — day of —, A. D., 184--.

*J. P., Justice of the Peace.*

18. If the sentence is imprisonment, proceed as in last form to, "peace and dignity of the state," then say :

And whereas the said J. R. was, on the — day of —, 184-- , convicted of said offence, and sentenced to be imprisoned in the jail at H., in said county, for the term of twenty days, and to pay costs of prosecution taxed at — dollars, and (if the sentence is so) to recognize with sufficient sureties to keep the peace and be of good behavior until the next term of the court of common pleas, to be holden at C., in said county of M. :

We command you, therefore, to convey the said J. R. safely to the jail in H., in said county, and deliver him to the keeper thereof; and the said keeper is commanded to receive the said J. R. into his custody in said jail, and him there safely keep until the expiration of said twenty days, and until he is discharged by due order of law.

Dated the — day of —, A. D., 184--.

*J. P., Justice of the Peace.*

19. *Form of record of acquittal.]*

Follow form 11, page 289, to the words, "it appears to me, the said justice;" then say—"that said J. R. is not guilty, as in said complaint is alleged. It is, therefore, considered by me, the said justice, that the said J. R. be thereof acquitted and discharged."

*J. P., Justice of the Peace.*

20. *Form of recognizance of witnesses.]*

M— ss. BE IT REMEMBERED, that on the — day of —, A. D., 184-- , before me, J. P., a justice of the peace for the county of M., came A. B., C. D. and E. F., all of C., in said county of M., and acknowledged themselves to be severally indebted to the state of New-Hampshire in the sum of — dollars, to be levied upon their goods, chattels, lands and tenements, and in default thereof upon their bodies respectively, if default be made in the condition following :

*The condition of this recognizance is such,* That if said A. B., C. D. and E. F. shall personally appear at the court of common pleas, to be holden at C., in and for the said county of M., on the — Tuesday of —, 184-- , and then testify what they know relative to a complaint on oath made by T. C., of C., in said county, against J. R. of said C., then and there to be heard and tried, and shall not depart without license, then this recognizance shall be void.

*J. P., Justice of the Peace.*

21. In taking this recognizance verbally, proceed as in form 9, page 288, to the words, "which is that;" then say : "You, the said A. B., C. D. and E. F., shall severally make your personal appearance at the court of common pleas to be holden at C., in and for the county of M., on the — Tuesday of — next, and there testify what

you know relating to this complaint, and not depart without license, then this recognizance shall be void.

*Note.* From twenty to fifty dollars is the usual amount required in the recognizance of witnesses. If the witness is a minor, some sufficient person should recognize for his appearance as principal.

**22. *Mittimus for a witness refusing to recognize.*]**

Proceed as in form 17, page 291, to, "the peace and dignity of the state:" and whereas the said J. R. was by me, the said justice, ordered to recognize for his appearance at the court of common pleas next to be holden at C., in and for said county of M., on the — Tuesday of — next, to answer said complaint; and the said A. B. being ordered by the said justice to recognize for his appearance at said court, to testify what he knew relative to said complaint, did then and there refuse to enter into such recognizance:

We command you, therefore, to take the said A. B., and convey him to the jail in H., in said county, and deliver him to the keeper thereof; and the said keeper is commanded to receive the said A. B. into his custody in said jail, and him there safely keep until he shall comply with said order, or be discharged by due order of law.

Dated the — day of —, A. D., 184—. J. P., *Justice of the Peace.*

**23. *Taxation of costs.*]**

M— ss. Before J. P., a Justice of the Peace at C., — —, 184—.

The State (T. C., complainant,) *vs.* J. R.

*Costs of Prosecution.*

*Justice's Fees:*

|                            |           |               |
|----------------------------|-----------|---------------|
| Complaint,                 | - - - - - | \$0.50 cents. |
| Warrant,                   | - - - - - | .25           |
| Entry and judgment,        | - - - - - | .50           |
| Examination,               | - - - - - | .34           |
| Adjournment,               | - - - - - | .17           |
| Recognizance,              | - - - - - | .17           |
| Appeal,                    | - - - - - | .17           |
| Recognizance of party,     | - - - - - | .17           |
| Recognizance of witnesses, | - - - - - | .51           |

*Witnesses:*

|                      |           |     |      |
|----------------------|-----------|-----|------|
| A. B., eight miles,  | - - - - - | .32 |      |
| two days,            | - - - - - | .80 | 1.12 |
| C. D., four miles,   | - - - - - | .16 |      |
| one day,             | - - - - - | .40 | .56  |
| E. F., twelve miles, | - - - - - | .48 |      |
| two days,            | - - - - - | .80 | 1.28 |

*Officer's Fees:*

|          |           |     |
|----------|-----------|-----|
| Service, | - - - - - | .23 |
| Travel,  | - - - - - |     |
| &c.,     | - - - - - |     |

Taxed by J. P., *Justice of the Peace.*

The general form of complaint, form 1, page 285; the warrant, officer's return, warrant to recognize for further examination, and recognizances of witnesses, are equally adapted to cases where the justice has jurisdiction only to bind over for trial as to those which he has authority to try. The record of examination, recognizance for appearance at court, and mittimus, are different in those cases where the justices can only bind over, from those before given.

24. *Form of record of examination.]*

M—ss. BE IT REMEMBERED, That on the — day of —, A. D., 184—, before me, J. P., a justice of the peace for the county of M., came T. C., of, &c., and on oath complained that J. R., of, &c., (Here copy the complaint, to "peace and dignity of the state.")

Whereupon the said J. R., being afterward, on the — day of —, [A. D., 184—,] brought by virtue of a warrant issued on said complaint, before me, the said justice, and having heard the said complaint said that he was not guilty of the said offence; and thereupon, after hearing the evidence offered, as well on the part of the said J. R. as of the state, it appears to me, the said justice, that there is just ground to hold the said J. R. to answer for said offence:

It is, therefore, ordered by me, the said justice, that the said J. R. recognize in the sum of four hundred dollars, with two sufficient sureties, in the sum of two hundred dollars each, to appear at the court of common pleas next to be holden at C., in and for said county of M., on the — Tuesday of — next, then and there to answer to all such matters and things as may be objected against him in behalf of said state, and stand committed till this order be performed.

J. P., *Justice of the Peace.*

If the party recognizes, that fact should be stated at the close of the record, as follows: Whereupon the said J. R., and J. S. and A. B., of, &c., as his sureties, entered into a recognizance accordingly; and the said J. R. was thereupon discharged from arrest.

25. *Form of recognizance.]*

Follow the form of recognizance, page 288, form 8, to the words, "peace and dignity of the state;" then say:

And the said J. R. was, after due consideration, ordered by me, the said justice, to recognize in the sum of four hundred dollars, with two sufficient sureties in the sum of two hundred dollars each, to appear at the court of common pleas next to be holden at C., in and for said county of M., on the — Tuesday of — next, then and there to answer to all such matters and things as may be objected against him in behalf of said state, and stand committed till this order be performed:

Now if the said J. R. shall make his personal appearance at the court aforesaid, and then and there answer to all such matters and things as may be objected against him in behalf of said state, and

there wait and abide the order of said court, and not depart without leave of the court, then this recognizance shall be void.

J. P., *Justice of the Peace.*

26. In taking this recognizance verbally, proceed as in form 9, page 288, to the words, "which is that;" and then say:

If you, the said J. R., shall make your personal appearance at the court of common pleas next to be holden at C., in and for the county of M., on the — Tuesday of — next, and then and there answer to all such matters and things as may be objected against you in behalf of said state, and there wait and abide the order of the court, and not depart without leave of the court, then this recognizance shall be void. Are you content?

27. *Form of mittimus.*]

### The State of New-Hampshire.

M— ss. To the Sheriff of said County of M., or his Deputy, or to any Constable of any Town in said County.

[L. S.] Whereas on the — day of —, A. D., 184—, before me, J. P., a justice of the peace for said county of M., came T. C., of C., in said county, laborer, and on oath complained that J. R., of C. aforesaid, in the county aforesaid, blacksmith, &c.

(Here copy the rest of the complaint to the words, "peace and dignity of the state:") then say—

And whereas said J. R. was, on the — day of —, 184—, ordered by me, the said justice, to recognize in the sum of four hundred dollars, with two sufficient sureties in the sum of two hundred dollars each, to appear at the court of common pleas next to be holden at C., in and for said county of M., on the — Tuesday of — next, then and there to answer to all such matters and things as may be objected against him in behalf of said state: And whereas said J. R. has neglected and refused to perform the order aforesaid,

We command you, therefore, to convey the said J. R. safely to the jail in H., in said county, and him deliver to the keeper thereof; and the said keeper is commanded to receive the said J. R. into his custody in said jail, and him there safely keep until he is discharged by due order of law. Dated the — day of —, A. D., 184—.

J. P., *Justice of the Peace.*

28. *Form of return of commitment.*]

M— ss., —, 184—. I have committed the body of the said J. R. to the jail in H., in said county, and delivered to the keeper thereof an attested copy of this warrant, with an attested copy of this my return endorsed thereon.

R. P., *Sheriff.*

29. *Form of mittimus in a case not bailable.*]

### The State of New-Hampshire.

M— ss. To the Sheriff of said County of M., or his Deputy, or to any Constable of any Town in said County.

[L. S.] Whereas on the — day of —, A. D., 184—, before me, J. P., a justice of the peace for said county of M., came T. C., of C.,

in said county, laborer, and on oath complained that J. R., of C., in said county, blacksmith, &c., (here copy the rest of the complaint to the words, "peace and dignity of the state;") then say: And whereas, after due examination, it was ordered by me, the said justice, that said J. R. be committed to the jail in H., in said county, and there detained until discharged by due order of law:

We command you, therefore, to convey the said J. R. safely to the jail in H., in said county, and there deliver him to the keeper thereof; and the said keeper is commanded to receive the said J. R. into his custody, and him there safely keep until he is discharged by due order of law. Dated the — day of —, A. D., 184—.

J. P., *Justice of the Peace.*

### 30. *Application to a justice to back a warrant.*]

To C. J., a Justice of the Peace for the County of H.

A. M., of —, in the county of —, shews that the warrant within written was duly issued by J. P., a justice of the peace for the county of M., against J. R., of C., in said county of M.: That said J. R. is not found in the said county of M., but is now to be found in the said county of H.: Wherefore said A. M. prays that you will issue your warrant, directed to all proper officers of said county of H., directing them to arrest the said J. R., and convey him to some justice of the peace for said county of M., for examination, or deliver him to the sheriff of said county of M., or his deputy, to be by him conveyed to such justice, for the purpose aforesaid. A. M.

H— ss. On the — day of —, A. D., 184—, personally appeared A. M., and made oath that the facts stated in the foregoing application are in his belief true.

Before me: C. J., *Justice of the Peace.*

### 31. *Form of backing a warrant.*]

#### **The State of New-Hampshire.**

H— ss. *To the Sheriff of said County of H., or his Deputy, or to any Constable of any Town in said County:*

[L. S.] Whereas application has been made to me, J. C., a justice of the peace for the county of H., as above, and satisfactory proof has been exhibited to me that the within written warrant was duly issued by J. P., a justice of the peace for said county of M.:

We command you, therefore, to arrest the body of said J. R., and convey him to some justice of the peace for the county of M. for examination, or deliver him to the sheriff of said county of M., to be by him conveyed to such justice, for the purpose aforesaid.

Dated the — day of —, A. D. 184—.

J. C., *Justice of the Peace.*

### 32. *Form of return to the justice.*]

H— ss., —, 184—. I have arrested the body of the within named J. R., and have conveyed him to J. P., a justice of the peace for the county of M., and now have him before said justice for examination.

N. P., *Deputy Sheriff.*

### 33. *Form of return of arrest and delivery to a sheriff or deputy sheriff.*]

H— ss., —, 184—. I have arrested the body of the within named

J. R., and have delivered him to J. P., a deputy sheriff for said county of M., to be by him conveyed before a justice of the peace for said county of M. for examination. M. M., Sheriff.

34. *Form of return by an officer of an arrest out of his county.]*

M—ss., —, 184—. I arrested the body of said J. R., at H., in said county of H., and now have him before J. C., a justice of the peace for said county of H., for examination. R. R., Sheriff.

35. *Form of warrant to convey an offender to the county in which the warrant issued.]*

## The State of New-Hampshire.

H—ss. To R. P., Sheriff of the County of M.

[L. S.] Whereas the within named J. R. was this — day of —, 184—, brought by you before me, C. J., a justice of the peace for the county of H., upon the within warrant, and satisfactory proof has been exhibited to me that the said warrant was duly issued by a justice of the peace for the county of M. :

We command you, therefore, safely to convey the said J. R. to said county of M., for examination according to law.

Dated the — day of —, A. D., 184—.

C. J., Justice of the Peace.

All matters of excuse and justification may be given in evidence under the general issue. The only special plea which occurs in practice is a plea of a previous acquittal or conviction. The form of this is :

36. M—ss. Before J. P., Justice of the Peace, at C., —, 184—.

The State (T. C. complainant) *vs.* J. R.

And the said J. R. in his own proper person comes into court here, and, having heard the said complaint read, says that said complaint ought not to be farther prosecuted against him, the said J. R., because he says that heretofore, to wit., on, &c., (Here copy the record of conviction or acquittal in the past tense, omitting the word "me," where it occurs) then say :

as by the record thereof appears ; which judgment is in full force and not reversed or annulled. And the said J. R. says, that he, the said J. R., and the said J. R. so convicted (or acquitted) are one and the same person, and not other and different persons, and that the said offence of which he, the said J. R., was so convicted, (or acquitted) and the offence set forth in this complaint, are one and the same, and not other and different. And this he, the said J. R., is ready to verify : Wherefore he prays judgment and that he may be thereof discharged.

37. And the said complainant, who prosecutes for said state in this behalf, says that said state ought not to be precluded from prosecuting said complaint, because he says that there is not any record of the said conviction, (or acquittal) as the said J. R. has in his plea alleged : And this he prays may be enquired of by said justice.

And the said J. R. doth the like.

Defects in the complaint are usually taken advantage of



by a motion to quash the complaint; and demurrers are very unusual, because they admit the facts alleged; and a motion in arrest of judgment will usually answer the same purpose.

Any offender who is ordered by a justice to recognize, may afterwards appear before the same or any other justice, and enter into the recognizance required; and the justice may issue a supersedeas, or liberate, for his discharge.

### 38. *Form of supersedeas.*]

#### **The State of New-Hampshire.**

M— ss. *To the Sheriff of said County of M., or his Deputy; to the Keeper of the Jail in H., in said County, or to any Constable of any Town in said County.*  
[L. S.]

Whereas [here insert the whole recital of the mittimus, to the words, "and stand committed till this order (or sentence) be performed;"] then add:] and whereas the said J. R., with A. B. and C. D., two sufficient sureties, have this — day of —, A. D. 184—, come before me, J. P., a justice of the peace for said county of M., and severally acknowledged themselves to be indebted to the state of New-Hampshire, the said J. R. as principal, in the sum of four hundred dollars, and said A. B. and C. D. as sureties, in the sum of two hundred dollars each, to be levied of their goods and chattels, lands and tenements, and for want thereof, upon their bodies, if default be made in the condition following; which is, that said J. R. shall appear at the court of common pleas to be holden at C., in and for said county of M., on the — Tuesday of — next, and then answer to the complaint aforesaid, and there wait and abide the order of the court, then said recognizance to be void.

We command you, therefore, that you wholly forbear and cease to arrest, take, detain or imprison the said J. R., for the cause aforesaid; and if you have taken or imprisoned him for that cause and no other, that you cause him to be delivered and set at liberty without delay. Dated the — day of —, A. D. 184—.

*J. P., Justice of the Peace.*

The condition of the recognizance must be such as is required by the order or sentence of the justice, and be so stated in the supersedeas.

### 39. *Form of liberate.*]

The form of this process is the same as that of a supersedeas, except that it is addressed "*To the Keeper of the Jail at A., in the County of H.*"; and the last clause is:

We command you, therefore, if said J. R. do remain in said jail, for the cause aforesaid, and no other, that you forbear and cease to detain him any longer, and that you deliver him thence and set him at liberty without delay.

**40. Form of interrogatories to a witness brought into court by an attachment.]**

H— ss. Before J. P., Justice of the Peace, at M., — —, 184—.

*The State vs. A. B.*

Interrogatories exhibited before said Justice against said A. B., for a contempt of said court.

1st. Were you summoned to attend as a witness on the — day of —, 184—, at the dwelling-house of —, in —, in said county, to testify what you knew relative to a plea of the case then and there to be heard and tried between T. P., of, &c., plaintiff, and T. D., of, &c., defendant, before J. P., justice of the peace? Was a subpoena in said action read to you, and by whom and when? Were your lawful fees for your travel and attendance on that occasion paid or tendered to you?

2d. What reason or excuse have you for neglecting to attend, in pursuance of said summons? W. A., Attorney.

The examination and answer of A. B. to certain interrogatories exhibited to him before J. P., Justice of the Peace for said County, for a supposed contempt of said court.

To the first interrogatory said A. B. answers and says, I was not duly and legally summoned to attend as a witness in the action in said interrogatory mentioned. A subpoena in said action was read to me on the — day of —, by one G. S., but no fees whatever were either paid to me by said G. S. or otherwise, for my travel or attendance as a witness in that case.

To the second interrogatory the said A. B. answers, and says, I did not attend as a witness, according to said summons, because my fees aforesaid were not paid. A. B.

H— ss., — —, 184—. Personally appeared A. B., and made oath that the foregoing answers are true.

Before me : J. P., Justice of the Peace.

**41. Form of record.]**

H— ss. BE IT REMEMBERED, That on the — day of —, [A. D., 184—,] A. B., of, &c., was brought before me, J. P., a justice of the peace for the county of H., by virtue of a writ of attachment for contempt upon an affidavit of A. M., that on the — day of —, 184—, he, the said A. M., summoned the said A. B. to appear as directed in a certain writ of summons, which said writ is as follows, to wit :

(Here copy the subpoena :)

by reading to him the said summons, and paid to him the sum of — dollars, — cents, as his fees for his travel and attendance ; and thereupon the said A. B., being put to answer interrogatories duly exhibited to him relative to said contempt : It appears to me, the said justice, that the said A. B. is not guilty of the contempt aforesaid. It is, therefore, ordered by me, the said justice, that said A. B. be thereof discharged. J. P., Justice of the Peace.

Or : It appears to me, the said justice, that the said A. B. is guilty of a contempt of the authority of this state, in neglecting to obey the said summons. It is, therefore, considered by me, the said justice, that the said A. B. pay a fine for the use of the county of H.,

of — dollars, and pay costs of prosecution, taxed at — dollars, and stand committed till sentence be performed.

*J. P., Justice of the Peace.*

**42. Form of the mittimus.]**

The mittimus differs from the usual form only in the recital, which commences :

“Whereas, on the — day of —;” and so proceed with a copy of the record to the end, but in the past tense.

Perhaps a more formal mode of proceeding in cases of contempt would be, instead of proceeding on a mere affidavit, to file a proper complaint, alleging the issuing of the writ of summons, the requirements of the writ, the service by reading, and payment of fees, and the neglect to attend. In that case the other proceedings would closely resemble those in other criminal cases ; the only point of difference being the examination on interrogatories, which is supposed to be necessary to give the respondent an opportunity to make his excuse.

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## COMPLAINTS FOR CRIMES AND OTHER OFFENCES.

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### OFFENCES AGAINST THE LIFE OR PERSON.

**Revised Statutes, Chap. 214, Page 433.**

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#### COMMENCEMENT AND CONCLUSION OF COMPLAINTS.

To J. P., a Justice of the Peace for the County of M.

*T. C., of C., in said County of M., laborer, complains that J. R., of C. aforesaid, blacksmith, on the — day of —, in the year of our Lord one thousand eight hundred and forty —, at C. aforesaid, in the county aforesaid, with force and arms :*

(Here insert the forms of complaints hereafter given ; and conclude) *contrary to the form of the statute in such case made and*

*provided, and against the peace and dignity of the state; wherefore the said T. C. prays that said J. R. may be held to answer to this complaint, and that justice may be done in the premises.*  
*T. C.*

*M— ss., — —, 184—. Personally appeared T. C., and made oath that the above complaint by him subscribed is in his belief true. Before me:*

*J. P., Justice of the Peace.*

*1. Murder, by shooting with a pistol.]*

upon one E. F., feloniously, wilfully, and of his malice aforethought, did make an assault; and a certain pistol, of the value of two dollars, then and there charged with gunpowder and a leaden bullet, which said pistol he, the said C. D., in his right hand then and there had and held, then and there feloniously, wilfully, and of his malice aforethought, did discharge and shoot off, to, against, and upon the said E. F., and with the leaden bullet aforesaid, out of the pistol aforesaid, then and there by the force of the gunpowder aforesaid, by the said C. D. discharged and shot off as aforesaid, then and there feloniously, wilfully, and of his malice aforethought, did strike, penetrate and wound the said E. F. in and upon the right side of the belly of him, the said E. F., near the right hip of him, the said E. F., giving to him, the said E. F., then and there, with the leaden bullet aforesaid, so as aforesaid discharged and shot out of the pistol aforesaid, by the said C. D., in and upon the right side of the belly of him, the said E. F., near the said right hip of him, the said E. F., one mortal wound, of the depth of four inches and of the breadth of half an inch; of which said mortal wound he, the said E. F., then and there instantly died. And so the said A. B., upon his oath aforesaid, complains that the said C. D. him, the said E. F., in the manner and by the means aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder;

*2. Murder, by cutting the throat.]*

upon one E. F., feloniously, wilfully and of her malice aforethought, did make an assault; and with a certain knife, of the value of ten cents, which she, the said C. D., in her right hand then and there had and held, the throat of him, the said E. F., feloniously, wilfully and of her malice aforethought did strike and cut; and with the knife aforesaid, by the striking and cutting aforesaid, did then and there give to him, the said E. F., in and upon the said throat of him, the said E. F., one mortal wound, of the length of three inches and of the depth of two inches; of which said mortal wound the said E. F. then and there instantly died. And so the said A. B., upon his oath aforesaid, complains that the said C. D. him, the said E. F., in manner and form aforesaid, then and there feloniously, wilfully, and of her malice aforethought, did kill and murder;

*3. Murder, by stabbing with a knife.]*

upon one E. F., feloniously, wilfully, and of his malice aforethought, did make an assault; and with a certain knife, of the value of

twenty cents, which he, the said C. D., in his right hand then and there had and held, the said E. F., in and upon the left side of the body, and between the ribs of him, the said E. F., then and there feloniously, wilfully, and of his malice aforethought, did strike and thrust, giving to the said E. F. then and there, with the knife aforesaid, in and upon the left side of the body, between the ribs of him, the said E. F., one mortal wound, of the breadth of three inches and of the depth of six inches, of which said mortal wound he, the said E. F., then and there instantly died. And so the said A. B. upon his oath aforesaid complains that the said C. D. him, the said E. F., in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder ;

4. *Murder, by striking with a poker.*]

upon one E. F., feloniously, wilfully, and of his malice aforethought, did make an assault ; and with a certain iron poker, of the value of ten cents, which he, the said C. D., in both his hands then and there had and held, the said E. F., in and upon the back part of the head of him, the said E. F., then and there feloniously, wilfully, and of his malice aforethought, did strike, giving unto him, the said E. F. then and there, with the said iron poker, by the stroke aforesaid, in manner aforesaid, in and upon the back part of the head of him, the said E. F., one mortal wound, of the length of three inches and of the depth of one inch ; of which said mortal wound he, the said E. F., on the said — day of —, at B. aforesaid, in the county aforesaid, did languish, and languishing did live ; on which same — day of — aforesaid, at B. aforesaid, in the county aforesaid, he, the said E. F., of the said mortal wound died. And so the said A. B. upon his oath aforesaid complains that the said C. D. him, the said E. F., in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder ;

5. *Murder, by casting a stone.*]

upon one E. F. feloniously, wilfully, and of his malice aforethought did make an assault, and a certain stone, of no value, which he, the said C. D., in his right hand then and there had and held, in and upon the right side of the head, near the right temple of him, the said E. F., then and there feloniously, wilfully, and of his malice aforethought, did cast and throw ; and with the stone aforesaid, so as aforesaid cast and thrown, the aforesaid E. F., in and upon the right side of the head, near the right temple of him, the said E. F., then and there feloniously, wilfully, and of his malice aforethought, did strike, penetrate and wound, giving to the said E. F., by the casting and throwing of the stone aforesaid, in and upon the right side of the head, near the right temple of him, the said E. F., one mortal wound, of the length of one inch and of the depth of one inch ; of which said mortal wound the said E. F. then and there instantly died. And so the said A. B. on his oath aforesaid complains that the said C. D. him, the said E. F., in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder ;

6. *Murder, by strangling.*]

upon one E. F. feloniously, wilfully, and of his malice aforethought,

did make an assault ; and with both his hands fixed and fastened about the neck and throat of her, the said E. F., her, the said E. F., then and there feloniously, wilfully, and of his malice aforethought did choke and strangle ; of which said choking and strangling she, the said E. F., then and there instantly died. And so the said A. B. upon his oath aforesaid complains that the said C. D. her, the said E. F., then and there, in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought did kill and murder ;

*7. Murder, by drowning.]*

in and upon one E. F. feloniously, wilfully, and of his malice aforethought, did make an assault ; and then and there feloniously, wilfully, and of his malice aforethought, with both the hands of him, the said C. D., did cast, throw and push the said E. F. into a certain pond there situate, wherein there was a great quantity of water ; by means of which said casting, throwing and pushing of the said E. F. into the pond aforesaid, by the said C. D., in form aforesaid, he, the said E. F., in the pond aforesaid, with the water aforesaid was then and there suffocated and drowned ; of which said suffocation and drowning, he, the said E. F., then and there instantly died. And so the said A. B. upon his oath aforesaid complains that the said C. D., in manner and form aforesaid him, the said E. F., feloniously, wilfully, and of his malice aforethought, did kill and murder ;

*8. Murder, by poisoning.]*

feloniously, wilfully, and of his malice aforethought, did put and mix a large quantity of white arsenic, being a deadly poison, with a certain quantity of beer, then being in the dwelling-house of one E. F. there situate, with intent the said E. F. then and there with the said poison feloniously, wilfully, and of his malice aforethought to kill and murder ; he, the said C. D., then and there well knowing the said white arsenic to be a deadly poison ; and that the said E. F. afterwards, to wit., on the same day and year aforesaid, at B. aforesaid, did drink a great quantity of the said beer, with which the said white arsenic was mixed by the said C. D. as aforesaid, he, the said E. F., not knowing that there was any white arsenic, or other poisonous ingredient, mixed with the said beer as aforesaid ; by means whereof he, the said E. F., then and there became sick and distempered in his body ; and the said E. F., of the poison aforesaid, so by him drank as aforesaid, and of the sickness occasioned thereby, from the said — day of —, in the year aforesaid, until the twenty-eighth day of said month, in the same year, at B. aforesaid, in the county aforesaid, did languish, and languishing did live ; on which said twenty-eighth day of —, in the year aforesaid, at B. aforesaid, in the county aforesaid, he, the said E. F., of the poison aforesaid, and of the sickness and distemper occasioned thereby, died. And so the said A. B. upon his oath aforesaid complains that he, the said C. D., in manner and form aforesaid, him, the said E. F., feloniously, wilfully, and of his malice aforethought, did poison, kill and murder ;

**PROCEEDINGS RELATIVE TO THE DISINTERMENT OF A PERSON SUSPECTED TO BE MURDERED.**

**R. S., 450, sec. 14. [See page 282.]**

**9. Form of complaint.]**

To J. P., a Justice of the Peace for the County of M.

T. C., of C., in said county, husbandman, on oath complains that he has reasonable grounds for suspecting, and does suspect that J. D., of said C., yeoman, deceased, and who was interred at said C. on the — day of —, [A. D. 184—,] came to his death by some unlawful means. Wherefore he prays that a warrant may issue, requiring the body of said J. D. to be disinterred and examined, and that justice may be done in the premises.

T. C.

M— ss., —, 184—. Personally appeared T. C., and made oath that the above complaint by him subscribed is true.

Before me : J. P., *Justice of the Peace.*

**10. Form of warrant.]**

**The State of New-Hampshire.**

M— ss. To the Sheriff of said County of M., or his Deputy, or to [L. S.] any Constable of the Town of C., in said County.

Whereas T. C., of C., in said county, husbandman, on the — day of —, A. D. 184—, exhibited to me, J. P., justice of the peace for said county of M., his complaint that

(Here insert the complaint.)

We command you, therefore, that you cause the body of said J. D. deceased, to be disinterred and examined, and that you summon A. B., C. D., &c., to appear before me, the said justice, at — in — in said county, on —, the — day of — next, to testify what they know relative to said complaint.

Dated the — day of —, 184—.

J. P., *Justice of the Peace.*

If, upon examination, evidence should be elicited to justify it, a complaint should be drawn against the party suspected, in the usual form, on which the usual proceedings will be had.

**11. Manslaughter.]**

upon one A. B. in the public highway there feloniously and wilfully did make an assault, and a certain cart, of the value of twenty dollars, then and there drawn by two horses, of the value of fifty dollars, which he, the said J. R., was then and there driving in and along the said highway, upon and against the said A. B. feloniously did force and drive, and him, the said A. B., did thereby then and there throw to and upon the ground; and did then and there feloniously force and drive one of the wheels, to wit., the off wheel of said cart, against, upon and over the head of said A. B., then lying upon the ground, and thereby did then and there give to said A. B. upon his head one mortal fracture and contusion, of which the said A. B.

then and there instantly died ; and so the said T. C. upon his oath aforesaid complains that the said J. R. him, the said A. B., in the manner and by the means aforesaid, feloniously did kill and slay ;

**12. Rape.]**

upon one E. F. violently and feloniously did make an assault, and her, the said E. F., then and there feloniously did ravish and carnally know, committing carnal copulation with her by force and against her will ;

**13. Abusing a female child, under the age of ten years.]**

upon one E. F., spinster, a woman child under the age of ten years, to wit., of the age of nine years, feloniously did make an assault, and her, the said E. F., then and there wickedly, unlawfully and feloniously did carnally know and abuse ;

**14. Maiming.]**

upon the said A. B., with set purpose and malice aforethought, unlawfully and feloniously did make an assault ; and with a certain axe, of the value of one dollar, which he, the said C. D., in both his hands then and there had and held, the left hand of him, the said A. B., with set purpose and malice aforethought then and there unlawfully and feloniously did cut off with intention the said A. B., in so doing, in manner aforesaid, to maim and disfigure ;

**15. Robbery.]**

with force and arms upon him, the said A. B., feloniously did make an assault, and him, the said A. B., in bodily fear and danger of his life then and there feloniously did put, and one gold watch, of the value of one hundred dollars, of the goods and chattels of him, the said A. B., from the person and against the will of him, the said A. B., then and there feloniously, and by violence and putting in fear, did steal, rob, take and carry away ;

**16. Assault, with intent to murder.]**

upon the said A. B., with a drawn sword, which he, the said C. D., in his right hand then and there held, did make an assault, with an intention him, the said A. B., then and there, with the drawn sword aforesaid, feloniously, wilfully, and of his malice aforethought, to kill and murder ;

**17. Assault, with intent to maim.]**

upon the said A. B., with a certain knife which he, the said C. D., in his right hand then and there had and held, did make an assault, with an intention him, the said A. B., with set purpose and malice aforethought unlawfully to maim and disfigure, by unlawfully cutting off the left ear of him, the said A. B. ;

**18. Assault, with intent to commit a rape.]**

upon her, the said A. B., did make an assault, with intent her, the said A. B., then and there feloniously to ravish and carnally know, and to commit carnal copulation with her by force and against her will ;

**19. Assault, with intent to rob.]**

upon the said A. B. did make an assault, with intent the moneys,



goods and chattels of him, the said A. B., from the person and against the will of him, the said A. B., feloniously and by violence, and by putting him in bodily fear and danger of his life, to steal, rob, take and carry away ;

## OFFENCES AGAINST PROPERTY.

Revised Statutes, Ch. 215, Page 435.

### 20. *Arson.*]

the dwelling-house of him, the said A. B., there situate, feloniously, wilfully and maliciously did set fire to, burn and consume ;

### 21. *Setting fire to a building, whereby a dwelling was burnt.*]

a certain building of one E. F. there situate, called a wood-house, feloniously, wilfully and maliciously did set fire to and burn, whereby the dwelling-house of him, the said T. C., there also situate, was then and there feloniously, wilfully and maliciously burnt and consumed ;

### 22. *Setting fire to a building adjoining a dwelling-house.*]

a certain out-building, called a wood-house, of the said T. C., there situate, and adjoining to the dwelling-house of him, the said T. C., also there situate, feloniously, wilfully and maliciously did set fire to, burn and consume ;

### 23. *Burning a meeting-house.*]

a certain meeting-house there situate, belonging to the first parish in the said town of B., and erected for the public worship of God, did then and there wilfully and maliciously set fire to, burn and consume ;

### 24. *Burning a vessel lying within the body of a county.*]

a certain vessel called the —, the property of him, the said T. C., and of E. F., G. H., &c., then and there lying and being within the body of the said county of —, did wilfully and maliciously set fire to, burn and consume ;

### 25. *Burning a quantity of boards.*]

a certain pile of boards, containing one thousand feet, of the value of ten dollars, of the property of him, the said T. C., there lying and being, wilfully and maliciously did set fire to, burn and consume ;

### 26. *Burglary.*]

about the hour of ten in the night, of the same day, the dwelling-house of one E. F., there situate, feloniously and burglariously did break and enter, with intent, the said E. F. then and there being, then and there feloniously and of his malice aforethought to kill and murder ;

27. *Or :* with intent one M. D. then and there being, feloniously to ravish and carnally know, committing carnal copulation with her by force against her will ;

28. *Or :* with intent, the money of the said E. F. then and there

from the person and against the will of the said E. F., by assaulting and putting the said E. F. in fear, then and there feloniously to steal, rob, take and carry away ;

**29. Burglary and stealing.]**

about the hour of twelve in the night of the same day, the dwelling-house of one E. F., there situate, feloniously and burglariously did break and enter, with intent the goods and chattels of the said E. F., in the said dwelling-house then and there being, then and there feloniously and burglariously to steal, take and carry away ; and one watch, with a silver case, of the value of twenty dollars, and [state here all the articles stolen, with the value of each] of the goods and chattels of the said E. F., in the said dwelling-house then and there being, then and there feloniously and burglariously did steal, take and carry away ;

The last allegation of actual stealing may be omitted. Its insertion does not vitiate the complaint.

**30. Breaking a store, &c., in the night time.]**

Follow the form in Burglary, form 26, &c., omitting the words, "*and burglariously*," and describing the building as an *office, bank, store, or warehouse*.

**31. Breaking a vessel in the night time.]**

Follow the form in Burglary, form 26, &c., page 306, omitting the words, "*and burglariously*," and describing the vessel as "a certain vessel called a ship, and known by the name of '*The Marius*,' then and there lying, and being within the body of the said county of R."

**32. Breaking or entering buildings in the night, and stealing.]**

about the hour of ten, in the night time of the same day, the dwelling-house of one E. F. there situate, feloniously did (break or) enter, and one frock coat, of the value of nine dollars, of the goods and chattels of the said T. C., then and there being in the said dwelling house, then and there feloniously did steal, take and carry away ;

Instead of dwelling-house, say store, mill, court-house, academy, or other building named in the *R. S.* 436, § 9.

**33. Breaking and entering in the day time, with intent to commit a crime, &c.]**

in the day time of the same day did break and enter a certain building called a shop, of him, the said T. C., there situate, with intent the goods and chattels of the said E. F. there situate, then and there feloniously to steal, take and carry away ; (See form 26, page 306.)

**34. Simple larceny.]**

feloniously did steal, take and carry away one silver spoon, of the value of two dollars, of the goods and chattels of him, the said T. C., then and there being found ;

35. *Of several articles.]*

feloniously did steal, take, and carry away two pairs of shoes, of the value of three dollars; two brass candlesticks, of the value of one dollar; and ten pounds weight of sugar, of the value of sixty cents, of the goods, &c.;

36. *Of goods of a third person.]*

feloniously did steal, take, and carry away one handsaw, of the value of — dollars, of the goods and chattels of one A. B., &c.; or, of the goods and chattels of the Concord Rail Road Corporation; &c.

37. *Of a person unknown.]*

feloniously did steal, take, and carry away one dress coat, of the value of — dollars, of the goods and chattels of a certain person to this complainant unknown; &c.

38. *Of horses and cattle, &c.]*

feloniously did steal, take, and carry away one horse, (or, one mare; or, five sheep, cows, oxen, steers, lambs, &c.,) of the value of — dollars, of the goods, &c.;

*Or*: one horse, of the value of — dollars; two cows, of the value of — dollars, and one swine, of the value of — dollars, of the goods, &c.;

39. *Of bank notes.]*

feloniously did steal, take and carry away one bank bill, for the payment of five dollars, and of the value of five dollars, then and there being found, and then and there being the property of said T. C.; and the said sum of five dollars, payable by and upon said bank bill, then and there remaining due and unsatisfied to the said T. C.;

40. *Of money.]*

feloniously did steal, take and carry away six pieces of the lawful silver coin of the United States called half dollars, of the value of three dollars, of the moneys of the said T. C., then and there being found;

*Or*: ten pieces of the lawful copper coin of the United States, called cents, of the value of ten cents; &c.

*Or*: five pieces of current silver coin, called five franc pieces, of the value of four dollars sixty-five cents; &c.

41. *Of promissory notes.]*

feloniously did steal, take, and carry away a certain writing called a promissory note, containing evidence of a subsisting contract and promise to pay in money the sum of twenty dollars and upwards, the said note then and there being of the value of twenty dollars, and being the property of said T. C., and the said sum of twenty dollars, payable upon said notes, being then and there due and unsatisfied to the said T. C.;

42. *Of several notes.]*

feloniously did steal, take and carry away five writings called promissory notes, containing together evidence of subsisting debts, contracts and promises to pay in money the sum of — dollars; the said notes then and there being of the value of twenty dollars, and being the property of said T. C.; and the said sum of — dollars, payable

upon said notes, being then and there due and unsatisfied to said T. C.

43. *Of receipts.*]

feloniously did steal, take, and carry away a certain writing called a receipt, containing evidence of the receipt, payment and discharge of the sum of — dollars; the said receipt then and there being of the value of twenty dollars, and being the property of said T. C.;

Or: two certain writings called receipts, containing together evidence, &c.;

In cases where the value of property stolen is less than twenty dollars, the sentence upon a conviction, besides fine and imprisonment, is to pay the owner the treble value, deducting the value of what is returned.

44. *Form of sentence.*]

Follow form 11, page 289, to "It is considered"; then say:

that said J. R. be punished by imprisonment in the common jail for the term of —, and pay a fine of — dollars, for the use of the county of —, and pay costs of prosecution taxed at — dollars, and also pay to said T. C. — dollars, being treble the value of said (article stolen) (or, — dollars, being treble the value of said [articles stolen] after deducting the value of one — returned to said T. C.) and stand committed till the sentence is performed.

45. *Against an accessory, for receiving stolen goods.*]

feloniously did steal, take and carry away one silver spoon, of the value of two dollars, (enumerate the articles in the former conviction) of the goods and chattels of one E. F., then and there being found, against the peace and dignity of the state and contrary to the form of the statute in such case made and provided. And the said A. B., upon his oath aforesaid, further complains, that G. H., of said B., laborer, afterwards, to wit., on the — day of —, now last past, with force and arms, at B. aforesaid, in the county aforesaid, the goods and chattels aforesaid, so as aforesaid feloniously stolen, taken and carried away, feloniously did receive and conceal, he, the said G. H., then and there well knowing the said goods and chattels to have been feloniously stolen, taken and carried away;

In addition to the sentence against a person convicted of concealing stolen goods, of fine and imprisonment, a judgment is to be rendered in favor of the owner of the goods stolen, for the value of such property, deducting the value of such part as may be returned,

46. *Form of judgment for the owner.*]

After the sentence, ending with, "and pay costs of prosecution, taxed at — dollars," say:

It is further considered that said T. C. recover against said J. R.

the sum of — dollars, being the value of the articles so stolen and concealed as aforesaid, (after deducting the value of — returned.)

The execution on this judgment is in common form.—  
*See pages 159 and 171; and form 10, Military Fines, post.*

**47. *Stealing from the person.*]**

feloniously did steal, take and carry away one silver watch, with a steel chain, of the value of twenty dollars, of the goods and chattels of him, the said A. B., from the person of him the said A. B.;

**48. *Against an accessory, for receiving stolen goods, the principal felon being unknown.*]**

one silver cup, of the value of five dollars, of the goods and chattels of him, the said A. B., by a certain evil disposed person, to the said A. B. yet unknown, then lately before feloniously stolen, unlawfully, unjustly, and for the sake of wicked gain, did receive and conceal, he, the said C. D., then and there well knowing the said silver cup to have been feloniously stolen;

**49. *Killing or maiming cattle.*]**

one black gelding, of the price of sixty dollars, of the goods and chattels of the said T. C., in a certain field of him, the said T. C., then and there being, feloniously and maliciously did then and there kill and destroy (or maim and wound, or poison,) with intent to injure him, the said T. C., to the great damage of him, the said T. C.;

**50. *Malicious injury of trees.*]**

wilfully and maliciously cut down (or strip off the bark from) five elm trees, placed and growing for ornament in a certain street in said C., in said county, called Main street, whereby the said trees were greatly injured;

**51. *Fraudulent mortgaging.*]**

did falsely and fraudulently mortgage one horse, of the value of fifty dollars, of the personal estate and property of said J. R., to one A. C., with intent thereby to prevent the attachment or seizure of the same upon mesne process or execution;

**52. *Fraudulent receipt of a mortgage.*]**

did falsely and fraudulently accept and receive from one A. C. a mortgage of one horse, of the value of fifty dollars, of the personal estate of said A. C., with intent thereby to prevent the attachment or seizure of the same upon mesne process or execution;

**53. *Fraudulent concealment.*]**

did fraudulently conceal, (Here enumerate the articles,) amounting in value to — dollars, of the property and personal estate of said T. R., with intent thereby to prevent the attachment or seizure of the same upon mesne process or execution;

**54. *Placing obstructions on a rail-road.*]**

did wilfully and maliciously place upon the track of the railroad of the Concord Railroad Corporation, in C. aforesaid, in the county aforesaid, one white oak plank, being an obstruction to the passing of the railroad cars thereon, whereby the lives of sundry persons, to wit., forty persons, riding in said cars upon said railroad were greatly endangered;

## FORGERY AND COUNTERFEITING.

Revised Statutes, Chap. 216, Page 438.

### 55. *Forgery of a promissory note.*]

did falsely make and counterfeit a certain promissory note for the payment of money, purporting to be made and signed by one E. F., for the sum of — dollars ; which said false and counterfeit promissory note is as follows, to wit., [*here insert an exact copy of the note :*] with intent to defraud the said T. C. ;

### 56. *Forging a certificate of a justice of the peace.*]

did falsely make and counterfeit a certain certificate and attestation of one E. F., a justice of the peace for the said county of S. ; which said false and counterfeited certificate and attestation is as follows, to wit., [*here insert an exact copy of the certificate, in words and figures ;*] which said false and counterfeited certificate and attestation then and there purported to be the certificate and attestation of a justice of the peace, in a matter wherein the said certificate and attestation might be received as legal proof, with intent to defraud the said T. C. ;

### 57. *Passing a forged deed.*]

feloniously did pass and use as true, a certain false and counterfeited deed, which said false and counterfeited deed is as follows, that is to say : (Here copy the deed verbatim, including the signatures and names of witnesses,) with intent that the said T. C. should be defrauded ; he, the said J. R., then and there well knowing the same to be false and counterfeited ;

### 58. *Counterfeiting a bank note.*]

feloniously did falsely make and counterfeit a certain bank note, purporting to be issued by a certain bank called The President, Directors and Company of the Grafton Bank, which said false and counterfeited bank note is as follows, that is to say : (Here insert a copy of the bill verbatim thus : “ No. —. The President, Directors and Company of the Grafton Bank promise to pay —, or bearer, ten dollars. Haverhill, June 27, 1840. John A. Page, cashier ; Mills Olcott, president,”) with intent that some person should be defrauded ;

### 59. *Fraudulent alteration of a bank note.*]

feloniously did falsely and fraudulently alter a certain bank note, purporting to be issued by a certain bank called The President, Directors and Company of the Globe Bank ; which said bank note, so falsely and fraudulently altered, was originally as follows, that is to say : (Here copy the bill verbatim, as, e. g. : “ No. —. The President, Directors and Company of the Globe Bank promise to pay —, or bearer, two dollars. Bangor, Maine, July 6, 1841. — —, cashier ; — —, President ;” by inserting the words, “ Boston, Mass.,” instead of the words, “ Bangor, Maine ;” with intent that some person should be defrauded ;

**60. *Passing a counterfeit bank note.*]**

feloniously did pass (or offer to pass) as true, a certain false and counterfeit bank note, purporting to be issued by a certain bank called The President, Directors and Company of the Grafton Bank ; which said false and counterfeited bank note is as follows, that is to say : " No. —. The President, Directors and Company of the Grafton Bank promise to pay —, or bearer, ten dollars. *Haverhill.* John A. Page, Cashier ; Mills Olcott, President," with intent that said T. C. should be defrauded ;

**61. *Having counterfeit bank notes, with intent knowingly and fraudulently to pass them.*]**

had in his possession and custody a certain false and counterfeited bank note, purporting to be issued by a certain bank called The President, Directors and Company of the Grafton Bank, which said false and counterfeited bank note is as follows, that is to say : (here copy the bill verbatim ;) he, the said T. R., then and there well knowing the same bank note to be false, forged and counterfeited, with intent that some person should be defrauded ;

**62. *Making a plate to be used in counterfeiting bills.*]**

did engrave and make, and did begin to engrave and make, a certain plate, the same being an instrument and material adapted and designed for forging and making false and counterfeit bank notes, purporting to be issued by a certain bank called The President, Directors and Company of the Grafton Bank ;

**63. *Being possessed of tools for counterfeiting.*]**

had in his custody and possession a certain plate, engraven, adapted and designed for the forging and making of false and counterfeit bank notes, purporting to be issued by a certain bank called The President, Directors and Company of the Grafton Bank, with the intent to use and employ the same, and to cause and permit the same to be used and employed in forging and making such false and counterfeit bank notes ;

**64. *Coining.*]**

did falsely and fraudulently make a certain false and counterfeit coin, in imitation of the good and lawful silver coin of the United States, current within this state by law and usage, called half dollars ;

**65. *Passing false coin.*]**

did falsely and fraudulently pass (or offer to pass) as true, a certain false and counterfeit coin, in imitation of the good and lawful silver coin, current within this state by law and usage, called Spanish dollars ; knowing the same to be so false and counterfeit, with intent that said T. C. should be defrauded ;

**66. *Having false coin.*]**

falsely and fraudulently had in his possession and custody five similar pieces of false and counterfeit coin, in imitation of the good and lawful silver coin of the United States current within this state by law and usage, called dimes, knowing the same to be so false and counterfeit, with intent that some person should be defrauded ;

**67. *Making or having tools for coining.*]**

did cast, stamp, engrave and make, (or did then and there knowingly have in his possession,) a certain tool and instrument called a die, adapted and designed for making false and counterfeit coin, in imitation of the silver coin current within this state by law and usage, called a dime; with the intent that the same might be used in making the false coin aforesaid;

**OFFENCES AGAINST PUBLIC JUSTICE.**

**Revised Statutes, Chap. 317, Page 440.**

**68. *Perjury.*]**

T. C., of, &c., complains that at the court of common pleas holden at C., in and for the county of M., on the — day of —, a certain issue duly joined in the court aforesaid between one L. M. and one P. G., in a plea of trespass for assault and battery, in which said L. M. was plaintiff and said P. G. was defendant, came on to be tried in due form of law, and was then and there tried by a certain jury of the country in that behalf, duly empannelled and sworn between the said parties; and that upon the trial of the said issue, so joined between the parties aforesaid, J. R., late of said C., laborer, appeared as a witness for and on behalf of said L. M., the plaintiff in the plea aforesaid, and was sworn, and then and there took his corporal oath before said court of common pleas to speak the truth, the whole truth and nothing but the truth, concerning the matter in question in the said issue (the said court of common pleas then and there having sufficient and competent power to administer an oath to the said J. R. in that behalf); and that upon the trial of the said issue, so joined between the parties aforesaid, a certain question then and there became and was material, that is to say, whether the said P. G. had dragged the said L. M. by the hair of his head; and that the said J. R., being so sworn as aforesaid, then and there, to wit, on the — day of —, at C. aforesaid, falsely, wilfully and corruptly did say, testify, swear and give evidence among other things to and before the said jurors, so sworn to try the said issue as aforesaid, and the said court of common pleas, in substance as follows: that the said P. G., the said defendant, dragged the said L. M., the said plaintiff, by the hair of his head on the ground twenty feet: Whereas in truth and in fact the said P. G. did not drag the said L. M. by the hair of his head twenty feet; and whereas in truth and in fact the said P. G. did not drag the said L. M. by the hair of his head at all; and so the said T. C. upon his oath aforesaid complains that the said J. R., in manner and form aforesaid, did falsely, wilfully and corruptly commit wilful and corrupt perjury, to the perversion of justice;

**69. *Subornation of perjury.*]**

did falsely, knowingly and corruptly solicit, suborn and procure A. W., the said A. W. being then and there pregnant with child, which was likely to be born a bastard, and to be chargeable to the said town of C., by promises and other sinister means, to go before one J. P., a justice of the peace for said county of M., and make oath that T. C., of C., in said county of M., laborer, (meaning the said complainant)



was the father of the child of which she was so pregnant : and that by means of the said corrupt solicitation, subornation and procurement of the said J. R., she, the said A. W., afterwards, to wit., on the — day of —, in the year aforesaid, at C. aforesaid, did go in her proper person before the said J. P., being such justice as aforesaid, and then and there having sufficient power and authority to administer an oath and receive the complaint of the said A. W. hereinafter mentioned, and then and there did complain to said justice in writing under her hand as follows, that is to say : (Here insert the complaint, including the signature :) and the said A. W. was then and there sworn, and took her corporal oath before the said J. P., justice of the peace as aforesaid, and then and there upon her oath aforesaid, before the said justice, did falsely, wilfully and corruptly say, testify and swear, that the said complaint by her subscribed was true : Whereas in truth the said J. R., at the time of soliciting, suborning and procuring the said A. W. falsely and corruptly to swear as aforesaid, well knew that the said T. C. was not father of the said child, of which she was then pregnant as aforesaid. And so the said T. C., on his oath aforesaid, complains that said J. R. did knowingly, falsely and corruptly suborn and procure the said A. W. in manner and form aforesaid to commit wilful and corrupt perjury, to the perversion of justice ;

*70. Attempting to suborn.]*

T. C., of, &c., complains that at the court of common pleas holden at C., in and for the county of M., on the — day of —, a certain issue duly joined in the court aforesaid, between one C. D. and one E. F., in a plea of trespass for assault and battery, in which said C. D. was pl. and said E. F. was def., came on to be tried in due form of law, and was then and there tried by a certain jury of the county in that behalf, duly impannelled and sworn between the said parties : and that before the trial of said issue, and while the same was pending, to wit., on the — day of [—,] at C. aforesaid, in the county aforesaid, J. R., of, &c., did wilfully and corruptly solicit and endeavor to persuade and procure one I. J. to be and appear as a witness on behalf of said C. D., the pl. aforesaid, at the trial of said issue, and upon the same trial to commit wilful and corrupt perjury, by falsely swearing and giving in evidence to, and before the jurors aforesaid, so sworn between the parties aforesaid to try the said issue, in substance as follows, that is to say :

(Here set out the false testimony.)

Whereas in truth, (here negative the evidence) to the subversion of justice ;

*71. Assaulting and obstructing an officer.]*

upon the said T. C., then and there being one of the constables of the town of N., legally authorized and duly qualified to discharge and perform the duties of said office, and being then and there in the due and lawful execution of his said office, in the service of a certain writ of attachment in a civil case, did make an assault, and him, the said T. C., did then and there beat, bruise and illtreat, and in the due and lawful execution of his said office in the service of said writ of attachment, did then and there unlawfully and knowingly obstruct, oppose and hinder, and other wrongs to the said T. C. then and there did ;

72. *In a criminal case.]*

upon the said H., then and there being one of the deputy sheriffs of the county of M., legally appointed and duly qualified to discharge the duties of said office; and being then and there in the due and lawful execution of the said office, in the service of a warrant issued by J. P., a justice of the peace for the said county of M., against one P. N., in a criminal case, founded upon a complaint under oath, duly exhibited to said justice, against said P. N., for the crime of feloniously stealing certain goods and chattels, of the value of ten dollars, did make an assault, and him, the said T. C., did then and there beat, bruise and ill-treat; and in the due and lawful execution of his said office, in the service of said warrant, did then and there unlawfully and knowingly obstruct, oppose and hinder, and other wrongs to the said T. C. then and there did;

73. *Rescue.]*

upon one J. D., then and there being one of the deputy sheriffs for said county of M., duly appointed and legally qualified to discharge the duties of said office, and then and there being in the due and lawful discharge of the duties of his said office, did make an assault, and then and there unlawfully and forcibly did rescue and set at liberty one R. P. out of the custody and against the will of said J. D., the said R. P. being then and there lawfully arrested by said J. D., deputy sheriff as aforesaid, upon a certain warrant issued by one J. P., a justice of the peace for said county of M., founded upon a complaint duly exhibited to said justice against said R. P., for the crime of feloniously burning the dwelling-house of one P. O.;

74. *Conveying tools into a prison.]*

did unlawfully convey into the common jail of the county of M., situate at H., in said county, being then and there a lawful place of confinement, a certain tool called a crow-bar, with intent that one R. P., then a prisoner lawfully confined in the said jail, should by means thereof escape therefrom; but without any escape of any prisoner from the said jail;

75. *Conveying tools to a convict.]*

feloniously and unlawfully did convey into the state prison, at C. aforesaid, to one R. P., the said R. P. then and there being a prisoner in the said state prison, lawfully convicted of the crime of robbery, and then and there lawfully confined and detained for the crime aforesaid, two steel files, being tools proper to facilitate the escape of prisoners, with intent to aid the said R. P., so being such prisoner, to escape from said state prison;

76. *Against an officer for a voluntary escape.]*

being then the keeper of the common jail of the county of M., at H. in said county, and having the custody in the said jail of one R. P., then a prisoner in the said jail, lawfully convicted of the crime of forging and counterfeiting a bank note, purporting to be issued by a bank, with intent that one J. S. should be defrauded, did unlawfully and voluntarily suffer and permit the said R. P., so being a prisoner, lawfully committed to his custody in said jail for the crime aforesaid, to escape and go at large;

77. *Compounding a felony.*]

A. B., of B., in the county of —, yeoman, upon his oath complains that C. D., of —, in the county aforesaid, yeoman, on the — day of —, [A. D., 184—,] at B. aforesaid, in the county aforesaid, came before E. F., Esq., then and yet being a justice of the peace for said county of S., legally qualified to execute the duties of said office, and then and there upon his oath complained against one G. H., for feloniously stealing, taking and carrying away one silver spoon and two silk handkerchiefs, of the goods and chattels of the said C. D., on which complaint the said justice as aforesaid then and there issued his warrant for the taking of the said G. H., to answer to said complaint; and afterwards, to wit., on the — day of —, in the year aforesaid, at B. aforesaid, the said G. H. was arrested by virtue of the said warrant, and was then and there brought before the said E. F., justice as aforesaid, and the subject of said complaint was examined into and heard by said justice: upon which said examination and hearing the said E. F., justice as aforesaid, made his warrant, under his hand and seal and in due form of law, directed to [*here set forth the warrant of commitment.*] And the said A. B. further complains, that the said C. D., well knowing the premises, afterwards, to wit., on the — day of —, at B. aforesaid, in the county aforesaid, unlawfully, and for the sake of wicked gain, did compound the said felony on behalf of the said G. H., and then and there did exact, receive and have of the said G. H. the sum of — dollars, for and as a reward for compounding the said felony and desisting from all further prosecution against the said G. H. for the same; against the peace and dignity of the state: Wherefore, &c.

78. *Compounding an offence against a penal statute.*]

A. B., of B., in the county of S., gentleman, upon his oath complains that C. D., of —, in the county aforesaid, yeoman, heretofore, to wit., on the — day of —, prosecuted out of the court of common pleas, &c. [*state the style of the court, and for what county it was to be holden,*] a certain writ against one E. F., directed to the sheriff of —; [*here recite the writ;*] the said writ so sued out as aforesaid, by the said C. D. against the said E. F., was by him sued out with intent to recover a certain penalty, supposed to have been incurred by the said E. F. by reason of the facts in said writ alleged. And the said A. B. further complains, that the said C. D., on the — day of —, at B. aforesaid, in the county aforesaid, unlawfully, and for the sake of wicked gain, did compound with the said E. F. for the said offence, without the order or consent of the said court out of which the said writ was sued out as aforesaid; and then and there did exact, receive and have of and from the said E. F. the sum of fifty dollars, as and for a reward for compounding with the said E. F. for the said offence, and desisting from further prosecuting his said suit; against the peace and dignity of the state: Wherefore, &c.

## OFFENCES AGAINST THE PUBLIC PEACE.

Revised Statutes, Chapter 218, Page 443.

### 79. *Assault and battery.*]

did make an assault upon the said T. C., and him, the said T. C., did then and there beat, bruise [or wound] and ill treat, †(here are to be inserted any circumstances of aggravation;) and other wrongs to the said T. C. then and there did;

### 80. *Assault and battery, and putting out an eye.*]

Insert in form 79, at the †.

and with his right hand the said T. C., in and upon the left eye of him, the said T. C., then and there violently and maliciously did strike; by means whereof the said T. C. then and there the use and sight of his said left eye entirely lost and was deprived of, and thereby became sick and distempered, and so remained for the space of three months;

### 81. *Assault and battery, and casting on a brick floor, and kicking, &c.*]

upon the said T. C. did make an assault, and him, the said A. B., did then and there beat, wound, bruise and ill treat; and did then and there violently cast and throw the said T. C. upon a certain brick floor there; and him, the said T. C., in and upon his head, breast, back, sides, and other parts of his body, with the feet of him, the said J. R., then and there violently did kick and strike, giving to the said T. C. then and there, by such casting and throwing of him, the said T. C., and by such kicking and striking of the said T. C. as aforesaid, in and upon the head, breast, back, sides, and other parts of the body of him, the said A. B., divers bruises, hurts and wounds;

### 82. *Assault and battery and false imprisonment.*]

Insert in form 79, at the †.

and him, the said T. C., then and there, against his will, unlawfully, without any warrant or justifiable cause whatever, did imprison, detain and hold in duress for the space of three days then next following;

### 83. *Assault and battery, and beating with a cane.*]

Insert in form 79, at the †.

and with a large cane which the said J. R. then and there in his right hand had and held, did strike divers grievous and dangerous blows upon the head, back, shoulders and other parts of the body of him, the said T. C., whereby the said T. C. was cruelly and dangerously beaten, bruised and wounded, and his life greatly endangered;

### 84. *Assault, and riding over a person with a horse.*]

upon him, the said T. C., an assault did make then and there, unlawfully and maliciously, and with great force and violence did ride

and drive a certain horse against, upon and over the said T. C., and thereby grievously wounded, bruised and ill-treated him, whereby his life was then and there greatly endangered ;

85. *Assault, and overturning a chaise with a cart.*]

upon the said T. C., in a certain chaise drawn by one horse in the common highway, then and there being, an assault did make ; and that the said J. R., then and there driving a horse drawing a cart, did, in the highway aforesaid, unlawfully, violently and maliciously drive the said horse so drawing said cart, against the said chaise ; and by such driving did then and there unlawfully and maliciously force the said cart against the said chaise ; and with one of the wheels of said cart did then and there, in the highway aforesaid, unlawfully and maliciously overturn the said chaise, in which the said T. C. then and there was as aforesaid ; by means of which overturning of the aforesaid chaise, he, the said T. C., was then and there grievously hurt, bruised and wounded ;

### RIOTS.

*Note.* In complaints for riots the names of the accused should be thus stated : “ J. R., T. S. and S. J., all of C., in said county of M., laborers, together with divers other evil disposed persons, to the number of ten, &c., whose names are unknown to this complainant,” at, &c., on, &c., with, &c. ;

86. *Riot and assault.*]

did unlawfully, riotously and routously assemble and gather together, to disturb the peace of the said state ; and being then and there so assembled and gathered together, upon one I. J., unlawfully, riotously and routously did make an assault, and him, the said I. J., did then and there unlawfully, riotously and routously beat, wound and ill-treat, so that his life was thereby greatly endangered ; and other wrongs then and there unlawfully, riotously and routously did and committed ; to the great damage of him, the said I. J., to the great terror of the people ;

87. *Riot, assault and false imprisonment.*]

[The same form to the words, “ greatly endangered ” ; then add ;] and him, the said A. B., then and there with force and arms unlawfully, riotously, routously and injuriously, against the will of him, the said A. B., without any legal warrant, authority or justifiable or probable cause whatsoever therefor, did imprison and detain in prison for the space of six hours then next following, and other wrongs to the said A. B. then and there unlawfully, riotously and routously did and committed ; to the terror of the people, to the great damage of him, the said A. B. ;

88. *Riot, and pulling down a building.*]

did unlawfully, riotously and routously assemble and gather together to disturb the peace of said state ; and being so assembled and gathered together, a certain building in the possession of him, the said A. B., then and there unlawfully, riotously and routously did pull

down and destroy, and other wrongs then and there did ; to the great terror of the people, and to the great damage of him, the said A. B. ;

89. *Riotously attacking a dwelling-house, breaking the windows, &c.]*

to wit., with clubs, staves, stones and other dangerous and offensive weapons, the dwelling-house of her, the said A. B., there situate, in the night time, unlawfully, riotously and routously did attack and beset, and did then and there unlawfully, riotously, routously and outrageously make a great noise, disturbance and affray, near to and about the dwelling-house of her, the said A. B., there situate ; and did unlawfully, riotously and routously continue near to and about the said dwelling-house, making such noise, disturbance and affray, for the space of two hours, and the windows of the said dwelling-house did then and there unlawfully, riotously and routously, with the dangerous and offensive weapons aforesaid, break, destroy and demolish, to the great damage and terror of her, the said A. B., and of her family, in the dwelling-house aforesaid then and there being, and to the great terror of the people ;

90. *Riotously breaking a dwelling-house, and removing goods.]*

did unlawfully, riotously and routously assemble together, and being so assembled and met together, the dwelling-house of her, the said A. B., did then and there unlawfully, riotously and routously break and enter, and then and there unlawfully, riotously and routously did put, cast, fling and throw divers goods and chattels, to wit., [*here enumerate the goods,*] of her, the said A. B., of the value of twenty dollars, then being in the dwelling-house aforesaid, from and out of the same, and thereby greatly damaged, injured and broke in pieces the said goods and chattels, and other wrongs then and there did ; to the great terror of the people, and to the great damage of her, the said A. B. ;

91. *Riot, and remaining an hour after proclamation.]*

unlawfully, riotously and tumultuously did assemble and meet together, to the disturbance of the public peace ; and that afterwards, on the same day, at B. aforesaid, I. J., Esq., then being a justice of the peace for the said county of S., did then and there come as near as he safely could to the said C. D., E. F. and G. H., and the said other persons, to the number of twelve and more, to the said A. B. unknown, being then and there so assembled, and with a loud voice he, the said I. J., Esq., did then and there command silence to be had while proclamation was making ; and the said I. J., Esq., after that did then and there openly, and with a loud voice, make proclamation, according to the form of the statute in such case made and provided, in these words following, that is to say : " In the name of the state of New-Hampshire, every person here assembled is commanded to disperse immediately, and depart peaceably to his home or lawful employment." And the said A. B., upon his oath aforesaid, doth further complain, that the said C. D., E. F. and G. H., and said divers other persons, to the number of twelve and more, to the said A. B. unknown, afterwards, to wit., on the same day, notwithstanding the said proclamation was openly made as aforesaid, did then and there continue so unlawfully, riotously and tumultuously assembled, to the great terror of the people ;

## OFFENCES AGAINST CHASTITY, DECENCY AND MORALITY.

Revised Statutes, Chap. 319, Page 444.

92. *Adultery, by a married man with an unmarried woman.*]

did commit the crime of adultery with one E. F., of said —, single woman, by then and there having carnal knowledge of the body of her, the said E. F., he, the said C. D., being then and there a married man, and having a lawful wife alive ;

93. *Adultery, by a married man with a married woman.*]

did commit the crime of adultery with one E. F., the wife of one G. H., by having carnal knowledge of the body of her, the said E. F. ; he, the said J. R., being then and there a married man, and having a lawful wife alive ; and she, the said E. F., being then and there a married woman, and the lawful wife of the said G. H. ;

94. *Open gross lewdness and lascivious behavior.*]

was guilty of open gross lewdness and lascivious behavior, by openly, grossly, lewdly and lasciviously lying on a bed with one E. F., of said B., single woman, for the space of four hours ;

95. *Lewd and lascivious cohabitation.*]

and from that day to the — day of —, in the year of our Lord —, did lewdly and lasciviously associate and cohabit with one E. F., of said B., single woman ; he, the said C. D., during all the time aforesaid being a married man, and having a lawful wife alive ;

96. *Incest.*]

did commit the crime of incest with one E. F., of said —, single woman, the said E. F. then and there being a daughter of C. R., who was then and there the lawful wife of said J. R., by then and there having carnal knowledge of the body of her, the said E. F. ;

97. *Polygamy.*]

did marry one E. F., spinster, and the said E. F. then and there had for his wife ; and that the said C. D. afterwards, to wit., on the — day of —, &c., at B. aforesaid, in the county aforesaid, did marry and take to wife one I. J., widow, and to the said I. J. was then and there married ; the said E. F., his former wife, being then and there alive ;

98. *Keeping a house of ill fame.*]

and on divers other days and times, between that day and the day of exhibiting this complaint, did keep and maintain, and yet doth keep and maintain a certain common, ill governed and disorderly house ; and in the said house, for his own lucre and gain, certain persons, as well men as women, to frequent and come together,

then, and on the said other days and times, there unlawfully and willingly did cause and procure; and the said men and women, in the said house, at unlawful times, as well in the night as in the day, then, and on the said other days and times, there to be and remain, drinking, whoring and misbehaving themselves, unlawfully and wilfully did permit and still doth permit, to the great damage and common nuisance of all the peaceable citizens of the said state there residing, inhabiting and passing; (omit, "contrary to the form of the statute in such case made and provided.")

99. *Keeping a disorderly house.*]

and on divers other days and times, between that day and the day of exhibiting this complaint, a certain common, ill-governed and disorderly house unlawfully did keep and maintain; and in the said house, for his own lucre and gain, certain evil disposed persons, as well men as women, of evil name, fame and conversation, to come together on the days and times aforesaid, there unlawfully did cause and procure; and the said persons, in the said house, at unlawful times, as well in the night as in the day, on the days and times aforesaid, there to be and remain, drinking, tippling, cursing, swearing, quarrelling, and otherwise misbehaving themselves, unlawfully did permit and suffer; to the great injury and common nuisance of all the peaceable citizens of said state there residing, inhabiting and passing; [omit as in last form.]

100. *Digging up a dead body without permission.*]

the common burying ground belonging to the (first parish) in the said town of B. there situate, unlawfully, knowingly and wilfully did break and enter, and the grave there in which a certain human body, to wit., the body of one E. F., had lately before been interred and then was, unlawfully, knowingly and wilfully did open, and the said body of her, the said E. F., and the remains thereof, then and there in the grave aforesaid being, unlawfully, knowingly and wilfully did dig up, remove and carry away from and out of the grave aforesaid; he, the said C. D., then and there not being authorized so to do, either by the selectmen, overseers of the poor or any justice of the peace of the said town of B., in which the said grave and the burying ground aforesaid was and is situate; or by any relative or friend, for the purpose of re-interment;

101. *Concealing a dead body unlawfully dug up.*]

did unlawfully and wilfully conceal a certain human body, to wit., the body of one E. F., and the remains thereof, which had been lately before interred in a grave in the common burying ground belonging to the (first parish) in the said town of B., and which had then lately before been unlawfully, knowingly and wilfully dug up, removed and carried away from the grave aforesaid, (by some person or persons to the said A. B. unknown,) without authority either from the selectmen, overseers of the poor, or any justice of the peace of the said town of B., in which the said burying ground was and is situate, or by any relative or friend, for the purpose of re-interment; he, the said C. D., then and there



well knowing the said dead body and the remains thereof to have been unlawfully, knowingly and wilfully dug up, removed and carried away from and out of the grave aforesaid, in manner aforesaid ;

102. *Profane swearing.*]

did profanely curse and swear, by uttering with a loud voice, in the presence and hearing of divers citizens of the said state, these wicked and profane words following, that is to say : (here set forth the profane oath and curse, in the words in which they were uttered :) to the great displeasure of Almighty God, against good morals and good manners ;

103. *Cruelty to animals.*]

one cow, of the price of — dollars, of the goods and chattels of one C. J., then and there being, wilfully and maliciously did maim and wound, to the great damage of said C. J. ;

104. *Defacing tomb-stones.*]

did wrongfully and maliciously mutilate, deface and injure a certain grave-stone, erected at the grave of one A. B., deceased, in memory of said deceased, and then and there being in the — Cemetery ; a place used and intended for the burial of the dead in said C. ;

## OFFENCES AGAINST PUBLIC POLICY.

Revised Statutes, Chap. 320, Page 445.

105. *Keeping a common gaming-house.*]

a certain gaming-house there situate, for money, hire, gain and reward, unlawfully did keep ; and in the said gaming-house, on the said — day of —, and on divers other days and times, as well before as afterwards, there unlawfully did suffer and permit divers idle and ill-disposed persons in the said gaming-house to game together ; and the said persons, in the said gaming-house there, on the said — day of —, and on the said other days and times, by such permission and sufferance of the said J. R., did play at divers games with cards and dice, and other unlawful games for money ; to the great damage and common nuisance of all the citizens of said state ;

106. *Winning money by gaming.*]

did play with cards, at a certain unlawful game called all-fours, with one E. F. ; and that the said J. R., by playing at the said unlawful game with the said E. F., did then and there unlawfully win of the said E. F., at one time and sitting, and by gaming as aforesaid, more than the sum of five dollars in money, to wit., the sum of ten dollars ; and the said sum of ten dollars, so won as aforesaid, did then and there receive from said E. F. ;

107. *Libel, imputing theft.*]

a certain false, malicious and scandalous writing of and concerning the said T. C., in the form of a letter addressed to the said T. C., did write and publish to divers good citizens of this state; which said false, malicious and scandalous writing is to the purport and effect following, to wit: *To T. C. Scoundrel, (meaning the said T. C.): It may not be amiss to acquaint you, (meaning the said T. C.) as the time draws near, you (meaning the said T. C.,) may be preparing yourself (again meaning the said T. C.) for a trial for stealing the turkeys out of my (meaning his, the said J. R.) yard; when I, (meaning the said J. R.) hope to see you (meaning the said T. C.) sing a neck psalm and perish according to law. (Subscribed.) J. R. (meaning the said J. R.) With intent to defame and slander the said T. C. and bring him into contempt, infamy and disgrace, to the great damage of the said T. C. (Omit, "contrary to the form of the statute," &c.)*

108. *Conspiracy to charge a man with a rape.*]

unlawfully and maliciously did conspire and agree together to accuse him, the said T. C., that he had then lately before feloniously ravished and carnally known the said E. F. by force and against her will; with intent unjustly to obtain and acquire to them, the said J. R., E. F. and G. H., of and from him, the said T. C., divers sums of money for compounding the said pretended rape, so falsely and maliciously charged on him as aforesaid; to the great damage of him, the said T. C., and against the peace and dignity of the state; (Omit "contrary," &c.)

109. *Conspiracy to persuade a man not to give evidence.*]

T. C., of C., in the county of M., yeoman, upon his oath complains that at the time of the conspiracy and agreement hereafter mentioned, one C. D. was a prisoner in the common jail, situate in H. aforesaid, in the county aforesaid, lawfully committed and charged with felony, by him before that time committed; and a certain indictment was about to be preferred against him, the said C. D., for the said felony, and that one E. F. was a material witness in support of such bill of indictment; and that J. R., I. J. and K. L., all of —, in the county of —, laborers, well knowing the premises aforesaid, on the — day of —, [A. D. 184—,] at B. aforesaid, in the county aforesaid, wilfully and corruptly did conspire and agree among themselves to prevent, as much as in them lay, the said E. F. from attending as a witness in support of said bill of indictment, so about to be preferred against him, the said C. D., as last aforesaid; against the peace and dignity of the state; (omit, "contrary to the form," &c.)

110. *Conspiracy to defraud an illiterate person, by falsely reading to him a deed.*]

T. C., of C., in the county of M., yeoman, upon his oath complains that J. R., E. F. and G. H., all of —, laborers, on the — day of —, [A. D. 184—,] at B. aforesaid, in the county aforesaid, did unlawfully conspire and agree among themselves, falsely and fraudulently to obtain from the said T. C. a deed of bargain and

sale of a certain lot of land in said town of B., called Lot No. 20 in said town, (here describe the land;) and in pursuance of the said conspiracy and agreement did falsely and fraudulently make a deed of bargain and sale of the said lot of land, to be signed and executed by him, the said T. C., and did then and there falsely and fraudulently present and read the same to him, the said A. B., as a bond for the sum of seventy dollars, to be given by him, the said T. C., to one I. J., that he, the said T. C., should indemnify the said I. J. against the payment of certain notes of hand which he, the said T. C., and said I. J. as his surety, had, before the day aforesaid, made and given to one K. L., he, the said T. C., being then and there an illiterate person, and by reason thereof wholly unable to read the deed, so as aforesaid falsely made out and presented to him; to the great damage of him, the said T. C., and against the peace and dignity of the state; (omit "contrary," &c.

111. *Conspiracy to cheat a man of his goods, under pretence of buying them.*]

did falsely conspire and agree among themselves unlawfully and fraudulently to obtain, acquire and get to themselves the goods, wares and merchandize of the said A. B., under color and pretence of buying the same; (omit "contrary," &c.)

112. *Selling spirituous liquor.*]

not being a licensed taverner or retailer, did unlawfully sell a large quantity, to wit., one quart of certain spirituous liquor called New-England rum, to one C. D. for the price of — cents;

113. *Peddling without license.*]

unlawfully did exercise the business of a peddler, going from place to place on foot, carrying to sell, and exposing for sale, goods, wares and merchandize not being the growth, produce or manufacture of the United States, without a license therefor from the court of common pleas for said county;

114. *Peddler refusing to show his license.*]

being a person having a license to exercise the business of a peddler, from the court of common pleas for said county of M., while pursuing his said business of a peddler in this state, unlawfully did refuse to shew his said license to one M. N., to whom he, the said J. R., then and there offered to sell some of his said goods, wares and merchandize, he, the said J. R., being thereto lawfully requested then and there by the said M. N.;

## OF ACCESSARIES AND ATTEMPTS.

Revised Statutes, Ch. 321, Page 447.

115. *Against a person present and abetting.]*

At the close of the complaint against the principal, after the words, "dignity of the state," add :

And the said T. C. further complains, that T. A., of —, in the county of —, laborer, on the day and year aforesaid, at C. aforesaid, in the county aforesaid, with force and arms feloniously was present, aiding, abetting and assisting the said J. R. [the felony and larceny] aforesaid, to do and commit : contrary, &c., against, &c.

In case of murder this is inserted immediately before the last clause ; and this clause charges both parties with the murder, thus :

And so the said T. C. on his oath complains that said T. R. and T. A. the said J. N. in manner and form aforesaid feloniously, wilfully and of their malice aforethought, did kill and murder, contrary, &c., against, &c.

116. *Against an accessory before the fact.]*

After charging the principal with the offence, the complaint proceeds against the accessory, thus :

And the said T. C. upon his oath aforesaid further complains that J. A., of —, in said county of —, laborer, before the said [felony and larceny] was committed in form aforesaid, to wit., on the — day of — aforesaid, in the year aforesaid, at — aforesaid, in the county aforesaid, did feloniously and maliciously counsel, hire and procure the said J. R. the said [felony and larceny] in manner and form aforesaid, to do and commit, contrary, &c., against, &c.

117. *Against an accessory after the fact.]*

At the close of the complaint against the principal, after the words, "dignity of the state," add :

and the said T. C. upon his oath aforesaid further complains that J. A., late of said C., laborer, well knowing the said J. R. to have done and committed the said [felony and larceny] in form aforesaid, afterwards, to wit., on the day and year aforesaid, at C. aforesaid, in the county aforesaid, him, the said J. R., did feloniously receive, harbor and maintain, contrary, &c., against, &c.

The offence may be described as "*felony and murder*," "*robbery*," "*arson*," &c. ; and if the offence has no legal name, it may be "*felony, crime and offence*" aforesaid ; or, "*crime and offence*," or merely "*offence*," if the act is a misdemeanor merely.

In complaints for attempts to commit crimes, instead of the allegation that the accused *did* the act complained of, say, "*did attempt to*" do such act. Thus :

118. *Attempting to burn a stack of hay.*]

a certain stack of hay, containing a large quantity, to wit., ten tons, of English hay, of the value of eighty dollars, of the property of said T. C., there lying and being, wilfully and maliciously *did attempt* to set fire to, burn and consume ; contrary, &c.

119. *Against a person attempting to commit a crime, and another hiring, &c. the same.*]

Set out the attempt thus :

a certain stack of hay, containing a large quantity, to wit., ten tons, of English hay, of the value of eighty dollars, of the property of said T. C., then and there being, by the counsel, hiring and procurement of one T. A., of — in said county, laborer, did wilfully and maliciously *attempt* to set fire to, burn and consume, contrary, &c., against, &c.

Then add :

And the said T. C. upon his oath aforesaid further complains, that said T. A., before the said crime and offence *was attempted to be* committed in form aforesaid, to wit., on the — day of — aforesaid, in the year aforesaid, at C. aforesaid, in the county aforesaid, did wilfully and maliciously counsel, hire and procure the said J. R. the said crime and offence, in manner and form aforesaid to do and commit, contrary, &c., against, &c.

## AGAINST IDLE AND DISORDERLY PERSONS.

Revised Statutes, Chap. 116, Page 225.

120. *Against a common drunkard.*]

is, and for a long time has been, a common drunkard, and on divers days and times between the — day of —, now last past, and the day of exhibiting this complaint, at C. aforesaid, was drunk and intoxicated by the excessive use of spirituous liquor ;

121. *Against a common fiddler.*]

is, and for a long time has been, a common fiddler ; and that he, the said J. R., at B. aforesaid, in the county aforesaid, on divers days and times between the — day of —, and the day of exhibiting this complaint, with a certain musical instrument called a violin, did make divers noises and disturbances, to the great annoyance of divers good citizens ;

122. *Against a vagabond and idle person.*]

is, and for thirty days last past has been, a vagabond and idle person, going about in the town of —, in the county aforesaid, from place to place, begging ;

**123. For juggling, or using any subtle craft.]**

was and is a person using a certain subtle craft, juggling, and unlawful games and plays, to wit., certain games and plays called — ; and that he, the said C. D., on the said — day of —, in the year aforesaid, at B., in the county aforesaid, and on divers other days and times between that day and the day of exhibiting this complaint, did subtly and craftily juggle, gamble and play at the said unlawful game and play called —, with divers persons to the said complainant unknown, for the purpose and with intent to obtain the moneys and property of the said persons unknown, by craft, juggling, and unlawful games and plays ;

**124. Against a common night walker.]**

was and is a common night walker ; and from the said — day of —, to the day of the filing of this complaint, during divers nights within the time aforesaid, did walk and ramble in the streets and common highways in the said town of —, at unseasonable hours of said nights, without having any lawful business, and without any necessity therefor ; against good morals and good manners ;

**125. Against a wanton and lascivious person.]**

and on divers other days and times between that day and the day of filing this complaint, was and is a wanton and lascivious person, and on the said days and times, at B. aforesaid, did utter certain lewd, indecent, wanton and lascivious expressions, in the hearing of divers persons ; and did then and there wantonly and lasciviously expose to view the private parts of the body of him, the said C. D., and did then and there, and on the days and times aforesaid, otherwise wantonly and lasciviously misbehave and conduct himself, against good morals and good manners ;

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## OFFENCES AGAINST THE POLICE OF TOWNS.

Revised Statutes, Chap. 113, Page 221.

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**126. Form of complaint.]**

To J. P., a Justice of the Peace for the County of R.

A. C., of P., in said county, yeoman, on oath complains that A. R., of said P., laborer, on the tenth day of June, in the year of our Lord one thousand eight hundred and forty-three, at P. aforesaid, in the county of R. aforesaid,

[did unlawfully make a bonfire of shavings and other combustible materials, in a certain public street called — street, within the compact part of said town of P.]

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the state. Wherefore the said A. C. prays that said A. R. may be held to answer for said offence, and that justice may be done in the premises. A. C.

R— ss., — —, 184—. Personally appeared A. C., and made oath that the above complaint by him subscribed is in his belief true.

Before me : J. P., *Justice of the Peace.*

If the offender is under fourteen years of age, he may be

described in the complaint as "A. R., of said P., laborer, a minor under the age of fourteen years."

Instead of the words in brackets, the following forms of complaint may be inserted :

**127. *Making brwols and tumult.***

in a certain public street in said town of P., called — street, did unlawfully make a great noise, brawl and tumult ;

**128. *Rude and indecent conduct.***

in a certain public street in said town of P., called — street, was guilty of rude, indecent and disorderly conduct ;

**129. *Insulting and impeding passengers.***

in a certain public street in said town of P., called — street, did unlawfully insult and impede divers persons passing in said street ;

**130. *Throwing stones.***

in a certain public street in said town of P., called — street, did unlawfully throw stones and bricks, to the great danger of persons passing in said street ;

**131. *Repeating obscene and profane words.***

in a certain public street in said town of P. did unlawfully repeat the obscene and profane words following, that is to say :

(Here insert the words.)

**132. *Defacing buildings.***

did wantonly injure and deface a certain building, situate on a certain street in said P. called — street, then and there owned and occupied by said A. C. ;

**133. *Firing guns.***

within the compact part of said town of P. did unlawfully fire and discharge a certain cannon, without the command of any military officer having authority therefor ;

**134. *Swimming.***

in the day time, within view of the public road in said P., leading from — to —, did unlawfully and indecently swim and bathe without necessity, and unlawfully and indecently did expose his person in dressing and undressing, for the purpose of swimming and bathing, without necessity ;

**135. *Leaving a cart in the street.***

did, without necessity, unlawfully place and leave, and cause to be placed and left, a certain cart, in the public street called — street in said P., for the space of two hours in the day time of the same day ;

**136. *Placing wood in the street.***

did, without necessity, place and throw, and cause to be placed and thrown into and upon a certain public street called — street, in said P., a large quantity, to wit., four cords, of wood, to the great impediment and hindrance of the free passage of said street, and did then and there suffer the same to remain in said street there for the space of two hours ;

137. *Driving on side-walks.*]

did, without necessity, unlawfully drive a certain wheel-barrow on and over the side pavements of a certain public street in said P., called — street;

138. *Swift riding.*]

did unlawfully and wrongfully ride through and along a certain public street in the compact part of said town of P., in a certain waggon drawn by two horses, at a swifter pace than at the rate of five miles an hour;

139. The warrant in police cases is in the form No. 2, p. 290.

If the offender is a minor under the age of fourteen years, a direction may be inserted in the warrant to notify the father or guardian, as follows:

You are further required to give notice to P. R., the father (or guardian) of said A. R., of the time and place of trial of said minor, by giving to him, or leaving at his usual place of abode, a copy of this warrant, with a notice of the said time and place endorsed thereon. [*To be inserted next preceding the date.*]

140. *Officer's return.*]

R— ss., — —, 184—. I have arrested the body of the said A. R., and now have him before J. P., justice of the peace, for trial, (and, if the case be so) and have notified the said P. R. of the time and place of trial of said minor, by giving to him a copy of this warrant, with a notice endorsed thereon by me, subscribed as follows: The said A. R. will be tried on this complaint at —, in said P., on the — day of —, 184—, at — o'clock in the —noon. D. C., *Constable of P.*

*Fees.* Service, &c., —.

141. *Form of summons.*]**The State of New-Hampshire.**

R— ss. To A. R., of P., in said County, laborer.

[L. S.] Whereas A. C., of P., in said county, has exhibited to me, J. P., a justice of the peace for said county, his complaint on oath that: (Here insert the complaint, from the word, "complains," to "dignity of the state:")

You are, therefore, required to appear before me, the said justice, at —, in —, in said county, on the — day of —, 184—, at — o'clock in the —noon, to answer to the said complaint. Dated the — day of —, 184—.

J. P., *Justice of the Peace.*

142. *Form of return.*]

R— ss., — —, 184—. I have served the within summons, by delivering to the within named A. R. an attested copy thereof (and, if the case be so) and left a like copy thereof with P. R., father (or guardian) of said A. R. D. C., *Constable of P.*

In case of appeal, instead of recognizing the appellant must give a bond.



143. *Form of bond on appeal.*]

KNOW ALL MEN BY THESE PRESENTS, That we, A. R., of P., in the county of R., as principal, and J. S. and A. B., of, &c., as sureties, are held and firmly bound to the town of P. in the sum of— dollars, to the payment whereof we jointly and severally bind ourselves and our heirs firmly by these presents, sealed with our seals, and dated the — day of —, 184—.

*The condition of this obligation is,* That whereas said A. R., on the complaint upon oath of A. C., of said P., yeoman, that: (Here copy the complaint, from the word "complains," to "dignity of the state,") was duly convicted before J. R., justice of the peace for the county of R., of the said offence, and sentenced to pay a fine of five dollars, for the use of said town of P., and costs of prosecution taxed at — dollars, from which sentence said A. R. has claimed an appeal to the court of common pleas, to be holden at P., in and for said county of R., on the — Tuesday of —.

Now if said A. R. shall prosecute said appeal with effect, and pay such costs as may be taxed against him, if he shall not be discharged at said court, then this obligation shall be void.

Signed sealed and delivered

A. R., (*Seal.*)

in presence of

J. S., (*Seal.*)

J. P., *Justice of the Peace.*

A. B., (*Seal.*)

## SEARCH WARRANTS.

Revised Statutes, 449, sec. 12 and 13. [See page 282.]

144. *Form of complaint.*]

To J. P., a Justice of the Peace for the County of M.

A. C., of F., in said county, saddler, on oath complains, that J. R., of said F., laborer, otherwise called J. R., a transient person, laborer, on the — day of —, [A. D. 184—] at F. aforesaid, in the county aforesaid, with force and arms feloniously did steal, take and carry away one bridle, of the value of one dollar, of the goods and chattels of the said A. C., contrary to the form of the statute in such case made and provided, and against the peace and dignity of the state; and the said A. C. further complains that he has probable cause to suspect, and doth suspect, that the said bridle is now concealed in the dwelling-house of said A. R., in said F.: Wherefore he prays that a warrant may be issued, authorizing a search of the house aforesaid of the said A. R., and that the said A. R. may be held to answer to this complaint.

A. C.

M— ss., — —, 184—. Personally appeared A. C., and made oath that the foregoing complaint, by him subscribed, is in his belief true.

Before me: J. P., *Justice of the Peace.*

145. *Form of search warrant.*]

### The State of New-Hampshire.

M— ss. To the Sheriff of said County of M., or his Deputy, or to [L. S.] any Constable of the Town of F., in said County.

Whereas A. C., of F., in said county, saddler, on the — day of —,

184—, exhibited to me, J. P., a justice of the peace for said county of M., his complaint on oath that— (Here copy the complaint, from the word “complaints,” to the end.)

We command you, therefore, with proper assistants to enter in the day time into the said house of the said J. R., and there diligently search for the said bridle; and if the same shall be found upon such search, that you bring the said bridle so found, and also the said J. R., before me, or some other justice of the peace for said county of M., that justice may be done in the premises. Dated the — day of —, A. D. 184—.

J. P., *Justice of the Peace.*

146. *Form of return.*]

M— ss., — —, 184—. I have searched for the said bridle in the house of said J. R., and having found the same therein I now have the same, together with the said J. R., before J. P., justice of the peace, for examination.

D. S., *Deputy Sheriff.*

*Fees, &c.*

147. *Complaint, to search for an offender.*]

If the offender is suspected to be concealed in any case, the warrant is to be drawn in the form given in that case, to the words, “dignity of the state:” then add:

and the said A. C. further complains, that he has probable cause to suspect, and does suspect, that said J. R. is now concealed in the dwelling of J. S., of said F., yeoman: Wherefore he prays that a warrant may be issued, authorizing a search of the house aforesaid of the said J. S. for said J. R., and that said J. R. may be held to answer to this complaint.

148. *Complaint, to search for counterfeit bank-notes.*]

At the close of the complaint for having in possession counterfeit bank-notes, after the words, “dignity of the state,” add:

and the said A. C. further complains, that he has probable cause to suspect, and does suspect that divers false and counterfeit bank-notes, purporting to be issued by a certain bank called The President, Directors and Company of the Grafton Bank, are now concealed in the dwelling-house of said J. R., in said F.: Whereby he prays that a warrant may be issued authorizing a search of the dwelling-house of said J. R., in said F., and that said J. R. may be held to answer to this complaint.

This form may be readily adapted to the case of counterfeit coin, materials and tools for counterfeiting and coining, implements for gambling, &c.

149. *Complaint, for search in the night.*]

Add to the usual form of complaint for the offence,

And the said A. C. further complains, that he has probable cause to suspect, and does suspect, that the said goods (or tools, or bank-notes, or said J. R.) is now concealed in the dwelling, barns or out-

buildings of said J. R., and that the same may be removed (or that said J. R. may escape) before day :

Wherefore he prays that a warrant may be issued, authorizing a search of the said dwelling-house, barns and out-buildings, in the night time, and that said J. R. may be held to answer to this complaint.

The form of warrant, No. 145, may be readily adapted to each of these cases.

Under these warrants, and under any criminal process, the officer has the right to break open any doors, if admittance is refused after request and stating his business. In cases requiring immediate action, it may not be necessary even to do this. Such process may also be served on Sunday.

The proceedings subsequent to the arrest will not differ in any material respect from those in ordinary cases.

The complaint in common use alleges the suspicion of the party that the person charged is the offender, as well as that the property is concealed in a particular place. No conviction can be had upon such a complaint, because there is no direct charge of the offence; and if the articles are found, or the proof justifies it, a new complaint and warrant may be drawn, on which a trial may be had. A complaint in this form is added, the warrant on which is in the form No. 145.

150. *Form of complaint upon suspicion.*]

To J. P., a Justice of the Peace for the County of M.

A. C., of F., in said county, husbandman, on oath complains, that one gold watch, of the value of forty dollars; one gold watch-chain and ring, of the value of six dollars; and one gold seal, of the value of four dollars, of the goods and chattels of said A. C., were, within ten days last past, feloniously taken, stolen and carried away, out of the house of said A. C., at F. aforesaid, in the county aforesaid, and that the said A. C. has probable cause to suspect, and does suspect that the said goods were so feloniously stolen, taken and carried away by A. R., of said F., laborer, and that the said goods are now concealed in the dwelling-house of said A. R., in said F.: Wherefore he prays that a warrant may issue, authorizing search of the house aforesaid of the said A. R., and that said A. R. may be held to answer to this complaint.

A. C.

M— ss., — —, 184—. Personally appeared A. C., and made oath that the foregoing complaint by him subscribed is in his belief true.

Before me: J. P., *Justice of the Peace.*

The warrant, instead of reciting the warrant, may be annexed to it; in which case the recital would be as follows:

Whereas A. C., of F., in said county, saddler, has exhibited to me,

J. P., a justice of the peace for said county of —, his aforesaid complaint upon oath:

We command you, therefore, &c.

The form of warrant, No. 145, is, however, deemed preferable in ordinary cases.

## SURETY OF THE PEACE.

R. S., 448, Sec. 9. [See Page 282, Sec. 9.]

### 151. *Form of complaint.*]

To J. P., a Justice of the Peace for the County of R.

C. D., of C., in said county, yeoman, on oath complains, that on the — day of — [A. D. 184—,] at C. aforesaid, in the county aforesaid, E. F., of said C., laborer, did threaten to do to him, the said C. D., some bodily hurt, insomuch that the said C. D. is afraid that the said E. F. will beat, wound, maim or kill him, the said C. D., or do him some other bodily harm: Wherefore the said C. D., not from any private malice, hatred or ill-will, but simply because he is afraid, and has good cause to fear that said E. F. will do him some bodily mischief as aforesaid, prays that said E. F. may be held to answer to this complaint, and to find sureties for his keeping the peace and being of good behavior. C. D.

R— ss., — —, 184—. Personally appeared C. D., and made oath that the above complaint by him subscribed is true.

Before me: J. P., *Justice of the Peace.*

### 152. *Form of the warrant.*]

## The State of New-Hampshire.

R— ss. To the Sheriff of the County of R., or his Deputy, or to [L. S.] any Constable of the Town of C., in said County.

Whereas C. D., of C., in the county of R., yeoman, on the — day of —, A. D. 184—, exhibited to me, J. P., a justice of the peace for the county of R., his complaint on oath that (Here copy the complaint, from the word, "complains:")

We command you, therefore, to arrest the said E. F., if to be found in your precinct, and bring him before me, the said justice, to answer to the said complaint. Dated the — day of —, A. D. 184—.

J. P., *Justice of the Peace.*

Instead of reciting the complaint, the recital in the warrant may be:

Whereas C. D., of C. aforesaid, yeoman, has exhibited to me, J. P., a justice of the peace for the county of R., his aforesaid complaint on oath: We command you, &c.

### 153. *Form of return.*]

R— ss., — —, 184—. I have arrested the body of the said E. F., and now have him before J. P., justice of the peace for said county.

A. C., *Constable of C.*

154. *Form of record.*]

R—ss. **BE IT REMEMBERED**, That on the — day of —, [A. D. 184—] C. D., of C., in said county, yeoman, exhibited to me, J. P., a justice of the peace for the county of R., his complaint on oath, that (Here copy the complaint, from the word “complains:”)

Whereupon the said E. F., being afterwards, on the — day of —, brought before me, the said justice, by virtue of a warrant issued on the complaint aforesaid; and after hearing the evidence, as well on the part of the said E. F. as of the said C. D., it appears to me, the said justice, that the said C. D. has good cause to apprehend that said E. F. will do him some bodily harm, and that the said C. D. does not require sureties of the peace against said E. F. out of malice or for vexation: It is, therefore, ordered by me, the said justice, that said E. F. recognize, himself in the sum of four hundred dollars, with two sureties in the sum of two hundred dollars each, for his appearance at the court of common pleas next to be holden at E., in and for said county of R., on the — Tuesday of — next, and for his keeping the peace and being of good behavior in the mean time towards all the good citizens of this state, and especially towards the said C. D., and pay costs of prosecution, taxed at — dollars, and stand committed till this order is performed.

J. P., *Justice of the Peace.*

155. *Form of the recognizance.*]

R—ss. **BE IT REMEMBERED**, That on the — day of —, [A. D. 184—] came before me, J. P., a justice of the peace for the county of R., E. F., of C., in said county, yeoman, M. N. and O. P., both of said C., yeomen, and severally acknowledged themselves to be indebted to the state of New-Hampshire, the said E. F. as principal, in the sum of four hundred dollars, and said M. N. and O. P. as sureties in the sum of two hundred dollars each, to be levied of their goods and chattels, lands and tenements, and for want thereof upon their bodies respectively, if default be made in the condition following:

*The condition of this recognizance is such*, That whereas the said E. F. has this day been brought before me, the said justice, to answer to the complaint of C. D., of said C., that: (Here copy the complaint from the word, “complains:”)

and it was therefore ordered by me, the said justice, that said E. F. recognize, himself in the sum of four hundred dollars, with two sureties in the sum of two hundred dollars each, for his appearance at the court of common pleas next to be holden at E., in and for said county of R., on the — Tuesday of —, and for his keeping the peace and being of good behavior in the mean time towards all the good citizens of this state, and especially towards the said C. D., and pay costs of prosecution, taxed at — dollars, and stand committed till this order be performed:

Now if the said E. F. shall appear at the said court, and there abide the order thereof upon the complaint aforesaid, and in the mean time in all things keep the peace and be of good behavior towards all the good citizens of this state, and especially towards the said C. D., then this recognizance shall be void.

J. P., *Justice of the Peace.*

For the manner of taking a recognizance, see page 289, form 9.

156. *Form of mittimus.*]**The State of New-Hampshire.**

**R— ss.** *To the Sheriff of said County of R., or his Deputy, or to any*  
**[L. S.]** *Constable of the Town of C., in said County:*

Whereas, on the — day of —, 184—, C. D., of C., in said county, yeoman, exhibited to me, J. P., a justice of the peace for the county of R., his complaint on oath, that :

(Here copy the complaint, from the word, “complains.”)

Whereupon the said E. F., being brought before me, the said justice, upon a warrant issued on said complaint, and the parties fully heard, *It was ordered,* (Here recite the order :)

and whereas said E. F. has neglected and refused to perform said order,

We command you, therefore, to convey the said E. F. safely to the jail in E., in said county, and him deliver to the keeper thereof ; and the said keeper is commanded to receive the said E. F. into his custody in said jail, and him there safely keep until he is discharged by due order of law. Dated the — day of —, A. D. 184—.

*A. B., Justice of the Peace.*

**CHAPTER 35.****OF THE MAINTENANCE OF BASTARD CHILDREN.**

- |                                                   |                                                   |
|---------------------------------------------------|---------------------------------------------------|
| 1. Warrant for arrest, how issued.                | 7. Town may make complaint.                       |
| 2. Bond may be required.                          | 8. Proceedings on such complaint.                 |
| 3. Proceedings returned to court of common pleas. | 9. Costs for respondent, if not guilty.           |
| 4. Mother may be a witness—when.                  | 10. Respondent imprisoned, how discharged.        |
| 5. Security for support required.                 | 11. Respondent going out of county, how arrested. |
| 6. Town may prosecute complaint.                  | 12. Proceeding on such arrest.                    |

§ 1. If any woman is pregnant with a child which, if born alive, may be a bastard, she may make complaint in writing, under oath, to any justice of the peace in this state, against any man, charging him with having begotten such

child; and said justice may thereupon issue his warrant, commanding the person so charged to be brought before some justice of the peace in and for the county in which the offence is alleged to have been committed, or in which the person so charged may reside. *R. S. 141, chap. 68, § 1.*

§ 2. The justice before whom such person shall be brought, if he see fit may order such person to give bond to the complainant in a reasonable sum, with sufficient surety or sureties, to the satisfaction of the justice, conditioned to appear at the term of the court of common pleas next to be holden within and for the county in which the offence is charged to have been committed, to answer to such complaint, and to abide the order of said court thereon, and in default thereof may commit him until such order is performed.—*Ibid., § 2.*

§ 3. Said justice shall make a certified copy of each paper in said case, and shall deliver the same to the complainant, or return the same to said court on or before the first day of the term aforesaid; and said complaint shall be entered at said term, and the person charged may be ordered to give bond as aforesaid, to the satisfaction of said court, for his appearance at any future day or term, and to abide the order of the court. The complaint shall be tried by the court, unless either party requests a jury, in which case it shall be tried by a jury, and the issue shall be, *chargeable or not chargeable.* *Ibid., § 3.*

§ 4. Any woman who shall have made her complaint in the manner aforesaid, charging any man with being the father of the child, and stating the time when and place where the same was begotten, and shall have declared in the time of her travail the same person to be the father of the child to the persons attending her, if any person did attend her; and shall have continued constant in such accusation, shall be a competent witness on the trial of such complaint, her credibility being left to the court or jury who try the cause; but no woman shall be admitted as a witness as aforesaid who shall have been convicted of any crime rendering her incompetent to testify in any other case.—*R. S. 142, § 4.*

§ 5. If any man is found chargeable as aforesaid, the court shall order him to pay such sum as they shall deem reasonable, to the mother of the child or the selectmen of the town liable by law for the maintenance of the child, to

be applied for such maintenance, and also to pay costs of prosecution; and may order him, or the mother, or both, to give security to save such town harmless from all charge for the maintenance of such child. Any person who shall neglect or refuse to obey any such order may be committed until the same is obeyed. *Ibid.*, § 5.

§ 6. If any woman, after having made her complaint as aforesaid, shall abandon the same, the town liable by law as aforesaid shall, upon application to the court or justice in writing, made for that purpose by their selectmen, agent or attorney, be admitted to prosecute said complaint, a record whereof shall be made; and all subsequent proceedings thereon shall be the same as if said complaint had been instituted originally by such town. *Ibid.*, § 6.

§ 7. If the mother of a bastard child neglects or refuses to make complaint as aforesaid; or, having made a complaint, shall neglect to prosecute the same in the court aforesaid; or shall, in the opinion of the selectmen of any town liable by law as aforesaid, make a false complaint, any justice of the peace to whom complaint may be made by said selectmen against any man, charging him with having begotten such bastard, may issue his warrant under his hand and seal, directing such person to be brought before some justice of the peace in and for the county in which the offence was committed, or in which such offender may reside. *Ibid.*, § 7.

§ 8. Such complaint shall be in the name of such town, and the proceedings thereon shall be the same in all respects as if the mother had complained as aforesaid. If found chargeable, he shall be ordered to give security to save the town harmless from the maintenance of such child, and to pay all costs of prosecution, and to stand committed until said order shall be performed. *Ibid.*, § 8.

§ 9. When any town is a party to such prosecution, and the party accused shall be found not chargeable, he shall recover his costs against such town. *Ibid.*, § 9.

§ 10. If any person committed to prison by virtue of this act is poor and unable to pay such sum, or to procure such security as may be ordered, said court may, on application for that purpose, discharge such person from imprisonment at such time and upon such terms as they shall think expedient. *R. S.* 143, § 10.

§ 11. Whenever a warrant shall be issued as aforesaid by



any justice, and the person charged therein shall, either before or after the issuing thereof, escape or go out of the county, the sheriff thereof, or his deputy, or any constable of the town to whom such warrant shall be directed, may pursue such person and apprehend him in any county in this state, and carry him before any justice in and for the county in which he was so apprehended, for examination. —*Ibid.*, § 11.

§ 12. If it shall appear to said justice that said warrant was duly issued, and that such person did escape or go out from such other county as aforesaid, he shall issue his warrant thereupon, directed to such sheriff, deputy or constable, commanding such officer to carry such person before some justice in and for the county from which he has so escaped or gone out, for trial, and that such further proceedings may be had thereon as the law requires. *Ibid.*, § 12.

## FORMS OF PROCEEDINGS.

### 1. *Form of complaint.*]

To J. P., Justice of the Peace for the County of H.

R. M., of B., in said county, single woman, on oath complains that she is now pregnant with a child, which if born alive may be a bastard, and that said child was begotten on the — day of —, [A. D. 184—,] at the house of A. M., in said B., by J. R., of said B., laborer: Wherefore the said R. M. prays that the said J. R. may be held to answer to this complaint, and that justice may be done in the premises.

R. M.

H— ss., — —, 184—. Personally appeared the said R. M., and made oath that the above complaint by her signed is in her belief true.

Before me: J. P., *Justice of the Peace.*

### 2. *Form of warrant.*]

#### The State of New-Hampshire.

H— ss. To the Sheriff of said County of H., or his Deputy, or to [L. S.] any Constable of the Town of B., in said County.

Whereas R. M., of B., in said county, single woman, on the — day of —, 184—, exhibited to me, J. P., a justice of the peace for said County of H., her complaint on oath that

(Here copy the complaint, to the word, "Wherefore.")

We command you, in the name of said state, to arrest the said J. R., and bring him before me, or some other justice of the peace for said county, to answer to said complaint. Dated the — day of —, A. D. 184—.

J. P., *Justice of the Peace.*

The warrant may be annexed to the complaint. In that case the recital would be:

Whereas R. M., of B., in said county, single woman, has made to me, J. P., a justice of the peace for the county of H., her aforesaid complaint on oath : We command, &c.

If the offence is committed in one county and the offender resides in another, the warrant may be directed "*To the sheriff of the county of H., or of the county of M., or his deputy, or to any constable of the town of —, in the county of H.*" The requirement may be to bring the offender "before some justice of the peace of the county of H., or of the county of M."

### 3. Form of return.]

H— ss., — —, 184—. I have arrested the within named J. R., and now have him before J. P., justice of the peace for said county.

Fees, —.

M. G., Deputy Sheriff.

### 4. Record of examination.]

H— ss. BE IT REMEMBERED, that on the — day of —, [A. D. 184—,] R. M., of B., in said county, single woman, exhibited to me, J. P., a justice of the peace for said county of H., her complaint upon oath, that : (Here copy the complaint, from the word "complains," to "wherefore :")

Whereupon the said J. R., being afterwards, on the — day of —, [A. D. 184—,] brought before me, the said justice, by virtue of a warrant by me issued on the said complaint, and the evidence on the part of said R. M. and said J. R. fully heard, it appears to me, the said justice, that said J. R. ought to be held to answer further to said complaint.

It is, therefore, ordered by me, the said justice, that the said J. R. give bond to the said R. M. in the sum of four hundred dollars, with two sufficient sureties, conditioned that said J. R. do appear at the court of common pleas next to be holden at A., in and for said county, on the — Tuesday of — next, and there answer to said complaint, and abide the order of said court thereon, and stand committed until this order is performed.

J. P., Justice of the Peace.

### 5. Form of bond.]

KNOW ALL MEN BY THESE PRESENTS, That we, J. R., of B., in the county of H., as principal, and A. B. and C. D. as sureties, are holden and stand firmly bound to R. M., of said B., single woman, in the sum of four hundred dollars, to the payment whereof we jointly and severally bind ourselves and our heirs firmly by these presents, sealed with our seals and dated the — day of —, A. D. 184—.

The condition of this obligation is such, That whereas, on the — day of —, A. D. 184—, R. M., of B., in said county, single woman, exhibited to J. P., a justice of the peace for the county of H., her complaint on oath that she was pregnant with a child, which if born alive would be a bastard, and that said child was begotten on the — day of —, 184—, at the house of A. M., in said B., by said J. R.; and whereas the said J. R. has been ordered by the said justice to appear at the court of common pleas next to be holden at A., in and for said county of H., on the — Tuesday of — next : Now if the said J. R. shall appear at said court, at the time and place aforesaid, and

answer to said complaint, and abide the order of said court thereon, then this obligation to be void.

Signed, sealed and delivered  
in presence of:

J. R. (*Seal.*)

A. B. (*Seal.*)

C. D. (*Seal.*)

6. *Form of mittimus.*]

**The State of New-Hampshire.**

H— ss. *To the Sheriff of the County of H., or his Deputy, or to any*  
[L. S.] *Constable of any Town in said County.*

Whereas on the — day of —, [A. D. 184--.] R. M., of B., in said county, single woman, exhibited to me, J. P., a justice of the peace for said county of H., her complaint on oath that she is now pregnant with a child, which, if born alive, may be a bastard, and that said child was begotten on the — day of —, [A. D. 184--.] at the house of A. M., in said B., by J. R., of said B., laborer:

Whereupon the said J. R., being brought before me, the said justice, and the evidence offered by said R. M. and by said J. R. being fully heard, it was ordered by me, the said justice, that said J. R. give bond to said R. M. in the sum of four hundred dollars, with two sufficient sureties, conditioned that said J. R. should appear at the court of common pleas next to be holden at A., in and for said county of H., on the — Tuesday of — next, and there answer to said complaint, and abide the order of the court thereon, and to stand committed until this order is performed; and whereas said J. R. has neglected to perform said order,

We command you, therefore, to convey the said J. R. to the jail in A., in said county, and deliver him to the keeper thereof; and the keeper of said jail is required to receive the said J. R. into his custody in said jail, and him there safely keep until he give bond as aforesaid, or be discharged by due course of law. Dated the — day of —, A. D. 184--.

J. P., *Justice of the Peace.*

7. *Complaint by selectmen.*]

To J. P., a Justice of the Peace for the County of H.

The town of B., in said county, by A. B. and C. D., selectmen of said town, complains that one R. M., of said B., single woman, is now pregnant with a child which, if born alive, may be a bastard and become chargeable to said town of B.; and that said child was begotten on or about the — day of — last, by J. R., of said B., laborer, and that said R. M. refuses to make a complaint against said J. R. according to the statute in such case made and provided: Wherefore said town prays that said J. R. may be held to answer to this complaint, and that justice may be done in the premises.

A. B.

C. D.

H— ss., — —, 184--. Personally appeared A. B. and C. D., and made oath that the foregoing complaint by them signed is in their belief true.

Before me: J. P., *Justice of the Peace.*

8. *Complaint by selectmen, after birth.*]

omit in last form the words, "is now pregnant with a child, which, if born alive, may become;" and insert, "on the — day of — last was delivered of a male child, which is living, and is a bastard, and is," &c.

9. *Complaint by the selectmen after the mother has abandoned her complaint.*]

omit, in form 7, p. 340, the words, "refuses to make a complaint against said J. R.," and insert, "having made a complaint against the said J. R. has neglected to prosecute the same in the court of common pleas."

10. *Form of warrant on complaint by selectmen,*]

is in the form No. 2, page 338, except that the recital is :

Whereas the town of B., in the county of H., by A. B. and C. D., selectmen of said town, on the — day of —, [A. D. 184--.,] exhibited to me, J. P., a justice of the peace for said county, a complaint on oath that: (Here copy the complaint, to the word "wherefore.")

The other proceedings are similar to those upon complaint of the mother, making a corresponding change to that in the warrant.

If the offender has escaped, or gone from the county, the proceedings are similar to those on other criminal process. See page 296, &c., forms 30, &c.

## CHAPTER 36.

### MILITARY FINES.

- |                                                                                                                                                                                                            |                                                                                                                                                                                                  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Fines, how collected.</li> <li>2. Complaint for fines.</li> <li>3. Judgment and appeal on complaint.</li> <li>4. Parents, &amp;c., liable for minors.</li> </ol> | <ol style="list-style-type: none"> <li>5. Persons arrested, how discharged.</li> <li>6. Fines collected, how applied.</li> </ol> <p style="text-align: center;"><i>Forms of Proceedings.</i></p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

§ 1. Fines for non-appearance, for deficiency of equipments, and disorderly conduct, may be levied by distress by a warrant under the hand and seal of the captain, directed to the clerk; or a complaint may be filed by the clerk before a justice of the peace, at the choice of such captain. *R. S.* 162, *ch.* 8, § 2.

§ 2. Upon any complaint filed by the clerk for any fine,

a summons shall be issued, and served as other writs of summons should by law be served; and such complaint and summons may at any time be amended by leave of the court without costs. If the party summoned shall neglect to appear, judgment shall be rendered against him by default. *Ibid.*, 165, § 10.

§ 3. The judgment against the party complained against shall be for the fine incurred and costs. From such judgment the respondent may appeal to the court of common pleas, on recognizing with sufficient sureties to enter and prosecute his appeal, and to pay such fine and costs as the court shall adjudge against him; otherwise execution shall issue against him. *Ibid.*, § 11.

§ 4. Parents, masters and guardians shall be liable for all fines and penalties incurred by persons under their care, and may be proceeded against in the manner provided by this chapter, or such minors may be proceeded against as if they were of full age. *Ibid.*, § 9.

§ 5. Any person arrested upon such warrant, or upon execution for any fine, may give bond and take the oath prescribed by law for poor debtors, and be discharged in the same manner as if arrested upon execution for debt.—*R. S.* 164, § 6.

§ 6. Fines collected under the foregoing provisions shall be applied by the captain for the use and benefit of the company to which the offender belongs. *R. S.* 165, § 8.

## FORMS OF PROCEEDINGS.

### 1. *Form of complaint for non-appearance.*

To J. P., a Justice of the Peace for the County of M.

B. C., of C., in the county of M., clerk of the — company of infantry, in the — regiment, commanded by A. C., on oath complains that A. P., of C., in said county, laborer, being liable to do military duty in said company, and being duly warned to meet with said company on the parade near —, in said C., on the — day of — [A. D. 184—,] at — o'clock in the —noon, completely armed and equipped, according to law, for inspection and military exercise, did, on said — day of — aforesaid, in the year aforesaid, at C. in said county,

[unnecessarily neglect to appear at said time and place of parade]

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the state. Wherefore the said B. C. prays that said A. P. may be summoned to appear and answer to the said complaint,

B. C.

M— ss., — —, 184--. Personally appeared B. C., and made oath that the foregoing complaint by him subscribed is true.

Before me: J. P., *Justice of the Peace.*

Other delinquencies may be stated in lieu of the clause in brackets; as—

*2. Deficiencies of equipment.]*

did appear on parade at the time and place of parade aforesaid, not completely equipped according to law; the said A. P. being then and there deficient of and not provided with a gun: (and so of other deficiencies.)

*3. For appearing with loaded arms.]*

did come on parade at the time and place of parade aforesaid, with his musket loaded with powder and shot;

*4. For neglect to have his gun clean.]*

did come on parade at the time and place of parade aforesaid, and did then and there neglect to have his gun and bayonet clean and in good order;

*5. For disorderly conduct.]*

did appear on parade at the time and place of parade aforesaid, and did then and there wilfully insult, abuse and treat with disrespect the captain of said company, being then and there one of his officers, by saying to him, (repeat the words.)

*6. Form of summons.]*

### **The State of New-Hampshire.**

M— ss. To the Sheriff of said County of M., or his Deputy, or to any [L. S.] of the Constables of the Town of C., in said County.

Whereas B. C., of C., in said county of M., clerk of the — company of infantry, in the — regiment, commanded by A. C., on the — day of —, 184--, exhibited to me, J. P., a justice of the peace for said county, his complaint on oath that: (Here copy the complaint, from the word "that" to "state.")

We command you, therefore, to summon the said A. P. to appear before me, the said justice, at —, in —, in said county, on the — day of — next, at — o'clock in the —noon, to answer to the said complaint. Dated the — day of —, A. D. 184--.

J. P., *Justice of the Peace.*

*7. Form of return.]*

M— ss., — —, 184--. I have summoned the said A. P., as within commanded, by leaving at his usual place of abode (or giving to him) an attested copy of this summons; (or, by reading to him this writ.)

J. C., *Constable of C.*

Plea, *not guilty*, as in trespass, form 52, page 105.

*8. Record of judgment.]*

M— ss. BE IT REMEMBERED, That B. C., &c., (copy the summons to the end of the complaint:)

Whereupon the said A. P., being duly summoned to appear before

me, the said justice, on, &c., at, &c., did then and there appear and plead that he was not guilty, as the said complaint alleged; and the said parties and their evidence being fully heard, it appears to me that said A. P. is guilty:

It is, therefore, considered by me, the said justice, that said A. P. pay a fine of — dollars, and costs of prosecution taxed at — dollars, and that execution issue for the same.

Entry of appeal, *see form 14, page 290.*

**9. Upon default.]**

Whereupon the said A. P., being duly summoned to appear before me; the said justice, on —, at —, and answer to said complaint, did not appear, but made default:

It is, therefore, considered, &c.

Recognizance on appeal, *see form 14, page 290.*

**10. Form of execution.]**

**The State of New-Hampshire.**

M— ss. *To the Sheriff of said County of M., or his Deputy, or to any*  
[L. S.] *Constable of the Town of C., in said County.*

Whereas The State of New-Hampshire, on the — day of —, A. D. 184—, before J. P., a justice of the peace for the county of M., recovered judgment against A. P., of, &c., [upon the complaint of B. C., of C., in said county, clerk of the — company of infantry in the — regiment, for a military fine] for — dollars, and costs taxed at — dollars, as appears of record, for which execution remains to be done:

We command you, therefore, that of the goods, chattels or lands of the said debtor in your precinct you cause to be levied, paid and satisfied the aforesaid sums, with lawful interest thereon, and 17 cents more for this writ and your own fees, and in default thereof to arrest the said debtor and commit him to jail; and the keeper of such jail is required to detain him in custody until he pay the same, with your fees, or until he is discharged by the creditor, or otherwise by order of law. And make return of this writ, with your doings thereon, to said justice within sixty days next coming. Dated the — day of —, A. D. 184—.

J. P., *Justice of the Peace.*

This is the usual form of execution in justice cases, against the body, except the part in brackets.

## CHAPTER 37.

## OF SHERIFFS AND THEIR DEPUTIES.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Sheriff to give bond.</li> <li>2. Sheriff not qualified till given.</li> <li>3. Deputy sheriffs, how appointed and qualified.</li> <li>4. Special deputies, how appointed.</li> <li>5. Deputies, how discharged.</li> <li>6. Sheriff responsible for deputies.</li> <li>7. Sheriff and deputies to serve writs, &amp;c., and act as crier.</li> <li>8. Penalty for neglect to serve precept.</li> <li>9. Penalty for neglect to pay money collected.</li> <li>10. Sheriff and deputies may require aid.</li> <li>11. Sheriff out of office may complete business commenced.</li> <li>12. Deputies to act in case of vacancy.</li> <li>13. Deputies not to receive business, after what time.</li> </ol> | <ol style="list-style-type: none"> <li>14. Defaults during vacancy, breach of bond.</li> <li>15. Sheriff accountable for fines.</li> <li>16. Penalty for neglects.</li> <li>17. Account against county, how adjusted.</li> <li>18. Sheriff and deputies not to act as attorneys.</li> <li>19. Deputies to render account of fees to sheriff.</li> <li>20. Sheriff to account for fees to county treasurer.</li> <li>21. Sheriff to pay over balance above salary.</li> <li>22. Sheriff to retain fees for services made by himself.</li> <li>23. Fees of sheriffs.</li> <li>24. Ferries and bridges, how accounted.</li> <li>25. Fees to be endorsed.</li> <li>26. Fees for copies.</li> <li>27. Jailers' fees.</li> </ol> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

*Forms of Proceedings.*

§ 1. Every sheriff hereafter appointed shall give a bond to the county in the sum of thirty thousand dollars, with sufficient sureties, to be approved by the justices of the court of common pleas, for the faithful performance of the duties of his office, and to answer for all neglect and misdoings of his deputies; and such bond shall be deposited in the office of the clerk of said court. *R. S. 352, ch. 178, § 1.*

§ 2. No sheriff shall be deemed qualified to perform any duty of his office until he shall have given security as aforesaid. *Ibid., § 2.*

§ 3. Every sheriff may appoint so many deputies as he shall think proper, by deputation in writing, under his hand and seal, and not otherwise, who shall each be sworn to the faithful discharge of the duties of his office before a justice of the peace, and the deputation and certificate of such oath thereon shall be recorded at length in a book kept for



that purpose by the clerk of the court of common pleas; and no deputy sheriff shall be deemed qualified to act as such until such record shall be made. *Ibid.*, § 5.

§ 4. Any sheriff may constitute a special deputy for the service and return of any process, by warrant endorsed thereon, in such manner as has been heretofore in practice in this state. *Ibid.*, § 6.

§ 5. Any sheriff may discharge from office any deputy by him appointed, by writing under his hand and seal, which shall be served by another deputy, by reading the same or giving an attested copy thereof to the deputy so discharged; and such discharge, with a certificate of the service thereof, shall be recorded in the manner prescribed for recording deputations. *Ibid.*, § 7.

§ 6. Every sheriff shall be responsible for the official conduct of his deputies respectively, until such discharge and the certificate of service thereof shall be recorded as aforesaid. *Ibid.*, § 8.

§ 7. The sheriff of every county, by himself or his deputy, shall serve and execute within his county all writs and precepts to him directed, issuing from lawful authority; and shall perform all the duties pertaining to the office of crier of the courts. *Ibid.*, § 9.

§ 8. If any sheriff, deputy sheriff or constable shall refuse or neglect to serve any legal precept to him directed and delivered for service, his legal fees therefor being first tendered, except in criminal cases, when the precept shall be endorsed by the attorney general or solicitor, or by the clerk by order of court, he shall forfeit the sum of fifty dollars to any person aggrieved thereby, who shall sue therefor within three months after such neglect or refusal. *Ibid.*, § 10.

§ 9. If any sheriff or his deputy shall, on demand made, refuse or neglect to pay to the creditor in any execution, any sum of money received by him or his deputy on such execution, he shall forfeit and pay to such creditor five times the lawful interest thereof, so long as he shall detain the same after such demand made. *R. S. 354*, § 11.

§ 10. Every sheriff, deputy sheriff or other officer, in the execution of his office for the preservation of the peace, or apprehending or securing any person violating the same, or for any other criminal matter or cause, may require suitable aid in the execution of his office; and if any person

when so required shall neglect or refuse to give such aid or assistance, he shall be punished by a fine not exceeding ten dollars, for the use of the town where the offence is committed. *Ibid.*, § 12.

§ 11. In case of the resignation or removal from office of any sheriff, or of the expiration of his term of office, he may execute all precepts then in his hands, and shall be answerable for completing all business which may have been committed to his care, and for the delivery to his successor of all prisoners who may be in his custody, and for that purpose may detain such prisoners in his custody. *Ibid.*, § 13.

§ 12. Whenever a vacancy, from any cause whatever, shall happen in the office of sheriff of any county, the deputies and jailers then in office shall continue in office, and shall execute the same in the name of the late sheriff, until another is appointed and duly qualified, and until they have completed all business which may have been entrusted to them before the person appointed sheriff is qualified.—*Ibid.*, § 14.

§ 13. No deputy sheriff shall receive any business after the expiration of thirty days from the next meeting of the governor and council after such vacancy shall have occurred. *Ibid.*, § 15.

§ 14. The defaults and misfeasances of such deputy sheriffs and jailers during the time aforesaid shall be deemed a breach of their respective bonds to the sheriff who shall have deceased, resigned or otherwise ceased to hold his office; and the executor or administrator of a deceased sheriff shall have like remedy for such defaults and misfeasances as such sheriff would have had if he had continued in life and in the exercise of his office. *Ibid.*, § 16.

§ 15. The sheriff of each county shall be accountable to the treasurer thereof for all fines and forfeitures imposed by the superior court and court of common pleas, and for which warrants shall be issued to him by the clerks, unless the justices of said court shall certify to such treasurer that the same has not been and cannot be recovered, and for all money by him received for the use of the county. *R. S.* 355, § 24.

§ 16. If any sheriff shall neglect or refuse to pay over to the county treasurer any such fine, forfeiture or money, immediately on receipt thereof, or immediately after he shall voluntarily or negligently suffer any prisoner on whom the

same was imposed, to escape, he shall forfeit and pay treble the amount thereof, with double costs of suit, on action brought by such treasurer in the name of the county; and such neglect or refusal shall be a good ground of removal of such sheriff from office. *Ibid.*, § 25.

§ 17. Every sheriff shall annually lay before the court of common pleas his account for all services done by himself or his deputies, for which the county is by law chargeable; and such allowance shall be made him as justice may require; and no such account shall be allowed unless it shall be presented within one year after the service is performed. —*R. S.* 356, § 26.

§ 18. No sheriff or deputy sheriff shall be suffered to appear in any court or before any justice, as attorney to any party in a suit; and if any sheriff or deputy sheriff shall make any process, writ, declaration or plea for any other person, the same shall be void. *Ibid.*, § 27.

§ 19. The deputies of each sheriff shall, once in every twelve months at least, and oftener if required, render to such sheriff, under oath, a true account of all fees which they shall have received, or which shall accrue to them by virtue of their office, for their travel and service on all writs of mesne process, and pay over to the sheriff twenty per cent. of the amount thereof. *Ibid.*, § 28.

§ 20. Every sheriff shall, on the first Tuesday of January annually, render to the county treasurer, under oath, a true account of all moneys received from his deputies by virtue of his office, and return to such treasurer the accounts rendered him by his deputies; and the treasurer shall state the same in the annual statements he is required to make for publication. *Ibid.*, § 29.

§ 21. Such sheriff shall retain for his own use, if he shall receive so much, the sum allowed him by law; and the residue of the sums received by him as aforesaid, he shall, at the time of rendering his account, pay over to the county treasurer, for the use of the county. *Ibid.*, § 30.

§ 22. Every sheriff shall retain for his own use the fees for all services by him personally made, and which he is by law bound to perform. *Ibid.*, § 31.

§ 23. The fees of sheriffs and deputy sheriffs shall be as follows:

For the service of every writ, process, notice or execution, except writs of subpoena for witnesses, twenty-three cents;

- For summoning witnesses, each seventeen cents ;  
 For taking bail, (to be paid by the person bailed,) seventeen cents ;  
 For actual travel to serve any writ, process or execution, to be reckoned from the place of service to the residence of the officer, in no case exceeding fifty miles, each mile five cents ;  
 For levying executions—on the dollar, for the first fifty dollars, two and a half cents ;  
 For the second fifty dollars, two cents ;  
 For sums above one hundred and under three hundred dollars, one cent ;  
 For sums above three hundred dollars, half a cent ;  
 For attending any court by the order thereof, to be paid out of the county treasury—the sheriff, each day, two dollars ;  
 Each deputy, one dollar fifty cents ;  
 For attending before justices on trials where his presence is required, each day one dollar. *R. S. 472, § 14.*  
 § 24. A ferry or toll-bridge shall be reckoned as three miles travel. *Ibid., § 13.*  
 § 25. The fees of every sheriff and deputy sheriff upon any writ, process or execution by him served, shall be endorsed thereon. *R. S. 473, § 15.*  
 § 26. To all recording or certifying officers there shall be allowed for each page, of two hundred and twenty-four words, copied or recorded, twelve and a half cents ;  
 For any part less than a page, eight cents ;  
 For every certificate on a copy of a whole case, ten cents.—*R. S. 471, § 3.*  
 § 27. Jailers shall be entitled to the following fees :  
 For receiving any prisoner into custody, or discharging him, twenty-five cents ;  
 For the board of a prisoner, each week, one dollar fifty cents. *R. S. 473, § 16.*

## CHAPTER 38.

### OF CORONERS AND CONSTABLES.

- |                                                                                                                    |  |                                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------|--|------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Coroners to give bond.<br>2. Remedy thereon.<br>3. Coroners to serve writs, when.<br>4. Constable to give bond. |  | 5. Remedy on constable's bond.<br>6. Constables to serve process from justice.<br>7. Coroners' and constables' fees.<br><i>Forms of Proceedings.</i> |
|--------------------------------------------------------------------------------------------------------------------|--|------------------------------------------------------------------------------------------------------------------------------------------------------|

§ 1. Every coroner, before he enters upon the duties of his office, shall give bond to the county for which he is commissioned, in the sum of five thousand dollars, conditioned for the faithful discharge of the duties of his office, with sufficient sureties, to be approved by the justices of the court of common pleas, and to be kept by the clerk of said court. *R. S. 356, ch. 179, § 1.*

§ 2. Any person injured by the breach of any coroner's bond may commence and maintain an action thereon, in the same manner he might do upon the bond given by a sheriff if he were injured by the breach thereof, and subject to the same provisions. *R. S. 357, § 2.*

§ 3. The coroner shall serve and execute all writs and processes directed to him, when the sheriff is a party; and in all cases where the sheriff is a party interested, or related to either party, he shall return talesmen and attend the jury; and in all such cases he shall have the same powers and authority as is by law vested in sheriffs in similar cases.—*Ibid.*, § 3.

§ 4. Every collector or constable shall, within six days after his election or appointment, give a bond, with sufficient sureties, to the acceptance of the town or of the selectmen, for the faithful performance of the duties of his office; and in default thereof the office shall become vacant. *R. S. 99, § 4.*

§ 5. Any person injured by the breach of any constable's bond may commence and maintain an action thereon in the name of the town, in the same manner he might do in the name of the county upon the bond given by the sheriff if he were injured by the breach thereof, and subject to the same provisions. *R. S. 357, § 4.*

§ 6. Any constable to whom any writ or other legal precept may be directed by a justice of the peace, is empower-

ed and required to serve and return the same according to law, and is vested with the same powers and subject to the same liabilities in relation thereto as sheriffs are in like cases. *R. S. 357, § 5.*

§ 7. Coroners and constables shall be entitled to the same fees as sheriffs in like cases. *R. S. 473, § 19.*

## FORMS OF PROCEEDINGS.

### 1. *Deputation.*]

[*L. S.*]      *To all to whom these Presents shall come.*

Know ye, That I, M. M., sheriff of the county of H., do hereby constitute and appoint —, of —, in the county of —, a deputy sheriff for the county of H., with full power to serve and execute according to law all writs, precepts or processes whatever, to him directed by lawful authority; and to do and perform all other things whatever which a deputy sheriff may or ought by law to do and perform.

To have and to hold said office of deputy sheriff, with all the power and authority thereto appertaining, during my pleasure. Given under my hand and seal this — day of —, A. D. 184--.

M. M., Sheriff.

### 2. *Certificate of oath.*]

H— ss., —, 184--. Personally appeared —, and took and subscribed the oath of allegiance, and the oath of office, as a deputy sheriff.

Before me: J. P., Justice of the Peace.

H— ss. Recorded this — day of —, 184--.

Attest: —, Clerk.

Form of oaths, see page 255.

### 3. *Deputy sheriff's bond.*]

KNOW ALL MEN BY THESE PRESENTS, That we, —, of —, in the county of H. and state of New-Hampshire, as principal, and — as sureties, are holden and stand firmly bound to M. M., sheriff of the county of H., in the sum of thirty thousand dollars, to the payment whereof we hereby jointly and severally bind ourselves and our heirs respectively, firmly by these presents, sealed with our seals, and dated this — day of —, A. D. 184--.

*The condition of this obligation is such,* That if the said —, who is appointed by said M. M. a deputy sheriff of said county of H., shall well and faithfully discharge and perform all the duties of a deputy sheriff; and if said obligors shall indemnify and save harmless the said M. M. from all loss, damages and costs that may happen to him by reason of the acts, nonfeasances, misfeasances or neglects of him, the said —, in his said office of deputy sheriff, and if the said — shall attend the court of common pleas on the first day of each session thereof, and continue there so long as the said M. may require his attendance, and shall once a year, and as much oftener as said M. may require, so long as he shall continue in said

office, and at the expiration of his term of office render to said M. in writing, on oath, a just account of all moneys he has received, or is entitled to receive, for the service of writs of mesne process and for travel to serve the same, and shall pay to him, the said M. M., one fifth part thereof, at the times of rendering his account as aforesaid, then this obligation to be void.

Signed, sealed and delivered  
in presence of us :

4. *Special deputation.*]

H— ss., — —, 184--. I hereby constitute and appoint A. B., of, &c., my deputy, to serve and return this writ according to law, at the risk of the plaintiff. M. M., Sheriff. (*Seal.*)

H— ss., — —, 184--. Personally appeared A. B., and made oath that he would serve and return this writ according to law.

Before me : J. P., Justice of the Peace.

5. *Bond to the sheriff.*]

See form of bond, form 3.

*Condition.*]

The condition of this obligation is, that whereas the said M. M., sheriff as aforesaid, has appointed the said A. B. his deputy, to serve and return a certain writ of attachment in favor of — against —, returnable at the court of common pleas for the county of H., on the — Tuesday of — next, at the request and risk of the pl. :

Now if the said A. B. shall indemnify said sheriff from all loss, damages and costs to which he may be subjected by reason of any act or neglect of said A. B., as such deputy, then this obligation to be void.

6. *Discharge of a deputy.*]

To R. R., of H., in the County of H.

By virtue of the power vested in me by the laws of this state, I do hereby remove and discharge you from the office of deputy sheriff of the county of H., which you now hold by my appointment, (at your own request, if so.) Given under my hand and seal the — day of —, A. D. 184--.

M. M., Sheriff. (*Seal.*)

7. *Return.*]

H— ss., — —, 184--. I served the within discharge on said R. R., by reading the same to him, (or, by giving to him an attested copy thereof) and on the same day returned the same to the clerk of the court of common pleas for said county, to be recorded, and paid him twenty-five cents for recording the same.

A. M., Deputy Sheriff.

8. *Deputy's account to the sheriff.*]

An account of all fees received by J. M. R., deputy sheriff for the county of Hillsborough, or which have accrued to him by virtue of his office, for travel and service on writs of mesne process from — 184--., to —, 184--.

A. B. vs. C. D.,

\$1.30

R. M. vs. N. P.,

.28

&c.

H— ss., — —, 184--. Personally appeared J. M. R., and made oath

that the foregoing account by him subscribed is a true account of all fees received by, or which have accrued to him for service of writs of mesne process, or travel to serve the same, from —, 184—, to —, 184—.

Before me : J. P., *Justice of the Peace.*

9. *Opening the court.]*

Hear ye : All persons having any business before the court of common pleas, held here this day, within and for the county of Hillsborough, may at this time draw near and give their attendance, and they shall be heard. *God save the state !*

10. *Adjourning the court.]*

Hear ye : All persons having any further business before the court of common pleas, held here this day, within and for the county of Hillsborough, may at this time withdraw and give their attendance at this place to-morrow, at nine of the clock in the forenoon, at which time and place this court stands adjourned. *God save the state !*

11. *Previous proclamation.]*

Hear ye : All persons having any further business before the court of common pleas, held here this day, within and for the county of Hillsborough, may at this time draw near and declare it, for this court stands on its adjournment. *God save the state !*

12. *Adjournment of the court without day.]*

Hear ye : All persons having any further business before the court of common pleas, held here this day, within and for the county of Hillsborough, may at this time withdraw and give their attendance on a new summons, for this court stands adjourned without day.—*God save the state !*

13. *Calling a recognizance.]*

A. B., A. B., A. B.: Come into court and answer according to the tenor of your recognizance, as you stand bound to do, otherwise it will be forfeited—and is forfeited.

14. *Calling sureties on recognizance,]*

A B., A. B., A. B.: Come into court, and bring with you the body of C. D., as you stand bound to do, otherwise your recognizance will be forfeited—and is forfeited.



## CHAPTER 39.

## OF CORONER'S INQUESTS.

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| 1. Coroner's inquests, when holden. | 9. Proclamation to be made.           |
| 2. Jury to be summoned—form.        | 10. Oath of witnesses, form.          |
| 3. Service of summons, how made.    | 11. Witnesses examined, recognized.   |
| 4. Juror not attending, penalty.    | 12. Verdict of jury and return.       |
| 5. Vacancies in jury, how filled.   | 13. Form of inquisition.              |
| 6. Oath of jurors, form.            | 14. If offender not in custody, duty. |
| 7. Witnesses to be summoned, how.   | 15. Body to be buried by coroner.     |
| 8. Jury to be charged—duties.       | 16. Fees on inquests.                 |

§ 1. It shall be the duty of the coroner to take an inquest upon the view of the dead body of any person whose death is supposed to have been occasioned by violence or casualty, within the county for which he is commissioned, whenever the majority of the selectmen of the town in which such dead body is found shall, in writing signed by them, authorize the same. *R. S. 453, chap. 224, § 1.*

§ 2. In every such case the coroner shall issue a summons, directed to three reputable persons, one of whom shall be a justice of the peace, requiring them to appear before him, at a time and place therein specified, as jurors, to inquire into the cause of such death, which summons shall be in substance as follows :

**The State of New-Hampshire.**

R— ss.

[L. S.] To — —,

GREETING.

In the name of the state of New-Hampshire you are hereby required to appear before me, one of the coroners of the county of —, at the dwelling-house of —, (or, at the place called —) within said town of —, on the — day of —, at — o'clock in the —noon, then and there to inquire upon a view of the body of — —, (or, a person unknown) there lying dead, how and in what manner he came to his death. Fail not of appearance, at your peril.

Given under my hand and seal at —, in said county, the — day of —, A. D. 184--.  
— —, Coroner.

*R. S. 454, § 2.*

§ 3. Service of such summons may be made upon such jurors by any sheriff, deputy sheriff or constable, authorized to serve precepts within such precinct, by reading the same

to every such juror, or by giving him a true and attested copy thereof in hand, and shall make return thereof to the coroner at the time and place of hearing. *Ibid.*, § 3.

§ 4. If any person summoned as juror as aforesaid, shall, without reasonable excuse, fail of appearance, or if any officer shall, without sufficient cause, fail to make due service or return of any such summons, he shall forfeit ten dollars. *Ibid.*, § 4.

§ 5. If any person named in such summons shall fail to attend at the time and place of taking such inquest, the coroner shall require the officer in attendance, or some other person, to return jurors from the by-standers to complete the number. *Ibid.*, § 4.

§ 6. The coroner shall administer to the jurors who are assembled the following oath :

"You solemnly swear that you will diligently inquire, and due presentment make, in behalf of this state, how and in what manner — —, who here lies dead, came to his (or her) death ; and that you will deliver 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."—*Ibid.*, § 6.

§ 7. The coroner may issue a subpœna for any witness, or compulsory process, if necessary, to be issued and served in the same manner as any justice of the peace might do upon a complaint in behalf of the state before him ; and the powers, duties and liabilities of the coroner, officer or witness shall be the same as upon such complaint. *R. S.* 455, § 7.

§ 8. The jurors having been sworn, the coroner shall give them a charge, upon their oaths, to declare of the death of the person, whether he died of felony, mischance or accident ; and if of felony, whether he died of his own or of another ; if of the felony of another, who were the principals and who accessaries ; with what instrument he was struck or wounded, and all important circumstances ; if he died of his own felony, the manner, means and instrument thereof, and all circumstances attending it ; if by mischance or accident, how and in what manner ; and in all cases to inquire whether he was killed in the place where found, or elsewhere ; and if elsewhere, how and by whom he came to such place ; and every fact relating to the cause of death which the finder of the body or any other person may know. *Ibid.*, § 8.

§ 9. The jurors being charged, shall stand together, and

the coroner shall 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 be sworn. *Ibid.*, § 9.

§ 10. The coroner shall administer to every witness the following oath :

" 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." — *Ibid.*, § 10.

§ 11. The testimony of every witness shall be drawn up in writing, and subscribed by him ; and if his testimony charge any person with killing or being in any way instrumental in the death of the person so found dead, the coroner shall bind such witness by recognizance, in a reasonable sum, for his personal appearance at the next term of the court of common pleas for the same county, there to give evidence accordingly. If such witness shall refuse to recognize as aforesaid, the coroner shall commit him to the common jail. *Ibid.*, § 11.

§ 12. The jury having viewed the body, heard the evidence, and made all the inquiry in their power, shall draw up and deliver to the coroner their verdict upon such death, in writing under their hands ; and the coroner shall set his hand and seal thereto, and shall return the same, with all recognizances, if any, by him taken, to the next term of the court of common pleas holden within and for the same county. *Ibid.*, § 12.

§ 13. The form of the inquisition shall be in substance as follows :

### The State of New-Hampshire.

R— ss. An inquisition taken at —, in said county, the — day of —, in the year of our Lord 184—, before — —, one of the coroners of said county, upon the view of the body of — —, there lying dead, by the oaths of — —, a justice of the peace for said county, and of — — and — —, all reputable persons, who being sworn and charged to inquire for the state when, how and by what means the said — — came to his death, upon their oaths do say : (here insert how, where, when, by what means and with what instrument the death occurred.) So the jurors aforesaid upon their oaths aforesaid do say (here insert the following, in case of murder :) that the said — — (or some person to the jurors unknown) in manner and form aforesaid, the aforesaid — — then and there, of his malice aforethought, did kill and murder, against the peace and dignity of the state ; (in case of self murder, insert instead :) that the said — —, in manner and form aforesaid, then and there voluntarily and feloniously, as a felon of

himself, did kill and murder himself, against the peace and dignity of the state; (or, in case of death by misfortune, insert instead,) that the said —, in manner aforesaid, came to his death by misfortune; (or, in case of death happening innocently by the hands of another person, insert instead :) that the aforesaid —, the aforesaid —, (deceased) by misfortune, and contrary to the will of the said —, in manner and form aforesaid did kill and slay.

In witness whereof the said jurors have hereunto set their hands the day and year first above written.

—, }  
—, } Jurors.  
—, }

In witness of all above written the said coroner hath hereto set his hand and seal, the same day and year.

—, (Seal.)

—R. S. 456, § 13.

§ 14. If any person charged by the inquest with having caused the death of the person whose body lies dead before them, shall not then be in custody, the coroner shall forthwith notify some justice of the peace of the same county thereof, that such person may be apprehended, examined and secured for trial according to law. *Ibid.*, § 14.

§ 15. Every coroner, after taking an inquest of the violent or casual death of any stranger, shall bury the dead body in a decent manner, and the expenses of such inquest and burial shall be paid to said coroner out of the treasury of the county, upon his certifying that the deceased was a stranger, on his account being examined and allowed by the court of common pleas. *Ibid.*, § 15.

16. The following fees shall be allowed on the taking of each coroner's inquest, to be paid from the county treasury :

To the coroner, for taking the same, one dollar fifty cents;

To the jurors, each one dollar fifty cents a day; for travel, each six cents a mile;

To the constable for summoning and attending the jury, sixty-seven cents a day, and his necessary expenses. R. S. 474, § 22.

17. *Authority for selectmen to take an inquest.*]

The undersigned, selectmen of the town of M., do hereby authorize J. M. R., a coroner for the county of H., to take an inquest of the death of an unknown person (or, of R. P., of said M.) found dead in said M. on the — day of —, A. D. 184—, whose death is supposed to have been occasioned by violence or casualty.

M. F.  
D. C.  
A. B.

M., —, 184.

## APPENDIX.

### *Forms of Agreements, Assignments, Bills of Sale, Bonds, Deeds, Indentures, Leases, Letters of Attorney, Releases, Surrenders, Trusts and Wills.*

#### 1. *General form of agreement.*]

Articles of agreement, indented, made and concluded the — day of —, A. D. 184—, between A. B., of C., in the county of M., of the one part, and C. D. of said C., on the other part.

The said A. B., for the consideration hereafter mentioned, doth hereby covenant and agree that, &c.

And the said C. D. doth hereby covenant and agree, &c.

To the true performance of the several covenants and agreements aforesaid the said parties do hereby respectively bind themselves and their respective heirs, executors and administrators, each to the other his executors and administrators, in the penal sum of — dollars.

In testimony whereof they have hereunto interchangeably set their hands and seals, the day and year first above written.

Signed sealed and delivered

in presence of

J. D.

R. R.

A. B. (L. S.)

C. D. (L. S.)

It is probably needless to remark, that all this is mere form. The first clause may be always wholly omitted, or any other form substituted, as: *This Indenture, &c.; Know all Men, &c.; Be it known, &c.; This deed witnesses that; Memorandum, &c.*; as in subsequent forms.

The repetitions in written instruments are very idle; as, “covenant and agree;” “give, grant, bargain, sell,” &c.; “have granted,” &c., “and do grant,” &c.

Penal clauses are in most cases entirely ineffectual. Damages are allowed, as an equitable compensation for any injury one party may sustain by the neglect of the other to perform his contract; and no more will be allowed than is equitable, if any form of instrument is adopted.

It is *never* necessary to mention “executors or administrators” in any legal instrument. They are bound in all cases, except such as are in their nature personal to the party contracting; and in that case they would not be bound if they

were named. They may avail themselves of any contract made with the deceased, whether they are named or not.—*Shep. Touchstone*, 178.

Heirs are bound, if they are named, and not otherwise. *Ibid.*, § 178. They can sue on any contract made with their ancestor, equally whether they are named or not. 2 *Sel. N. P.* 418.

The word “heirs” must not be omitted in *deeds* of real estate; because in that case the purchaser would take but an estate for life. *Litt.* § 1.

Assigns usually need not be named in legal instruments. If a covenant relates to any thing in being, they are bound, whether named or not. If it relates to any thing merely personal to the contracting party, they are not bound, though they are named. In one case only, that of a contract relating to something not then in being, but to be done on land leased; as, to erect a building, or the like, assignees will be bound if they are named, but not otherwise.

Assignees can sue on what are called covenants running with the land, whether named or not, and in no other case.—2 *Sel. N. P.* 420, 426.

These words, *heirs*, *executors*, and *administrators* and *assigns*, are generally omitted in the following forms. The person drawing any instrument has only to bear in mind that they do no hurt, and he is entirely at liberty to use them at his pleasure. It has been intended to insert them wherever they could have any legal operation.

Sealing is required in all deeds, leases and other instruments affecting real estate; and in some other cases; and is *generally* to be preferred.

### 2. *Agreement on sale of wheat.*]

It is agreed by A. B., of, &c., and C. D., of, &c., as follows:

Said A. B. agrees to sell and deliver to said C. D., at his store in C., on or before the — day of —, three hundred bushels of wheat, warranted to be good, clean and merchantable.

Said C. D. agrees to pay said A. B. three hundred dollars, in full for said wheat, in three months from such delivery.

Witness our hands and seals, the — day of —, 184--.

Signed, sealed and delivered  
in presence of

A. B. (L. S.)  
C. D. (L. S.)

### 3. *Agreement to convey land.*]

A. B., of M., and C. D., of B., agree as follows:

Said B. agrees to convey to said D. in fee a certain tract of land (Here describe the premises, as in a deed) by a warranty deed in common form, for one hundred dollars, on or before the — day of — next:

Said D. agrees to pay said B. the said sum of one hundred dollars on the delivery of the deed.

Said D. may enter upon and occupy the premises, and take the profits thereof on the — day of —.

Witness our hands and seals the — day of —, 184--.

Signed, sealed and delivered  
in presence of

A. B. (L. S.)  
C. D. (L. S.)

#### 4. *Agreement to build a house.*]

A. B., of M., and C. D., of G., agree as follows: Said B. agrees to construct and complete for said D., on lot No. —, on — street in M., a two story dwelling-house, agreeably to the plan and specifications signed by the parties; to furnish all necessary materials, of good and suitable quality, and the work to be done in a thorough, workmanlike manner, on or before the — day of — next, for the sum of 800 dollars.

Said D. agrees to pay said sum of 800 dollars as follows: \$100 when the cellar is completed; \$100 when the frame is erected; \$100 when the outside is shingled and clapboarded; \$100 when the lathing is completed, and the residue when the building is completed.

Said B. agrees to pay rent at the rate of — dollars a month, from the — day of — till the work is finished.

Witness our hands and seals, the — day of —, 184--.

A. B. (L. S.)  
C. D. (L. S.)

Specifications for the construction of buildings are extremely various. All that will be attempted will be to direct attention to the particulars which would ordinarily be embraced in a specification.

**SPECIFICATION.** Materials—size of building—height of stories.

*Cellar.* Size—depth—walls—quality of stone—thickness—how laid—posting—underpinning—depth—how hammered—lined.

*Cellar Windows.* How many—where—size—sash—glass.

*Rollway.* Where—how constructed—doors.

*Frame.* Size of timbers—floor joists—rafters—how far apart.

*Roof.* Pitch—how framed—qualities of boards—shingles, quality—length—how laid—weather and saddle boards—lead about chimneys—dormer windows—gutters—conductors—scuttle.

*Outside.* How boarded—clapboards, quality—how laid—weather boards—pilasters.

*Chimneys.* Foundations—quality of bricks—arch—trimmers—fire-places, how many—where—what sizes—hearths and jams, what—flues—size—separate—plastered—oven and ash-hole—arched—kind of doors—chimney tops—quality of bricks—height.

*Windows.* How many—where—size—sashes—springs—weights—glass, size—quality—finish—outside—inside—shutters—blinds—fastenings.

*Doors.* Outside—finish—inside—how many—size—thickness—panels—hinges—locks—latches—finish of casings—steps—scrapers.

*Floors.* Double—under floor—quality of boards—upper—quality—width—thickness—seasoning—mop-boards—width, &c.

*Lathing and Plastering.* Furrings, how close—laths, quality—mor-

**tar—sand, what—hair—thickness—number of coats—how put on.**  
**Closets.** How many—where—shelves—pins.  
**Stairs.** Front—what—finish—banisters—back, cellar and garret stairs.  
**Sinks.** How many—spouts, what, where—pump, where—what.

*5. Agreement to compound debts.]*

KNOW ALL MEN BY THESE PRESENTS, That the subscribers, creditors of J. B., of, &c., finding that said J. B. is disabled, by losses and otherwise, to pay us our respective debts in full, do severally and respectively agree with said J. B. to accept of him thirty cents for each dollar of our respective demands against him, in full satisfaction of the whole of said demands, provided the said sum of thirty cents for each dollar of our said demands is paid to us or our representatives within six months from the date hereof. And we do further respectively agree, that neither of us, nor any person claiming under us, will commence or prosecute any action or suit in law or equity against said J. B., his goods or estate, within said term of six months, nor at any time afterward, in case said sum of thirty cents for each dollar shall be paid within said six months as aforesaid.

And we do further respectively agree, that if any suit or action shall be commenced or prosecuted against said J. B., his goods or estate, in violation of this agreement, the said J. B. shall thenceforth be forever discharged from all claims and demands of the creditor, by whom or in whose right any such suit or action shall be brought or prosecuted.

Witness our hands and seals, the — day of —, 184--.

|                              |               |
|------------------------------|---------------|
| Signed, sealed and delivered | A. B. (L. S.) |
| in presence of               | C. D. (L. S.) |
|                              | E. F. (L. S.) |

*6. Agreement not to sue ; or, letter of license.]*

KNOW ALL MEN BY THESE PRESENTS, That the subscribers, creditors of J. B., of, &c., do hereby severally and respectively agree with said J. B. that neither of us, nor any other person in our right respectively, shall commence or prosecute any suit or action in law or equity against said J. B., his goods or estate, upon any of our respective demands at any time within one year from the date hereof.

And we do further respectively agree, that if any suit or action shall be commenced or prosecuted against said J. B., his goods or estate, in violation of this agreement, the said J. B. shall thenceforth be forever discharged from all claims and demands of the creditor by whom or in whose right any such suit or action shall be brought or prosecuted.

Witness our hands and seals, the — day of —, 184--.

|                              |               |
|------------------------------|---------------|
| Signed, sealed and delivered | A. B. (L. S.) |
| in presence of               | C. D. (L. S.) |
|                              | E. F. (L. S.) |

*7. Agreement between a trader and his factor.]*

A. B. and C. D., both of C., &c., agree as follows: A. B. agrees to employ said C. D. as a factor, in the business of selling at retail such goods and merchandize as he may consign to him, and such as said C. D. may purchase for said A. B. by his orders ; and in pur-



chasing such goods and produce as are usually purchased by barter and otherwise at a country store, for the term of three years from date, at the store in —, called the — store.

C. D. agrees that he will take charge of, and, according to his best skill, sell and dispose of all said goods for the best profit he can, to safe and trustworthy persons, if sold on credit: and that he will purchase such goods as he may be directed by said A. B., and other goods and produce, to the best advantage; will keep correct accounts in the books of said A. B. of all receipts and payments; all purchases, consignments and sales; will make proper charges of all goods sold on credit, and proper credit for all money or goods received on account, and will promptly collect and secure all debts due to said A. B.; will take, and state on the ledger once a year, an account of all the stock, property and assets in his care, and all debts and liabilities contracted in the course of the business; and a like account at the close of said three years; and will then deliver up all such property and assets to said A. B., on request; will transact said business in the name of said A. B., and will not engage in any trade or business whatever on his own account, or as factor or agent for any other person.

A. B. agrees to pay said C. D. for his services — dollars a year; (or, agrees to allow said C. D. — per cent. on all sales by him made for money, or when the money shall be collected for the same; deducting the like per centage on all sales where the debt shall be lost.)

Witness our hands and seals, the — day of —, A. D. 184—.

Signed, sealed and delivered  
in presence of

A. B. (L. S.)

C. D. (L. S.)

#### 8. *Agreement of co-partnership.*]

A. B., of —, and C. D., of —, agree as follows: The parties agree to become partners in the trade of buying and selling such goods as are usually kept for sale or purchased at a country retail store, for three years from this date, under the firm of B. & D.

Said parties have each contributed the sum of five hundred dollars, as the capital stock of said firm.

(Or: The said A. B., having purchased one half of the stock of goods now in the store of said C. D., at a fair valuation, for \$500, and given satisfactory security for the same, the parties have each contributed one half of said stock of goods as the capital stock of said partnership.)

Neither partner is to engage in any trade or business whatever for his private advantage, but both are to devote their time and skill for the common benefit.

All the expenses of the business and all losses are to be borne in common, and the profits are to be equally divided.

Correct books of account are to be kept, in which shall be entered all money received and paid, all purchases and sales of goods, and all matters of account relating to the business of the firm, which shall be in common and accessible to both. The partner transacting any business shall cause the same to be entered on the books, or the other partner may so enter it.

No money or other property shall be withdrawn by either partner, or applied to his own use, except with the written consent of the other partner; and in every such case the same shall be charged,

and his share of profits shall be reduced in proportion to the amount withdrawn.

Once in each year a correct account shall be taken and stated on the ledger of all the stock, property and assets of the firm, and of all the debts and liabilities.

At the close of the partnership a like account shall be taken and stated, and the stock and property, and the debts, shall be equally divided, after payment of the liabilities of the firm.

All securities taken for debts due to the partnership, and all notes and obligations given, shall be in the name of the firm; and all business of the firm shall be transacted in that name.

Credit shall not be given to any person to an amount exceeding — dollars, without the written consent of both partners; and the partner giving such credit shall bear the loss, if any accrues.

No debt or claim of the firm shall be released or settled without payment in full, unless by the written consent of both partners.

Neither partner shall have power to bind the firm as surety in any case; and neither partner shall become a surety for any person without the written consent of the other.

Witness our hands and seals, this — day of —, A. D. 184—.

Signed, sealed and delivered

in presence of

A. B. (L. S.)

C. D. (L. S.)

The first entry on the day-book should be a copy of this agreement.

#### 9. *Agreement on dissolution of partnership.*]

A. B., of, &c., and C. D., of, &c., agree as follows: The partnership existing between said parties, under the firm of B. & D., is dissolved. Said A. B., in consideration of — dollars paid to him by said C. D., grants and assigns to said C. D. all his right and interest in all the goods and stock of said firm, and in all the debts and demands due said firm; with full power to collect the same by suit or otherwise in the name of said A. B., for his own use.

Said A. B. agrees that he will not do any act by which said C. D. may be delayed or hindered from collecting any of said debts or demands; and that he will at any time, on request, execute any proper instrument for enabling said C. D. to collect the same.

Said C. D. agrees to pay all the debts and demands existing against said firm, and to indemnify and save said A. B. harmless from all loss, cost, damage or expense to which he may be subjected by reason of the same.

Witness our hands and seals, the — day of —, A. D. 184—.

Signed, sealed and delivered

in presence of

A. B. (L. S.)

C. D. (L. S.)

#### 10. *Assignment of a debt.*]

KNOW ALL MEN BY THESE PRESENTS, That I, E. M., of, &c., in consideration of — dollars to me paid by W. P., of, &c., do hereby grant, sell and assign to said W. P.

[a certain debt due me from T. H., of, &c., for goods sold and delivered, amounting to — dollars,]

with full power to collect and discharge or dispose of the same in my name at his pleasure, at his own expense and risk. And I do hereby

covenant that said debt is justly due, and that I have not done and will not do any act by which the collection thereof may be hindered or prevented

Witness my hand and seal, the — day of —, 184—.

Signed, sealed and delivered  
in presence of

E. M. (L. S.)

By the insertion of a proper condition, any assignment may be made a mortgage. *See form of condition, form 23, page 368.*

#### 11. *Assignment of a bond.*]

In form 10, in lieu of the words in brackets, insert: "a certain bond, dated the — day of —, made to me by S. B., for five hundred dollars, conditioned for the payment of two hundred and fifty dollars and interest."

If by endorsement say, in lieu of the words in brackets, "the within written bond."

#### 12. *Assignment of a judgment.*]

KNOW ALL MEN BY THESE PRESENTS, That I, E. D., of, &c., in consideration of the sum of — dollars to me paid by L. M., of, &c., do hereby grant and assign to said L. M. a certain judgment by me recovered against E. F., of, &c., at the court of —, holden at —, for the county of —, on the — day of —, for — dollars — cents damages, and costs taxed at — dollars — cents, with full power to recover the same for his own use at his own risk and expense.

Witness my hand and seal the — day of —, 184—.

Signed, sealed and delivered  
in presence of

E. D. (L. S.)

#### 13. *Assignment of a judgment by endorsement on a copy or execution.*]

KNOW ALL MEN BY THESE PRESENTS, That I, E. D. within named, in consideration of — dollars to me paid by L. M., of, &c., do hereby grant and assign to said L. M. the judgment within mentioned, with full power to recover the same for his own use, at his own risk and expense.

Witness my hand and seal the — day of —, 184—.

Signed, sealed and delivered  
in presence of

E. D. (L. S.)

#### 14. *Assignment of a mortgage.*]

KNOW ALL MEN BY THESE PRESENTS, That I, C. D., of, &c., in consideration of — dollars to me paid by W. S., of, &c., do hereby grant and assign to said W. S. a certain mortgage made to me by A. B., of, &c., dated the — day of —, 184—, and recorded in the Rockingham Registry, vol. —, page —, together with the debt thereby secured, and all my right to the premises thereby conveyed:

[Hereby covenanting that the amount of — dollars is now due upon said mortgage, and that I have not done and will not do any act by

which the right of said W. S. to said debt and mortgage may be impaired.]

Witness my hand and seal the — day of —, 184—.

Signed, sealed and delivered

in presence of

C. D. (L. S.)

J. R.

R. R.

Acknowledgment, *see form 33, page 370.*

15. *Assignment of a mortgage by endorsement.]*

KNOW ALL MEN BY THESE PRESENTS, That I, C. D., within named, in consideration of — dollars to me paid by W. S., of, &c., do hereby grant and assign to said W. S. the within mortgage, the debt thereby secured, and all my right to the premises thereby conveyed.

Witness my hand and seal the — day of —, 184—.

Signed, sealed and delivered

in presence of

C. D. (L. S.)

J. R.

R. R.

Acknowledgment, *see form 33, page 370.*

16. *Assignment of a lease.]*

BE IT KNOWN, That I, E. F., of, &c., in consideration of — dollars to me paid by G. H., of, &c., do hereby grant and assign to said G. H. a certain lease, dated the — day of —, 184—, made by J. L., of, &c., to said E. F., of a certain tract of land: (Here describe the premises) for the term of — years, at the annual rent of — dollars. And I do hereby agree with said G. H. that I have not done and will not do any act by which said lease may be impaired.

And I, the said G. H., agree with said E. F. that I will pay the rents and perform the covenants in said lease, and will indemnify said E. F. against the same.

Witness our hands and seals the — day of —, 184—.

Signed, sealed and delivered

in presence of

E. F. (L. S.)

G. H. (L. S.)

J. W.

R. W.

17. *Assignment of lease by endorsement.]*

BE IT KNOWN, That I, E. F., within named, in consideration of — dollars to me paid by G. H., of, &c., do hereby grant and assign to him the lease within written; and do hereby covenant that I have not done and will not do any act by which said lease may be impaired.

And I, the said G. H., agree with said E. F. that I will pay the rents and perform the covenants in said lease, and will indemnify said E. F. against the same.

Witness our hands and seals, the — day of —, 184—.

Signed, sealed and delivered

in presence of

E. F. (L. S.)

G. H. (L. S.)

Acknowledgment, *see form 33, page 370, if over seven years are unexpired.*

In either of the preceding forms it may be advisable to insert a condition :

Provided, that if said G. H. shall fail to pay the said rent, or to perform any covenant in said lease, this assignment shall be void, if said E. F. shall so elect.

*18. Assignment of a man's whole estate in trust for creditors.]*

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of —, in consideration of one dollar to me paid by C. D., of —, and of the trusts herein expressed, do grant and assign to said C. D. all my property, estate, rights and credits, of every description, except such as is by law exempted from attachment and execution, (a schedule of the principal part thereof being hereto annexed) to have and to hold the same to said C. D. and his heirs, in trust to sell and dispose of said property to the best advantage, and collect and convert into money the said debts and demands ; and, after deducting from the proceeds of said property the expenses incurred by said C. D. in transacting the business, and a reasonable compensation for his services, to divide and pay the said proceeds among all the creditors of A. B., in equal proportion to their respective claims.

C. D. agrees to execute said trust, being responsible only for his actual receipts or wilful defaults. The creditors whose names are subscribed agree to said assignment, and that this instrument shall be a release in full of all their claims, whenever their just proportion of the proceeds of said property shall be paid.

Witness our hands and seals the — day of —, A. D. 184—.

Signed, sealed and delivered

A. B. (L. S.)

in presence of

C. D. (L. S.)

[To be acknowledged, if real estate is included.]

E. F. (L. S.)

*Affidavit.]*

I do solemnly swear that I have placed and assigned, and the true intent of this assignment is to place in the hands of my assignees, all my property of every description, except such as is by law exempted from attachment and execution, to be divided among all my creditors, in proportion to their respective claims. A. B.

H— ss., —, 184—. Personally appeared A. B., and made oath that the above affidavit by him subscribed is true.

Before me : J. P., Justice of the Peace.

*19. Assignment of dower.]*

This Indenture, between R. L., of, &c., and J. L., of, &c., widow of O. L., late of, &c., deceased,

WITNESSES :

That said R. L. hereby assigns to said J. L. (Here describe the premises and privileges assigned :) to hold to her during her natural life, as her dower in all the lands and tenements whereof the said O. L. was seized at the time of his decease : And said J. S. hereby accepts the said premises as her dower in all the said lands and tenements, and releases her right and claim to all the residue of the same lands and tenements.

Witness our hands and seals the — day of —, A. D. 184—.

Signed, sealed and delivered

R. L. (L. S.)

in presence of

J. L. (L. S.)

J. W.

T. D.

19. *Acknowledgment.*]

H— ss., — —, 184—. Personally appeared R. L. and J. L., and acknowledged this instrument, by them signed, to be their free act and deed.

Before me : J. P., *Justice of the Peace.*

20. *Bill of sale of goods.*]

BE IT KNOWN, That I, A. B., of, &c., in consideration of — dollars to me paid by C. D., of, &c., do sell and convey to said C. D. the following goods and chattels, to wit. (Here enumerate the articles) (or, the goods and chattels enumerated in the schedule annexed;) warranted free of any incumbrance, and against any adverse claims.

And I have put the said C. D. in possession of said property, by delivering to him this deed in the name of the whole.

Witness my hand and seal the — day of —, A. D. 184—.

Signed sealed and delivered

in presence of

A. B. (L. S.)

J. D.

R. W.

21. *Mortgage bill of sale.*]

BE IT KNOWN, That I, A. B., of, &c., in consideration of — dollars to me paid by C. D., of, &c., do sell and convey to said C. D. the following goods and chattels, to wit. : (Here enumerate the articles;) (or, the goods and chattels enumerated in the schedule annexed;) warranted free of incumbrance, and against any adverse claims; upon condition that if I pay to said C. D. — dollars and interest, in one year, agreeably to my note of this date for that sum, payable to said C. D. or order, on demand with interest, this deed shall be void.

And I have put the said C. D. in possession of said property, by delivering him this deed in the name of the whole.

The parties agree that until condition broken said property may remain in possession of said A. B., but said C. D. may at his pleasure take and remove the same and may enter into any buildings or premises of said A. B. for that purpose.

Witness our hands and seals the — day of —, 184—.

Signed, sealed and delivered

in presence of

A. B. (L. S.)

C. D. (L. S.)

J. D.

R. R.

*Affidavit.*]

We severally swear that the foregoing mortgage is made for the purpose of securing the debt specified in the condition thereof, and for no other purpose whatever; and that said debt was not created for the purpose of enabling the mortgager to execute said mortgage, but is a just debt, honestly due and owing from the mortgager to the mortgagee.

A. B.

C. D.

H— ss., — —, 184—. Personally appeared A. B. and C. D., and made oath that the above affidavit by them subscribed is true.

Before me : J. P., *Justice of the Peace.*

22. *Condition to indemnify.*]

Upon condition that if I shall indemnify said C. D. against all loss, cost, damage and expense to which he may be subjected by rea-

son of signing a note to J. A., for — dollars and interest, at my request as my surety, then this deed shall be void.

*Affidavit.*]

We severally swear that the foregoing mortgage is made for the purpose specified in the condition thereof, and for no other purpose whatever; and that said liability was not created for the purpose of enabling the said mortgager to execute the said mortgage, but is a just liability, bona fide incurred by said mortgagee for said mortgager.

A. B.  
C. D.

Certificate, *see above.*

23. *Bond.*]

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of C., &c., am held and firmly bound to C. D., of, &c., in the sum of — dollars, to be paid to said C. D., to the payment whereof I bind myself and my heirs firmly by these presents, sealed with my seal and dated the — day of —, A. D. 184—.

*The condition of this obligation is,* That if I, the said A. B., shall pay to said C. D. — dollars and interest, on or before the — day of — next, this obligation shall be void.

Signed, sealed and delivered  
in presence of

A. B. (L. S.)

24. *Joint and several bond.*]

Instead of, "I bind myself," &c., say, "We jointly and severally bind ourselves and our respective heirs."

25. *Condition to pay money by instalments.*]

*The condition of this obligation is,* That if I, the said A. B., shall pay to said C. D. two hundred dollars and interest, in manner following, viz.: twenty dollars and interest thereon on the first of December next; twenty dollars and interest thereon on the first of March, 184—; twenty dollars and interest thereon, on the first of June, 184—; and twenty dollars and interest thereon, on the first of September, 184—; and so twenty dollars and interest thereon quarterly on the same days in each future year till the whole is paid, then this obligation to be void.

26. *Condition to pay an annuity.*]

*The condition of this obligation is,* That if I, the said A. B., shall pay to said C. D. and E. F., or the survivor of them, — dollars on the — day of —, in the present and every future year during their lives, and the life of such survivor, then this obligation shall be void.

27. *Condition to maintain a person.*]

*The condition of this obligation is such,* That if I, the said A. B., shall at all times during the natural life of the said C. D. suitably support and maintain the said C. D., and provide him with suitable food, drink, clothes, nursing, medicine, and all other things suitable and necessary, in the house of said A. B., (or, if the said A. B. shall remove from the town of —, in such suitable house in said town as said A. B. may provide) then this obligation shall be void.

**28. Condition to indemnify.]**

*The condition of this obligation is,* That if I, the said A. B., shall indemnify said C. D. against all loss, cost, damage and expense to which he may be subjected by reason of his signing, at the request and as surety for said A. B., a bond to the judge of probate of the county of —, in the penalty of — dollars, conditioned for the faithful discharge by said A. B. of his duties as executor of the will of J. D., deceased, then this obligation shall be void.

**29. Condition to convey land.]**

*The condition of this obligation is,* That if said A. B., upon payment of — dollars and interest by said C. D., within two years from this date, agreeably to his note of even date herewith, shall convey to said C. D. and his heirs forever a certain tract, [Here describe the land as in a deed] by a warranty deed in common form, duly executed and acknowledged, [and in the mean time shall permit said C. D. to occupy and improve said premises for his own use,] then this obligation shall be void.

**30. Condition to perform covenants.]**

*The condition of this obligation is,* That if said A. B. shall perform and keep all the covenants and agreements on his part to be performed contained in certain indentures, of even date herewith, between said A. B. and C. D., according to their true intent, then this obligation shall be void.

**31. Condition to indemnify a town against a bastard.]**

*The condition of this obligation is,* That if said A. B. shall indemnify the said town of N. against all expenses, damages, costs and charges to which they may be subjected by reason of the birth, maintenance and education of a certain bastard child with which one E. F. is now pregnant, and of which said E. F. has on oath complained that said A. B. is the father, then this obligation shall be void.

If the child is born, say :

of a certain bastard child of which one E. F. has lately been delivered, and of which said E. F. has on oath complained that said A. B. is the father, then this obligation shall be void.

**32. Condition to pay a woman for the support of a bastard child.]**

*The condition of this obligation is,* That if said A. B. shall pay to said C. D., towards the support and maintenance of a bastard child of which said C. D. has lately been delivered, and of which said C. D. has on oath complained that said A. B. is the father, — per week from the — day of —, during the term of seven years, if said child shall so long live, then this obligation shall be void.

**33. Deed of release, or quitclaim.]**

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of C., in the county of M., and state of New-Hampshire, in consideration of one hundred dollars to me paid by C. D., of D., in the county of H., in said state, do release to the said C. D. and his heirs and assigns forever, a certain tract of land, situate in said D., containing one hundred acres, more or less, being lot No. 16, in the sixth range and first divi-



*sion of lots in said D., laid out to the original right of J. S., [conveyed to me by R. G., by his deed dated June 12th, 1840, recorded in the H—Registry, vol. —, page —]*

To have and to hold the said premises, with all the privileges and appurtenances thereto belonging, to the said grantee, *his* heirs and assigns forever; and I do hereby covenant with the said grantee that I will warrant the said premises to the said grantee and *his* heirs and assigns, against the lawful claims of any person claiming under me.

*[And I, C. D., wife of said A. B., for the consideration aforesaid, do hereby release my right of dower in said premises.]*

In witness whereof we have hereunto set our hands and seals, this — day of —, in the year of our Lord one thousand eight hundred and —.

Signed, sealed and delivered  
in presence of  
J. R.  
R. R.

A. B. (L. S.)  
C. D. (L. S.)

STATE OF NEW-HAMPSHIRE, M— ss., — —, 184—. The above named A. B. acknowledged the foregoing instrument to be his voluntary act and deed. Before me: J. P., *Justice of the Peace.*

*34. Release of a right.]*

In the preceding form insert the following description :  
all my right and interest in a certain tract of land, situate, &c.

*35. Release of dower.]*

Or, all my right of dower in a certain tract of land, situate in C., in said county, containing — acres, bounded, &c., of which my late husband, J. B., was heretofore seized.

*36. Release of a share of real estate.]*

Or, all my right, interest and share in a certain tract of land, situate, &c., of which my late father, R. B., died seized.

*37. Release of a share of real and personal estate.]*

Or, all my right, interest and share in all the real (and personal) estate of which my late father, R. B., died seized, (and possessed) wherever the same may be situate, or however described.

*38. Release of a reversion.]*

Or, all my right and interest in the reversion of a certain tract of land, situate, &c., set off to C. B., widow, as her dower in the estate of her late husband, G. B., of C., deceased, after the decease of said C. B.

*39. Release of dower on the husband's deed.]*

KNOW ALL MEN BY THESE PRETENTS, That I, M. B., wife of the within named A. B., in consideration of — dollars to me paid by the within named C. B., do release all my right of dower in the premises within described.

In witness whereof I have hereunto set my hand and seal, the — day of —, A. D. 184—.

Signed, sealed and delivered  
in presence of  
J. D.  
R. R.

M. B. (L. S.)

Acknowledgment in common form.

40. *Deed of warranty.*]

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of C., in the county of R. and state of New-Hampshire, in consideration of — dollars to me paid by C. D., of said C., do sell and convey unto the said C. D., his heirs and assigns forever, a certain tract of land, situate in said C., containing forty acres, more or less, bounded southerly on the highway leading from C. to H.; easterly on land of G. H.; southerly on land of G. H.; westerly on land of J. R., and northerly partly on land of S. M. and partly on land of S. O., [being the same conveyed to me by J. G., by his deed dated —, 184—, recorded in the R— Registry, vol. —, page —.]

To have and to hold the said premises, with all the privileges and appurtenances thereto belonging, to the said grantee, his heirs and assigns forever.

And I do covenant with said grantee, his heirs and assigns, that I am the lawful owner of said premises, and am rightfully seized thereof in fee simple; that they are free of all incumbrances; that I have good right to sell and convey the same in manner aforesaid; and that I and my heirs will warrant the same premises to the said grantee, his heirs and assigns forever, against the lawful claims of all persons.

In witness whereof I have hereunto set my hand and seal, this — day of —, A. D. 184—.

Signed, sealed and delivered

in presence of us:

A. B. (L. S.)

J. D.

R. W.

STATE OF NEW-HAMPSHIRE—Hillsborough ss., —, 184—. The above named A. B. acknowledged the above instrument to be his free act and deed. Before me: J. P., Justice of the Peace.

41. *Description of land by bounds.*]

a certain tract of land, situated in said C., warranted to contain ten acres by measure, bounded,—beginning at a stake and stones on the highway, being the southeasterly corner of P. L's. lands; thence by said highway south sixteen degrees east forty rods, to a stake and stones, by land of R. S.; thence south 74 degrees west, forty rods, to a white oak tree marked; thence north, sixteen degrees west, forty rods, to a sapling pine, by land of O. G.; thence north, 74 degrees east, forty rods, to the first mentioned bound, together with the buildings standing thereon.

*Note.* It is never necessary to mention *buildings*, but is often more satisfactory to purchasers.

42. *Description of mills.*]

a certain sawmill, situate in A., in said county, known as the Blanchard mill, together with the mill-dam, mill-yard, water privilege and rights of flowage, and all the real estate, rights and privileges appurtenant thereto or occupied therewith, together with a right of way for all persons from the public highway to said mill over the ground now used for that purpose.

43. *Description of a mill privilege.*]

a certain mill privilege, situate on the easterly side of P. river, in

said G., described as follows: Beginning at the mouth of — brook; thence westerly to the centre of said river; thence southerly down the middle of said river, about — rods, to a point due west of a large hemlock tree, marked; thence easterly, to said hemlock and on the same course, six rods from said hemlock to a stake and stones; thence northerly to said brook, six rods east of the mouth of the same; thence westerly to the first mentioned bound; with the right to draw so much of the water of said river, and no more, as will pass through a gate six feet long and one foot deep, under a head of eight feet, at all times when the water shall not be necessary for the use of the gristmill on the west side of said river, or other mill erected instead thereof, and using the same quantity of water as is now required for said gristmill; said privilege being subject at all times to the obligation to maintain and keep in perfect repair all that part of the mill, dam and its appurtenances which is situate on the premises before conveyed.

*Note.* A reference to former conveyances, *see form of quitclaim deed, form 33*, is always advisable, as it saves much trouble in examining the records.

*Deed of wife's property.]*

KNOW ALL MEN BY THESE PRESENTS, That we, A. B., of, &c., and C. B., wife of said A. B., in her right, in consideration, &c.

Follow common form. Both husband and wife should acknowledge such a deed.

*44. Mortgage deed.]*

KNOW ALL MEN BY THESE PRESENTS, That I, C. D., of L., in the county of Middlesex and commonwealth of Massachusetts, in consideration of the sum of — dollars to me paid by J. S., of B., in the county of H., and state of New-Hampshire, do sell and convey to the said J. S., his heirs and assigns forever, forty-eight acres of land, more or less, situate in said B., bounded southerly by the road leading from M. to A.; easterly by lot No. 12, in the 2d division of lots in said B.; southerly by land of P. R., as the fence now runs, and westerly by the stream called — brook, with the buildings thereon. Also four acres of meadow, in the Great Meadow, so called, in said B., bounded westerly and southerly by the brook; easterly by meadow of P. G. and northerly by land of A. M.; [said premises being subject to a mortgage made by me to C. H., dated — —, 184—, recorded in the H— Registry, vol. —, page —.]

To have and to hold the said premises, with all the privileges and appurtenances to the same belonging, to the said grantee, and his heirs and assigns forever. And I do covenant with the said grantee and his heirs and assigns, that I am the lawful owner of the said premises, and am rightfully seized thereof in fee simple, and have good right to sell and convey the same in manner aforesaid; and that the said premises are free of all incumbrances; and that I and my heirs will warrant the same to the said grantee and his heirs and assigns, against the lawful claims of all persons.

The condition of the foregoing deed is, that if I shall pay to the said J. S. four hundred dollars and interest, within one year from

the date, agreeably to my note of even date, for that sum, payable to said J. S., or order, in one year with interest, then this deed shall be void.

In witness whereof I have hereunto set my hand and seal, this — day of —, A. D. 184--.

Signed, sealed and delivered in

presence of

J. D.

R. R.

C. D. (L. S.)

STATE OF NEW-HAMPSHIRE: H— ss., — —, 184--. The above named C. D. acknowledged the foregoing instrument to be his voluntary act and deed. Before me: J. P., *Justice of the Peace*.

Release of dower. See form 33.

Conditions to pay money by instalments;

“ to pay an annuity;

“ to maintain a person;

“ to indemnify;

“ to perform covenants;

See BONDS, forms 25, 26, 27, 28, 30, page 368-9.

In mortgage deeds may be inserted an agreement that the mortgager shall occupy; that the mortgagee may sell; for confession of judgment, &c.

45. *Agreement that mortgager shall occupy.*]

And it is agreed that, until condition broken, said C. D., doing no waste, shall retain possession of said premises for his own use.

46. *Agreement that mortgager may sell.*]

And it is agreed that, on failure of performance of said condition, the said J. S. may advertise said mortgaged premises for sale, by publication of a notice in some newspaper printed at M., in said county, three weeks successively before such sale, and may sell the same at public auction to the highest bidder; and his deed thereof, in pursuance of such sale, shall convey to the purchaser an indefeasible title to the same, discharged of all right of redemption by the mortgager or any person claiming under him; and the mortgagee shall apply the proceeds of said sale in payment of said mortgage debt, and pay over the balance, if any, to the mortgager, after deducting the expenses of notice and sale.

47. *Agreement to confess judgment.*]

And I hereby authorize any attorney of the court of common pleas to appear for me, in any proper court, in an action to be brought on said mortgage, and confess judgment therein, to be entered conditionally as by law provided, for the amount of said mortgage debt, interest and costs; and I hereby release all errors in such judgment.

48. *Deed of covenant, to stand seized to uses.*]

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of, &c., in consideration of the love and affection I bear to my son, C. B., do, for myself and my heirs, covenant with said C. B. and his heirs that

I will henceforth stand seized of my homestead farm, situate in said —, containing — acres, more or less, conveyed to me by J. L., by his deed recorded in the — Registry, vol. —, page —, with all the privileges and appurtenances to the same belonging, for the uses and purposes following, that is to say: To my own use, during my natural life, without impeachment of waste, and after my decease to the use of said C. B., his heirs and assigns forever.

*Provided, however,* that if said C. B. shall neglect or refuse, at my request, to stock, cultivate and improve said farm, in a husbandlike manner, and to deliver to me in proper order in the buildings on said premises, one half of all the produce and income of said farm and stock, upon my allowing him the use of the easterly half of the house, then this conveyance shall be void.

In witness whereof I have hereunto set my hand and seal, this — day of —, 184--.

Signed, sealed, &c.

A. B. (L. S.)

### Acknowledgment in common form.

*Note.* It is believed that deeds framed in this form are much safer in cases where a father is making a conveyance to a son, for the sake of a support in old age, than the modes usually adopted. The usual mode of lodging deeds is hazardous to the last degree; as it leaves the essential part of the contract not in writing, but to the uncertainty of memory; and, when disputes arise, the witness may be dead, moved to a distant part of the country, or interested to defeat the just claims of one or the other of the parties.

#### 49. *Executor's or administrator's deed.*]

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of C., &c., executor of the will of M. N., late of said C., deceased, (or, administrator of the estate of M. N., late of said C., deceased, intestate,) by virtue of a license from the court of probate for the county of H., holden at A. on the — day of —, A. D. 184--, authorizing me to sell at public auction so much of the real estate of said deceased as should be sufficient to raise the sum of — dollars, to pay the debts existing against the estate of said deceased, with incidental charges; and in consideration of the sum of — dollars to me paid by R. S., of said C., &c., do sell and convey to said R. S. and his heirs forever:

(Here describe the premises:)

TO HAVE AND TO HOLD the premises, with all the privileges and appurtenances thereto belonging, to said grantee, and his heirs forever. And I do, in my said capacity, covenant with said grantee and his heirs, that said M. N. died rightfully seized of said premises; that I am duly authorized by said license to sell and convey the same in manner aforesaid; that in making said sale I have in all things complied with the law, and that I will warrant the said premises to said grantee and his heirs, against the lawful claims of all persons claiming under me.

In witness whereof I have hereunto set my hand and seal, the — day of —, A. D. 184--.

Signed, sealed and delivered  
in presence of

A. B. (L. S.)

J. D.

R. R.

H— ss., — —, 184--. The said A. B. acknowledged this instrument by him signed to be his free act and deed.

Before me : J. P., *Justice of the Peace.*

#### 50. *Guardian's deed.*]

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of C., &c., guardian of D. B., of said C., a minor, by virtue of a license from the court of probate for said county of M., holden at said C. on the — day of —, A. D. 184--, authorizing me to sell the real estate of said minor (or, so much of the real estate of said minor as should be sufficient to raise the sum of — dollars) for the support of said minor; and in consideration of the sum of — dollars to me paid by R. S., of said C., &c., do sell and convey to said R. S. and his heirs forever.

(Here describe the premises:)

To have and to hold the said premises, with all the privileges and appurtenances thereof, to said grantee and his heirs forever.— And I do, in the capacity aforesaid, covenant with said grantee and his heirs, that said D. B. is rightfully seized of said premises; that I am duly authorized by said license to sell and convey the same in manner aforesaid; that in making said sale I have in all things complied with the law; and that I will warrant the said premises to said grantee and his heirs, against the lawful claims of all persons claiming under me.

In witness whereof I have hereunto set my hand and seal, the — day of —, A. D. 184--.

Signed, sealed and delivered  
in presence of

A. B. (L. S.)

J. S.

J. D.

*Acknowledgment, see last form.*

#### 51. *Deed by attorney.*]

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of, &c., by my attorney, A. T., duly authorized by letter of attorney, under my hand and seal, in consideration of — dollars to me paid by C. D., of, &c., do sell and convey to said C. D. and his heirs forever,

(Here describe the premises.)

To have and to hold the said premises, with all the privileges and appurtenances to the same belonging, to the said grantee and his heirs forever. And I do covenant with said grantee and his heirs that I am rightfully seized in fee of the said premises; that they are free of incumbrances; that I have good right to sell and convey the same in manner aforesaid, and that I and my heirs will warrant the said premises to the said grantee and his heirs forever, against the lawful claims of all persons.

In witness whereof I have, by my said attorney, hereunto set my name and seal, the — day of —, 184--.

Signed, sealed and delivered  
in presence of

A. B. (L. S.)

By A. T., his att'y.

STATE OF NEW-HAMPSHIRE: H— ss., — —, 184—. The said A. B., by A. T., his attorney above named, acknowledged the above instrument to be his voluntary act and deed.

Before me: J. P., *Justice of the Peace.*

*Note.* For the safety of the purchaser it is indispensable that the power of attorney should be recorded. In the event of any controversy he will otherwise be required to prove the existence of such an instrument, and its contents, which could rarely be done after a few years.

### 52. Deed of partition.]

This Indenture, made between A. B., of, &c., C. D., of, &c., and E. F., of, &c.

WITNESSETH:

That said parties have agreed to make partition of a certain tract of land, situate in —, bounded, &c., containing, &c., now owned by them as tenants in common, in manner following:

The said A. B. shall hold in severalty — acres, bounded, &c.

The said C. D. shall hold in severalty — acres, bounded, &c.

The said E. F. shall hold in severalty — acres, bounded, &c.

And to each of said parties and his heirs the other two parties do grant and release the tract assigned to him as aforesaid, to hold to him and his heirs in severalty forever. And do hereby covenant that they will warrant and defend the same to him and his heirs against the lawful claims of all persons claiming under them or either of them.

In witness whereof the said A. B., C. D. and E. F. have interchangeably set their hands and seals, the — day of —, A. D. 184—.

Signed, sealed and delivered

in presence of

J. R.

D. D.

A. B. (L. S.)

C. D. (L. S.)

E. F. (L. S.)

STATE OF NEW-HAMPSHIRE: H— ss., — —, 184—. The said A. B., C. D. and E. F. acknowledged the above instrument, by them signed, to be their free act and deed respectively.

Before me: J. P., *Justice of the Peace.*

### 53. Collector's deed.]

KNOW ALL MEN BY THESE PRESENTS, That I, —, collector of taxes for the town of —, in the county of — and state of New-Hampshire, for the year 184—, by the authority in me vested by the laws of this state, and in consideration of —, to me paid by —, do hereby sell and convey to him, the said —, his heirs and assigns. (Here describe the land sold.)

To have and to hold the said premises, with the appurtenances, to him, the said —, his heirs and assigns forever. And I do hereby covenant with said — that in making sale of the same I have in all things complied with the law, and that I have good right, so far as that right may depend upon the regularity of my own proceedings, to sell and convey the same in manner aforesaid.

In witness whereof I have hereunto set my hand and seal, the — day of —, A. D. 184—.

Signed, sealed and delivered

in presence of

— —. (L. S.)

Acknowledgment in common form.

SHERIFF'S DEED. *See form 52, page 184.*54. *Form of deed and acknowledgment in Illinois.]*

THIS DEED, made this — day of —, eighteen hundred and —,

WITNESSETH :

That A. B., of the county of —, state of —, in consideration of — dollars, to — paid by —, of —, the receipt of which is hereby acknowledged, do by these presents remise, release and forever quit-claim to the said —, his heirs and assigns forever, all that certain tract of land situate, lying and being in the county of — and state of —, and known as the — quarter of section —, in township —, of range —, — of the — principal meridian in the state of —.

To have and to hold the aforescribed premises, with the appurtenances thereunto belonging, to the said —, his heirs and assigns forever : the said — hereby covenanting that — will warrant and defend the title to the aforesaid premises to the said —, his heirs and assigns forever, against all persons claiming under or through —.

In testimony whereof the said — has hereunto set — hand- and seal-, the day and year above written. — —. (L. S.)

Done in presence of

—.  
—.

STATE OF — : county of — ss. I, —, a justice of the peace of the county aforesaid, do certify the above named —, who — known to me to be the person described in the foregoing deed, and who signed and sealed the same, did this day acknowledge that — executed the said conveyance for the uses and purposes therein mentioned.

Given under my hand and seal at —, this — day of —, in the year of our Lord one thousand eight hundred and —.

— —, *Justice of the Peace.* (L. S.)

*Secretary's certificate of the justice's official character.]*

STATE OF — : secretary of state's office, —, 184—. The above named — is a justice of the peace in and for our county of —, duly qualified, and his signature as such genuine.

(L. S.) In testimony whereof I have hereto set the seal of said state of —. — —, *Secretary of State.*

*Acknowledgment by husband and wife.]*

STATE OF — : county of — ss. I, —, a justice of the peace for the county aforesaid, do certify that —, and —, his wife, who are known to me to be the persons described in the foregoing deed, and who signed and sealed the same, did this day acknowledge the same to be their free act and deed. And said —, wife of said —, being by me privately examined, separate and apart from her said husband, acknowledged that she executed said deed without any fear or compulsion from any person.

Given under my hand and seal at —, the — day of —, A. D. 184—.

— —, *Justice of the Peace.* (L. S.)

55. *Indenture to bind an apprentice.]*

This indenture witnesseth that A. B., of, &c., doth bind out his son, C. B., and the said C. B. doth bind out himself as an apprentice



to R. P., to learn the trade of —; to dwell with and serve the said R. P. from the date hereof until the — day of —, A. D. 184—. During which time the said apprentice his said master shall faithfully serve, his secrets keep, and all his lawful commands every where at all times obey; he shall do no damage to his said master, nor wilfully suffer any to be done by others; and if any to his knowledge be intended, he shall give his master seasonable notice thereof. He shall not waste the goods of his said master, nor lend them unlawfully to any; at cards, dice or any unlawful game he shall not play; taverns, grogshops, or places of gaming, he shall not frequent; from the service of his said master he shall not absent himself, but in all things and at all times he shall behave himself as a good and faithful apprentice ought, during the whole time aforesaid.

And the said R. P. on his part hereby agrees to instruct the said apprentice in the trade of a —, by the best means he can, and also to cause him to be instructed to read, write, and cypher as far as the Rule of Three, if the said apprentice be capable to learn, and shall faithfully find and provide for the said apprentice good and sufficient meat, drink, clothing, lodging and other necessities fit and convenient for such an apprentice, during the term aforesaid; and at the expiration thereof shall give to the said apprentice two suits of apparel, one suitable for the Lord's days and the other for working days.

In witness whereof the said parties have hereunto interchangeably set their hands and seals the — day of —, 184—.

Signed, sealed and delivered  
in presence of

A. B. (L. S.)

C. B. (L. S.)

R. P. (L. S.)

#### 56. *Indenture to bind out a poor child.]*

This indenture witnesseth B. T., P. W. and S. M., overseers of the poor of the town of —, in the county of —, by virtue of a law of this state do bind out as an apprentice C. D., son of G. D., of said town, a child chargeable to said town, who is not employed in any lawful business, and whose parents are unable to maintain him, unto A. B. of said —, &c., to learn the art, &c., [as in the last form, to "working days."]

In testimony, &c.

B. T. (L. S.)

P. W. (L. S.)

S. M. (L. S.)

A. B. (L. S.)

*Note.* Males may be bound by overseers till the age of twenty-one years; females only till eighteen.

#### 57. *Indenture to bind to labor any idle person.]*

This indenture witnesseth B. T., P. W. and S. M., overseers of the poor of the town of C., in the county of M., by virtue of a law of this state, do bind out to labor to C. D., of said C., yeoman, for the space of one year from the date hereof, A. B., a person residing in said town of C., who lives idly and pursues no lawful business, and who is poor and stands in need of relief, (or whose family, standing in need of relief, are supported by such town) during which time the said A. B. shall faithfully serve the said

C. D. and obey all his lawful commands, not wasting any of his goods, nor doing any damage to him whatever.

And the said C. D. agrees to pay to the said overseers, for the service of the said A. B. for the term aforesaid, the sum of — dollars, to be applied by the said overseers for the support of the said A. B.'s family [if he has any, if not, say, "to be laid out at the discretion of the said overseers, for the use and benefit of the said A. B."]

In testimony whereof the parties aforesaid have hereunto interchangeably set their hands and seals, the — day of —, 184--.

Signed, sealed, &c.

B. T. (L. S.)

P. W. (L. S.)

S. M. (L. S.)

C. D. (L. S.)

58. *Indenture to bind a minor as a servant.*]

This indenture witnesseth that A. B., of, &c., doth place his son, C. B., a minor, with the consent of the said C. B. expressed by his signature hereto, as a servant to C. D., of, &c., to dwell with and serve the said C. D. from the date hereof until the — day of —, 184--. During which term the said C. B. his said master faithfully shall serve: he shall do no damage to his said master, nor wilfully suffer any to be done by others; he shall not waste his master's goods, nor lend them unlawfully to any; from the service of his said master he shall not absent himself, but shall in all things behave himself as a faithful servant ought, during the whole time aforesaid.

And the said C. D. agrees to allow the said servant to attend the district school in the district in which he lives, three months in every winter, during the term aforesaid, and to provide him with suitable books and stationery; and also shall and will provide the said C. B. with good and sufficient meat, drink, clothing, lodging and other necessities fit and convenient for such servant, during the term aforesaid; and at the expiration thereof to give him two suits of wearing apparel, one suitable for the Lord's days and the other for working days.

In testimony, &c.

A. B. (L. S.)

C. B. (L. S.)

C. D. (L. S.)

59. *Indenture by a mother.*]

This indenture witnesseth that A. B., of, &c., mother of D. B., a minor, and son of C. B., of, &c., deceased, doth bind out her son, the said D. B., with the consent of the said D. B. expressed by his signature hereto, as an apprentice to C. D., &c. [as in form 55, page 377,] or as a servant to C. D., &c., [as in form 58.]

60. *Indenture by a guardian.*]

This indenture witnesseth that A. B., of, &c., guardian legally appointed to C. D., minor son of E. D., late of, &c., deceased, with the consent of the said C. D. expressed by his signature hereto, doth bind out the said C. D. as an apprentice, &c. [see form 55, page 377] or as a servant [see form 58, page 379.]

61. *Indenture by a minor, with the approbation of the selectmen.*]

This indenture witnesseth that C. D., a minor, now resident in —,

son of A. D., of, &c., deceased, having no parent or guardian, with the approbation of E. F., G. H. and J. K., selectmen (or a major part of the selectmen) of the said town of —, doth bind out himself as an apprentice (see form 55, page 377;) or as a servant, (see form 58, page 379.)

After the signature of the parties, the selectmen should express their approbation as follows :

We the subscribers, selectmen of the town of —, having examined the terms of the foregoing deed, do here signify our approbation of the same, and of the said C. D. binding himself as therein mentioned.

E. F.  
G. H.  
J. K.

## 62. *Lease.*]

This indenture, made the — day of —, A. D. 184—, between A. B., of E., in the county of R. and state of New-Hampshire, and R. S., of said E., witnesseth, that(1) in consideration of the rents and covenants hereinafter reserved and contained, on the part of the said R. S. to be paid and performed, the said A. B. doth lease to the said R. S.(2) all that farm called the Q— farm, situate in said E., now or late in the possession of R. T., with all the privileges and appurtenances to the same belonging.(3) To have and to hold the same to him from the date hereof [or from the first day of April next, &c.,] for the term of five years next ensuing;(4) paying therefor yearly during the said term to the said A. B., his heirs and assigns, the yearly rent of forty dollars, to be paid by equal half-yearly payments, on the first days of October and April in each year; the first payment to be made on the first day of October next.(5)

And the said A. B. agrees with the said R. S. that the said R. S. shall peaceably possess the said premises during said term, without the lawful interruption or eviction of any person whatsoever, [or of the said A. B., or any person claiming under him.](6)

And the said R. S. agrees that he will pay to the said A. B. the said yearly rent of forty dollars, at the days and times above mentioned; and will at all times during said term seasonably pay and discharge all taxes which shall be assessed upon said premises; and will at all times during said term, at his own expense, maintain and repair all the buildings and fences belonging to said premises, or which may at any time during said term be erected thereon; and the same premises and every part thereof, in good repair as they now are, will peaceably deliver up to the said A. B., his heirs and assigns, at the termination of this lease.(7)

In witness whereof we have hereunto interchangeably set our hands and seals the day and year aforesaid.

Signed, sealed and delivered  
in presence of

J. D., } by the said }  
R. R., } A. B. }  
M. M., } by the said }  
N. S., } R. S. }

A. B. (L. S.)

R. S. (L. S.)

If the lease be for more than seven years it should be ac-

known by the lessor, and recorded in the same manner as a warrantee deed.

(1.) If any money is paid down for the lease, say, "in consideration of — dollars to me paid by the said R. S., and of the rents," &c. as before.

(2.) The premises may be described as usual in deeds, as a "certain tract of land, situate in said E., containing forty acres, bounded," &c.; or, "a certain dwelling house, situate in C. street in said P., called the — house," &c.

(3.) Here may be inserted any exception from the lease, as, an

*63. Exception of timber trees.]*

Reserving to the said A. B. all timber and other trees standing or growing on said premises, with liberty to fell or lop and carry away the same.

*64. Exception of ways.]*

And reserving to the said A. B. a drift way from the highway over the premises to any other lands now occupied or owned by said A. B.; or, all ways leading through or over the said premises to any other lands now owned or occupied by the said A. B.

(4.) Or, for and during the natural life of the said R. S.

(5.) Here may be inserted any provisos or conditions, as

*65. Proviso to terminate the lease by notice.]*

Provided, that if either party shall terminate said lease, and thereof give notice in writing to the other, three months before the end of any year, then from the end of the same year this lease shall be void.

*66. Proviso: lease to be void on non-payment of rent.]*

Provided, that if the said yearly rent of forty dollars, or any part thereof, shall be unpaid for the space of forty days after either of the days whereon the same ought to be paid as aforesaid, then this lease shall be void.

*67. Proviso of re-entry for non-payment of rent, non-performance of covenants, and assignment without license.]*

Provided, that if the said rent, or any part thereof, shall be unpaid for the space of forty days after either of the days whereon the same ought to be paid as aforesaid;

Or: in case the said R. S. shall neglect or refuse to perform all his agreements herein contained;

Or: in case the said R. S. shall let or assign over the said premises, or any part thereof, to any person without the consent of the said A. B. in writing, it shall be lawful for the said A. B., or his agent, to enter upon the said premises, or any part thereof, and thenceforth the said lease shall be void.

(6.) Here may be inserted any other covenants on the part of the lessor: as,

**68. *Covenant to pay half the expense of new walls, &c.*]**

and that the said A. B. will pay one half the expense of erecting new stone walls, or other permanent fences on the premises.

**69. *Covenant to deduct half the taxes from the rent.*]**

and that the said A. B. will allow, out of the rent aforesaid, one half of the taxes which shall be legally assessed on the premises and paid by the said R. S.

**70. *Covenant to permit winter grain to be harvested.*]**

and that said R. S., in the harvest season next after the expiration of the said term, may reap and carry away the crop of winter grain by him sown, and then growing upon any part of said premises not exceeding two acres.

(7.) Here may be inserted any other covenants on the part of the lessee : as,

**71. *Covenant not to sell, &c. hay or fodder.*]**

and will not sell or carry away, or permit to be sold or carried away from the said premises, any of the hay, straw or other fodder that shall grow thereon ; but will consume the same with his cattle upon the premises, or leave the same for the use of the lessor.

**72. *Covenant to use the manure on the premises.*]**

and will, at the proper season in every year during said term, use or spread upon the tillage lands of the same premises, where most requisite and proper for the improvement thereof, in an even and regular manner, all the manure, dung and compost which shall be made on the premises, except that made thereon in the last year of said term, which shall be left in the yards and dunghills of the said premises, for the use of the said A. B.

**73. *Covenant not to plant hemp, &c.*]**

and will not plant or sow any hemp, or mustard, or any rape for seed on the said premises or any part thereof.

**74. *Covenant not to overstock pasture the last year.*]**

and will not, at any time in the last year of this lease, pasture or suffer to be pastured upon the said premises or any part thereof, any larger stock of cattle than were usually pastured thereon in the two years next preceding.

**75. *Covenant not to pasture grass fields.*]**

and will, from the first day of October preceding the termination of this lease, keep uneaten all the fields and parcels of ground sown with grass seed in the last fifteen months of said term.

**76. *Covenant to permit grass seed to be sown with grain last year.*]**

and will permit the said A. B. to sow with grass seeds all or any of the lands sown with grain within one year previous to the termination of this lease, and to roll in the same with a roller drawn by horses or otherwise.

*77. Covenant to permit lessor to plough, &c. last year.]*

and will permit the said A. B., his heirs and assigns, at any time after the first day of October preceding the termination of this lease, to enter upon all the then tillage lands of the said premises, or the grounds which ought to be in tillage according to the true intent of these presents, and the same to plough, sow, harrow, dress, manure, lime and prepare for such course of husbandry as he or they shall think proper.

*78. Covenant not to till more than a certain quantity.]*

and will not have, use or employ in ploughing or tillage, a greater quantity of land than ten acres at any one time, or in any one year, during the term hereby demised.

*79. Covenant to spread lime, plaster or ashes.]*

and will spread on every acre of tillage ground, in a regular and even manner, at least — hundred weight of good lime or plaster; or in lieu thereof — loads of ashes, and in that proportion for a less quantity than an acre.

*80. Covenant not to keep land in tillage more than three years.]*

and will not keep or continue in ploughing or tillage any part of the said premises more than three years at one time.

*81. Covenant to sow one third of tillage annually with grass.]*

and will every year sow with grass seeds and lay down to grass at least one third part of the ploughing or tillage lands, and sow upon every acre thereof at least — pounds of clover seed, &c., of the best quality.

*82. Covenant to keep land in grass three years.]*

and will, whenever any part of the grass lands are laid down to grass, keep and continue the same in grass at least three years before the same or any part thereof be again ploughed out or converted into tillage.

*83. Covenant to keep in grass natural mowing.]*

and will, during the whole of said term, keep in grass, and at the expiration thereof leave in grass, all the fields called the A. field, &c., and all such lands as are or shall be converted into watered meadows.

*84. Covenant to carry on in a husbandlike manner.]*

and will in all respects manage and carry on said premises in a husbandlike manner, according to the custom of the country.

*85. Covenant not to keep tavern, &c.]*

and that no person shall sell or retail any beer, ale or other liquors whatever, or keep any victualling or other public house of entertainment in the buildings on said premises; nor suffer the trade of a tallow chandler, nor other like offensive trade, to be carried on therein, without the license of the said A. B. in writing.

**86. *Covenant that the landlord may enter to view.*]**

and that it shall be lawful for the said A. B. and his agents, at any seasonable time in the day time, with suitable assistants or workmen, to enter upon the premises, or any part thereof, to view, search and see the condition of the same, and of all decays and want of repairs which shall then and there be found, and to give or leave notice in writing at the said premises for the said R. S. to repair the same within the space of three months then next ensuing, within which time of three months the said R. S. agrees to repair the same.

**87. *Lease of a house.*]**

This indenture, made this — day of —, 184—, between H., of, &c., and J. S., of, &c.

WITNESSETH:

That in consideration of the rents and agreements to be paid and performed on the part of the said J. S., the said J. H. does hereby lease to the said J. S. a certain dwelling-house, with the appurtenances, situate on lot No. —, on — street, in M., excepting the stable on said lot.

To have and to hold the same to said lessee, for the term of one year from the date hereof, the said lessee paying therefor the yearly rent of sixty dollars during the said term, in the manner hereinafter provided.

And the said lessor covenants with the said lessee, that he may occupy the premises during the term aforesaid, peaceably and free from all lawful claim of any other person.

And the said lessee covenants with the said lessor, that he will pay to said lessor sixty dollars as the annual rent of said premises, to be paid in monthly payments of five dollars each, on the first day of each month during said term, and for such further time as the lessee may hold the same; and that he will pay all legal taxes assessed on said premises during the said term; and will not make or suffer any waste upon the premises; that he will not lease nor underlet, nor permit any other person or persons to occupy the same, and that he will not carry on therein any offensive trade or business, nor make nor suffer to be made any alterations therein, but with the consent in writing of the lessor; that he will not suffer any ashes to remain in the said building after the same are taken from the hearth or stove, unless in a safe deposit of brick or stone; nor do any act or transact any business by which the insurance on said building may be affected; and that the lessor may enter to view and make improvement, and to expel the lessee if he shall fail to pay the rent or taxes or perform his covenants aforesaid, or shall make or suffer any waste thereof; and that he will peaceably quit and deliver up the premises to the lessor, at the termination of this lease, in as good order and condition, reasonable and careful usage thereof and unavoidable casualties excepted, as the same now are or may be put into by the said lessor.

In testimony whereof the parties have hereunto interchangeably set their hands and seals the day and year first herein written.

In presence of

A. B.

C. D.

J. H. (L. S.)

J. S. (L. S.)

**88. *Lease at the halves.*]**

This indenture, made the — day of —, 184—, between A. B., of,

&c., and C. D., of, &c., WITNESSETH: That the said A. B., in consideration of the agreements of the said C. D., hereafter mentioned, doth lease to the said C. D. a certain farm, situate in C., &c., bounded, &c. To have and to hold the same from the date hereof for the term of one year. And the said A. B. and C. D. do hereby agree each to provide and place on said farm one half of the live stock and animals proper to be kept on said farm, and necessary to carry on the same, and one half of the farming tools and utensils necessary for the same, and to pay one half of all the taxes which may be assessed on the same and on the stock which shall be kept thereon agreeably to this lease, and to furnish in due season one half of the seed necessary to plant and sow the tillage lands on the same.

And the said C. D. agrees that he will, at his own expense, repair the buildings and fences of every description on said premises, and will seasonably plough, plant, sow and cultivate, in a husbandlike manner, all the tillage lands on said premises, using thereon all the manure now on the premises, and harvest the corn, corn fodder, grain, hay and flax, and every other description of crop which shall grow or be raised on said farm; pick all the apples and make the same into cider, (the said A. B. agreeing to pay half the expense of the mill, and finding his own barrels); and in all respects manage said farm and improve said stock in a husbandlike manner; and in their proper season render and deliver to the said A. B., at his house in said C., one half of all the produce of said farm and stock, of every nature and description, excepting the hay and fodder, to be by said C. D. deposited in such suitable places as shall be provided by said A. B. for the same: the corn being delivered in the ear, the grain and seeds of every kind thrashed and cleaned, the flax well rotted and in the bundle, and all other articles in proper order for use.

And the said C. D. agrees that he will carefully tend and fodder the stock kept on the said premises, with the hay and other fodder which shall grow or be raised on said premises; and that he will not sell, dispose of or carry away, or suffer to be carried away from said farm any of the hay or fodder of any kind, but will leave thereon all the hay and fodder which shall not be consumed by the stock aforesaid, and all the manure which shall be made on said premises, for the sole use and benefit of the said A. B.

And it is further agreed, that if any dispute shall arise between said parties relative to the amount of stock to be kept on said farm, or the kind or value of the stock, tools or utensils to be placed on said farm, or relative to the division of the crops, that the same shall be determined by two disinterested persons, one of them to be chosen by each of said parties; and, in case of their disagreement, by some impartial person to be named by them.

In witness whereof the said parties have hereto interchangeably set their hands and seals, the day and year aforesaid.

Signed, sealed and delivered

A. B. (L. S.)

C. D. (L. S.)

in presence of

J. D.

R. R.

### 89. *Lease by an attorney.*]

An indenture, made, &c. between A. B., of, &c. and E. F., of, &c.

Whereas the said A. B. by letter of attorney, under his hand and



seal duly executed, dated the — day of —, 184—, did authorize the said C. D. in the name of said A. B., and on his behalf, to execute leases of such parts of his lands and tenements in — as by the said C. D. should be thought fit:

*Now this indenture witnesseth*, that in consideration of the rent and agreements hereinafter mentioned on the part of the said E. F. to be paid and performed, he, the said A. B., by his said attorney, C. D., hath granted, demised, &c. [here proceed as in other leases, until you come to the covenants of the lessor, which begin thus:] And the said A. B., by his said attorney, doth covenant and agree, [here insert the covenants, &c.]

In witness whereof the said A. B., by said C. D., his said attorney, and the said E. F., have hereunto interchangeably set their names and seals, the day and year aforesaid.

Signed, sealed and delivered

in presence of

J. D.

R. R.

A. B. (L. S.)

By his attorney, C. D.

E. F. (L. S.)

#### 90. *Brief lease.*]

A. B., of, &c. and C. D., of, &c. agree as follows:

A. B. leases to C. D. his house in C. (here insert a description of the premises) for one year:

C. D. agrees to pay — dollars a year rent, payable, &c., not to assign or lease the same, nor make alterations, nor carry on any offensive trade therein without B.'s written consent; to quit the same at the termination of this lease, and to leave the same in good condition and repair, unavoidable casualties excepted.

This lease shall be void if C. D. fails to perform this agreement.

Witness our hands and seals, the — day of —, 184—.

A. B. (L. S.)

C. D. (L. S.)

#### 91. *Marriage settlement.*]

Articles of agreement between A. B., of, &c., C. D., of, &c., and E. F., of, &c.

Whereas a marriage is intended between said A. B. and said C. D., and it is mutually agreed that the estate of said C. D., and such property as she may hereafter become entitled to by descent, devise or otherwise, shall be settled and secured for her separate use: *Now it is agreed* between the said parties as follows:

The said C. D., in consideration of ten dollars to be paid by said E. F., sells and conveys to said E. F. and his heirs a certain tract of land, &c.: (Here describe real estate;) also the following goods and chattels, to wit.:

[Five shares in the capital stock of the — Bank; and the following notes, to wit.: a note signed by A. P., dated —, for — dollars and interest, on demand, &c.; one horse, &c.; one bureau, &c.; enumerate all the articles;]

To hold the same in trust for the following purposes, and no other:

1. The said trustee shall permit the said C. D. to occupy, manage and improve the said property, and to take the profits thereof at her own discretion and for her own use, during her pleasure, without the interference of said A. B., or any other person whatever.
2. The said trustee, at the request of said C. D., shall take posses-

sion of said property, and manage and improve the same to the best advantage, and pay the income and profits thereof to said C. D. in such sums and at such times as he shall judge will be most for her benefit, taking her receipt for the same, without the interference of said A. B. or any other person whatever.

3. The said E. F., at the request or by the assent of said C. D., shall have full power to cause any part of the property, real or personal, held by him in trust as aforesaid, to be sold, and the proceeds thereof to be invested in other real, or safe and productive personal estate or securities, to be held subject to the same trusts as the property hereby conveyed.
4. The said E. F. shall, with the assent of said C. D., invest any part of the income of the said property in real estate, or personal property or security, upon the trusts aforesaid.
5. The said E. F. shall, at the request of said C. D., at any time sell and convey any part of said property to such person or persons, for such sums of money and upon such trusts as said C. D. shall in writing direct.
6. In case of the decease of said C. D. without devising or making such direction, the said trustee shall convey the said property [to said A. B., or in case of his decease] to such persons as would be by law entitled thereto if she had deceased intestate and unmarried, in the several shares and proportions in which they would be by law entitled to the same in such case.

The said E. F. agrees faithfully to execute said trusts, being liable only for his actual receipts or gross defaults.

It is further agreed, that if at any time hereafter any personal or real estate, of any kind, should descend to or vest in said C. D., by deed, devise or otherwise, the said estate shall be by said A. B. and C. D. conveyed to said E. F., or to such person as may then be trustee for said C. D., to hold in trust for the uses before declared.

In witness whereof we have hereunto set our hands and seals, this — day of —, 184—.

Signed, sealed and delivered  
in presence of  
J. D.  
R. R.

A. B. (L. S.)  
C. D. (L. S.)  
E. F. (L. S.)

**Acknowledgment, see form 52, page 376.**

**92. Letter of attorney, to receive debts.]**

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of —, do appoint C. D., of —, my attorney, for me and in my name, and to my use, [or, to the use of him, the said C. D.] to demand, recover and receive of E. F., of —, [all sums of money, debts and demands whatsoever which are now due and owing to me, the said A. B., by or from the said E. F.] and in default of payment thereof to commence and prosecute to final judgment and execution any action or actions he may think proper for the recovery hereof, and to compromise and settle the same; and sufficient discharges for the same for me and in my name to execute and deliver, and to do all other things concerning the premises as fully in every respect as I myself could if personally present; and an attorney or attorneys under him for the purposes aforesaid to make, and at his pleasure to revoke; hereby ratifying whatsoever my said attorney shall in my name lawfully

do or cause to be done in and about the premises by virtue of these presents.

In witness whereof I have hereunto set my hand and seal, the — day of —, 184—.

Signed sealed and delivered

in presence of

A. B. (L. S.)

In lieu of the words in brackets, proper words, descriptive of any debt or demand, may be inserted, as :

**93. *To receive all debts.*]**

all sums of money, debts and demands whatsoever, which are now due and owing to me, the said A. B., by or from any person or persons whomsoever.

**94. *To receive a legacy.*]**

from J. B., executor of the will of A. B., late of —, deceased, a legacy of — dollars, to me given and bequeathed by the said A. B., by his said will, bearing date the — day of —, 184—, to be paid to me on, &c.

**95. *To receive rent.*]**

from E. F., of, &c., all rent and arrearages of rent which now is or may hereafter become due from the said E. F. for the messuage or tenement, with the appurtenances, situate, &c., leased by me to said E. F.

**96. *To receive money due on a bond.*]**

of E. F., of —, the sum of — dollars, due to me by his bond bearing date the — day of —, 184—.

**97. *To receive sailor's wages.*]**

from any person whatever all such sums of money as now are or may hereafter become due and owing to me for wages from any ship or ships to which I now do or shall belong.

**98. *Letter of attorney, to let or sell lands.*]**

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of —, do appoint C. D., of —, my attorney, for me and in my name to lease a certain tract of land, situate, &c., [or, all my lands and tenements, situate in —] to such person and for such term or terms, and at such rents, as he shall think fit; and also to grant, sell and convey the same absolutely and in fee simple, for such price and to such persons as he shall think fit. And for me and in my name to seal, execute, deliver and acknowledge such deeds and conveyances thereof, or any part thereof, as he shall think fit; hereby ratifying all such leases, deeds and conveyances as shall be executed by my said attorney concerning the premises.

In witness whereof I have hereunto set my hand and seal, this — day of —, 184—.

Signed, sealed and delivered

in presence of

J. D.

R. W.

A. B. (L. S.)

STATE OF NEW-HAMPSHIRE: *Hillsborough ss.*, — —, 184—. The said A. B. acknowledged the above instrument to be his free act and deed.

Before me: J. P., *Justice of the Peace.*

*99. Letter of attorney, to receive seizin of lands levied upon to satisfy an execution.]*

KNOW ALL MEN BY THESE PRESENTS, That whereas I, A. B., of, &c. at — court of —, holden at —, in and for the county of —, on the — day of —, recovered judgment against C. D., of, &c. for the sum of — dollars, and cost of suit taxed at — dollars; and whereas a certain tract of land, situate in —, was attached on the original writ in said action, bounded as by the officer's return on said writ may appear: Now therefore I appoint S. F., of, &c. my attorney, for me and in my name to appoint an appraiser of said land, and to receive seizin of the same, or so much thereof as shall be taken to satisfy said execution and charges of levying; and to discharge the said execution for so much as the same shall be satisfied by said levy; and in all things relating to the premises to act for me as fully as I might if personally present; hereby ratifying whatever my said attorney shall lawfully do in the premises.

In witness whereof I have hereunto set my hand and seal, this — day of —, 184—.

Signed, sealed and delivered  
in presence of

A. B. (L. S.)

*100. Letter of attorney, to take possession of mortgaged lands and lease the same.]*

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of &c., do appoint C. D., of, &c., my attorney, for me and in my name by an open and peaceable entry made in the presence of two witnesses, to take the actual possession of a certain tract of land situate in —, bounded, &c., for the breach of the condition of a certain deed of mortgage thereof, made to me in fee by E. F., of, &c., bearing date the — day of —, and recorded in the registry of deeds for the said county of —, lib. —, fol. —, and if necessary to expel therefrom by lawful means any person who may be in possession thereof, or of any part thereof; and having taken actual possession of said mortgaged lands in manner aforesaid, to continue and keep the same, and at his discretion in my name to lease the whole or any part thereof to such person and at such rent as he may judge expedient, for a term not exceeding (one) year, subject to the right in equity to redeem the said mortgaged lands, as by law is provided. Hereby ratifying whatsoever my said attorney shall lawfully do in the premises.

In witness whereof I have hereunto set my hand and seal, this — day of —, 184—.

Signed, sealed and delivered  
in presence of

A. B. (L. S.)

J. D.

J. S.

*101. Letter of attorney to settle the estate of an intestate or testator.]*

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of, &c., administrator of the goods and estate of C. D., late of —, deceased, [or executor of the last will and testament of C. D., late of —, deceased,] do appoint E. F., of, &c., my attorney, for me and in my name in the capacity aforesaid to demand, recover and receive from all persons whomsoever, all and singular sums of money, debts, goods and effects whatsoever, due, payable or in any way belonging to the said

deceased in his lifetime, and to me in the capacity aforesaid, and in my name to give receipts and discharges for the same. To pay whatever may be found legally due from said estate to any person or persons whatsoever, and take discharges for the same: to settle with the widow and heirs [legatees and devisees] of said deceased for their respective [legacies, devises] shares or proportions of said estate, and to pay and assign to them whatever may be [by the will of the deceased or] legally coming to them respectively: to commence and prosecute to final judgment and execution any actions he shall judge proper against any person, and to reply to and defend any action that may be by any person be brought against me in the capacity aforesaid relating to said [will or] estate, or the settlement thereof; and for those purposes to appear for and represent me before any court before whom any such action may be pending: to submit any matter in dispute to reference or arbitration, and to settle an account before the court of probate of all his proceedings herein: and generally to take and use all due means for [the execution of said will and] the settlement of said estate, according to law; and in the premises to transact whatever I could or ought to do if personally present, and to substitute and appoint one or more attorneys under him. Hereby ratifying whatever my said attorney or his substitutes shall lawfully do or cause to be done in the premises by virtue of these presents.

In witness whereof I have hereunto set my hand and seal, this — day of —, 184--.

Signed, sealed and delivered

in presence of

J. D.

J. S.

A. B. (L. S.)

### 102. *Power of attorney to transfer bank stock.*

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of —, in the county of —, do hereby appoint C. D., of —, my attorney, for me and in my name to sell and transfer to any person or persons, the whole or any part of the property to me belonging in the capital stock of The President, Directors and Company of the — Bank, and for that purpose to execute all necessary deeds of transfer, and one or more persons under him to substitute with like power for the same purpose.

In witness whereof I have hereunto set my hand and seal, the — day of —, 184--.

Signed, sealed and delivered

in presence of

J. D.

J. S.

A. B. (L. S.)

STATE OF NEW-HAMPSHIRE: Rockingham ss., — —, 184--. The said A. B. acknowledged the above instrument by him signed to be his free act and deed. Before me: J. P., *Justice of the Peace*.

### 103. *Power of attorney to receive dividends.*

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of, &c., do appoint C. D., of, &c., my attorney, for me and in my name to receive and give receipts for all dividends now due or which may hereafter grow due on the property by me held in the capital stock of The President, Directors and Company of the — Bank.

In witness whereof I have hereunto set my hand and seal, the — day of —, 184--.

Signed, sealed and delivered

in presence of

J. D.

J. S.

A. B. (L. S.)

STATE OF NEW-HAMPSHIRE : Rockingham ss., — —, 184--. The said A. B. acknowledged the above instrument by him signed, to be his free act and deed. Before me : J. P., *Justice of the Peace*.

104. *Power of attorney to vote by proxy.*]

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of, &c., do appoint C. D., of, &c., my proxy, for me and in my name to vote at any election of directors of the — Bank, and on all other matters which at any regular meeting of the stockholders may properly and legally come before them.

In witness whereof I have hereunto set my hand and seal, this — day of —, 184--.

Signed, sealed and delivered

in presence of

J. D.

J. S.

A. B. (L. S.)

105. *Power of attorney to transfer stock in the funds.*]

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of —, do make, constitute and appoint C. D., of, &c., my true and lawful attorney, for me and in my name to sell, assign and transfer all [or one hundred dollars, part of] the funded six per cent., &c. stock, standing in my name in the books of the United States, at Portsmouth, New-Hampshire, that is to say, in the books of the loan officer of the United States in and for the state of New-Hampshire, [or of the treasury ;] with power also an attorney or attorneys under him for that purpose to make and substitute, and to do all lawful acts necessary for effecting the premises. Hereby ratifying and confirming all that my said attorney or his substitutes shall do therein by virtue hereof.

In witness whereof I have hereunto set my hand and seal, the — day of —, A. D. 184--.

Signed, sealed and delivered

in presence of

J. D.

J. S.

A. B. (L. S.)

STATE OF NEW-HAMPSHIRE : Rockingham County ss. BE IT

|                                                    |                                                                                                                                                                                                                                                            |
|----------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| {<br>SEAL OF COURT,<br>or<br>[NOTARIAL SEAL.]<br>} | KNOWN, that on the — day of —, one thousand eight hundred and forty—, before me, J. S., esquire, chief justice of the — court of —, [or notary public] came A. B. within named, and acknowledged the above letter of attorney to be his free act and deed. |
|----------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

In testimony whereof I have hereunto set my hand and [caused to be] affixed the seal of said court [or, my notarial seal] the day and year aforesaid.

J. S., *Judge, &c., [or, Notary Public.]*

*Note.* If there be no public or official seal, say, “ have affixed my seal ;” and proof of the execution must be made

at the place of transfer, by a subscribing witness. The acknowledgment must be taken before a judge of the United States court or of the superior court, or of a county court, mayor of a city or notary public.

106. *Letter of attorney to receive dividends on the public debt.*

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of, &c., do make, constitute and appoint C. D., of, &c., my true and lawful attorney, for me and in my name to receive the dividends which are or shall be payable according to law on the funded six per cent. stock standing in my name in the books of the United States at Portsmouth, New-Hampshire; that is to say, in the books of the loan officer of the United States in and for the state of New-Hampshire, [or, of the treasury] from the — day of —, to the — day of —, with power also an attorney or attorneys under him, for that purpose to make and substitute, and to do all lawful acts requisite for effecting the premises. Hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do by virtue hereof.

In witness whereof I have hereunto set my hand and seal, the — day of —, 184--.

Signed, sealed and delivered

in presence of

J. D.

J. S.

A. B. (L. S.)

Acknowledgment as in the last form.

107. *Declaration and power of attorney to receive a pension.*

STATE OF NEW-HAMPSHIRE: Rockingham County ss. BE IT KNOWN, that before me, J. P., esquire, one of the justices of the peace in the county aforesaid, personally appeared R. P., and made oath that he is the identical R. P. named in an original certificate in his possession, of which the following is a copy: [Here insert a copy of the whole certificate verbatim.]

[That he served in the revolutionary army, and is entitled to a pension of — dollars per month;] that he now resides in —, and has resided there for the space of — years past, and that previous thereto he resided in —.

Sworn and subscribed this — day of —, one thousand eight hundred and —. Before me: J. P., *Justice of the Peace.*

If the pensioner is an invalid, insert, in lieu of the parts in brackets:

“That he is entitled to a pension of — dollars per month on account of wounds or disabilities received or incurred in the service of the United States during the — war: That he served in captain —’s company in the — regiment, at the time he was disabled,” &c.

108. *Power of attorney.*

KNOW ALL MEN BY THESE PRESENTS, That I, R. P., of —, in the county of R. and state of New-Hampshire, a revolutionary [or an invalid] pensioner of the United States, do hereby constitute and appoint F. B., of, &c., my true and lawful attorney, for me and in my

name to receive from the agent of the United States for paying pensions in the state of New-Hampshire, my pension, from the [fourth] day of [March] to the [fourth] day of [September] one thousand eight hundred and forty—.

Witness my hand and seal this — day of —, one thousand eight hundred and forty—.

Signed, sealed and delivered

in presence of

R. P. (*L. S.*)

J. D.

J. S.

Rockingham County ss. **BE IT KNOWN**, that on the — day of —, 184—, before me, J. P., esquire, a justice of the peace in the county aforesaid, personally appeared R. P., above named, and acknowledged the foregoing power of attorney to be his act and deed.

In witness whereof I have hereunto set my hand and seal, this — day of —, 184—.

J. P., *Justice of the Peace.* (*L. S.*)

#### 109. *Oath to be taken by the attorney.*]

Rockingham County ss. **BE IT KNOWN**, that on the — day of —, before me, J. P., esquire, a justice of the peace in the county aforesaid, personally appeared P. B., the attorney named in the foregoing power of attorney, and made oath that the same was not given to him by reason of any sale, transfer or mortgage of pension or arrears of pension therein authorized to be received by him. P. B.

Sworn and subscribed the day and year last above mentioned.

Before me: J. P., *Justice of the Peace.*

#### 110. *Form of surgeons' certificate of disability.*]

We the subscribers, practising physicians and surgeons of the town of C., in the county of R. and state of New-Hampshire, do hereby certify that, after a careful examination of the case of J. M., who is now on the pension list, roll of the New-Hampshire agency, we are of opinion that his disability does still continue, being [a wound apparently made by a musket ball passing obliquely through the wrist, and injuring the bones of the wrist] and further, that the degree of disability under which he labors at present is [total or partial] being not less than the original degree of disability for which he was placed on the pension roll.

B. K.

R. K.

STATE OF NEW-HAMPSHIRE: Rockingham County ss. Sworn to and subscribed before me, J. P., esquire, a justice of the peace for said county, this — day of —, 184—.

J. P., *Justice of the Peace.*

I certify that the deponents are credible persons.

J. P., *Justice of the Peace.*

#### 111. *General warrant of attorney.*]

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of, &c., do appoint C. D., of, &c., my attorney in all cases real, personal and mixed, moved or to be moved for me or against me in any court of law, in my name to appear, plead and pursue to final judgment and execution, with power of substitution.

In witness whereof I have hereunto set my hand and seal, the — day of —, 184—.



112. *Warrant to appear for a plaintiff and prosecute his suit.]*

I, A. B., of, &c., do hereby authorize C. D., of, &c. to appear at the — court of —, to be holden at —, on the — day of —, for me and on my behalf to prosecute a certain action of [the case, &c.] by me commenced against E. F., of, &c. and there (as well as at any other court to which the same action may be carried) to plead to and pursue the same to final judgment and execution.

Witness my hand and seal, the — day of —, 184—.

113. *Warrant to defend a suit.]*

I, A. B., of, &c., do hereby authorize C. D., of, &c., to appear for me in an action of [trespass on the case, &c.] commenced against me by E. F., of, &c. at the — court of —, to be holden at —, on the — day of —, then and there [and at any other court to which the said action may be carried] to plead thereto; and further to do such things therein as he shall judge necessary for my defence in said action. Witness my hand and seal the — day of —, A. D. 184—.

114. *Warrant of attorney to confess judgment.]*

To A. B., esquire, of, &c., an attorney of the — court of —, to be holden at —, on the — day of —, or to any other attorney of said court.

I authorize you, or any of you, to appear for me, E. F., of, &c. in the said court, or any other subsequent term, at the suit of G. H., of &c., and confess judgment against me to the said G. H., in an action of debt for one hundred dollars and costs of suit.

In witness whereof I have hereunto set my hand and seal, this — day of —, 184—.

115. *Form of a warrant of attorney to acknowledge satisfaction of a judgment.]*

To A. B., esquire, an attorney of the — court of —, to be holden at — on the — day of —, or to any other attorney of the same court.

Whereas I, G. H., of, &c. did in — term last past recover a judgment in said court against E. F., of, &c. for — dollars debt, and — dollars cost of suit, as by the record thereof now remaining in said court may appear, which judgment I do hereby acknowledge to be paid, I do hereby give you and every of you full power for me and in my name to acknowledge satisfaction, upon record in the said court, of the said judgment, and the said debt and damages thereupon recovered.

In witness whereof, &c.

116. *Warrant to a sheriff or gaoler to discharge a defendant.]*

To R. H. A., esquire, sheriff of the county of M., and to the keeper of the common gaol in H., in said county.

Whereas J. D., of —, is now in your custody by virtue of a writ of execution issued out of the — court of —, at —, at the suit of me, J. D., of, &c. for the sum of — debt, and cost of suit in said writ mentioned, for which I have received satisfaction: Now this is to desire and authorize you and each of you immediately to release and discharge the said J. D. from the execution aforesaid, and from

imprisonment by reason of any execution or process in my favor against him, upon being paid your fees.

Witness my hand and seal, the — day of —, 184—.

117. *Letter of substitution, endorsed on the original power.*]

KNOW ALL MEN BY THESE PRESENTS, That I, E. F., of, &c. within named, have appointed and substituted in my room and place, D. F., of, &c. to take seizin and possession of the within described premises for the said A. B., and to act and do therein all and whatever I might or can do by virtue of the within letter of attorney. Hereby approving and confirming all and whatever my said substitute shall lawfully do by virtue of these presents.

In witness whereof I have hereunto set my hand and seal, this — day of —, 184—.

Signed, sealed, &c.

E. F. (L. S.)

118. *Revocation of a letter of attorney.*]

KNOW ALL MEN BY THESE PRESENTS, That whereas I, A. B., of, &c., by my letter of attorney bearing date, &c. did appoint C. D., of, &c. my attorney for the recovery of all debts and sums of money whatsoever due to me, the said A. B., from E. F., of, &c., as by the said letter of attorney may appear: *Now know ye*, that I, the said A. B., do by these presents revoke, countermand, annul and make void the said letter of attorney, and all power and authority thereby given or intended to be given to the said C. D.

In witness, &c.

119. *General release.*] (Common form.)

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of C., in the county of Merrimack and state of New-Hampshire, esquire, do remise, release and forever quitclaim unto C. D., of said C., gentleman, all actions and causes of action, suits, bills, bonds, writings, obligations, debts, dues, duties, reckonings, accounts, sums of money, judgments, executions, extents, quarrels, controversies, trespasses, damages and demands whatsoever, both at law and in equity, or otherwise, which against him, the said C. D., I ever had, now have, or which I shall or may have, claim, challenge or demand, for or by reason or means of any act, matter, cause or thing, from the beginning of the world to the day of the date of these presents.

In witness whereof I have hereunto set my hand and seal, this — day of —, A. D. 184—.

Signed, sealed and delivered

in presence of

J. N.

R. D.

A. B. (L. S.)

120. *Brief form of release.*]

May 20, 184—, I, A. B., do hereby release to E. F. all suits, promises, covenants and demands, which I have or can claim against him.

Signed, sealed and delivered

in presence of

C. L.

A. B. (L. S.)

By a release of all demands, are barred all rights and

titles to land, rights of entry, rents service, rent charges and arrearages of rents, annuities and their arrearages, commons, estovers, rights to personal property out of possession, conditions before and after breach, warranties, statutes, recognizances, obligations, covenants broken, and contracts, (except those which are to be performed on a future contingency) debts, duties, actions real, personal and mixed, including writs of entry, scire facias and appeals, judgments and executions.—*Shep. Touchstone*, 343-4.

By a release of all covenants and promises, are released all such covenants and contracts as are not released by the word *demands*.—*Ibid.*, 342-3.

121. *Release of a legacy.*]

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of C., &c. do hereby acknowledge to have received of C. D., of said C., esquire, executor of the will of G. B., late of said C., deceased, one hundred dollars, in full satisfaction of a legacy given and bequeathed to me, the said A. B., by said G. B., deceased, by his said will dated on the sixth of August, A. D. 184--; and I do hereby release and discharge the said C. D. from all legacies, dues and demands which I, the said A. B., may have or claim against him by virtue of said last will and testament.

In witness whereof I have hereunto set my hand and seal, this — day of —, A. D. 184--.

Signed, sealed and delivered

in presence of

A. B. (L. S.)

J. D.

R. R.

122. *Release of debt on bond.*]

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of C., &c. have received of C. D., of said C., two hundred dollars, in full satisfaction of a certain bond bearing date the — day of —, A. D. 184--; for the sum of four hundred dollars, with a condition to be void on payment of the sum of two hundred dollars in two years, made and executed by the said C. D. to me, the said A. B., (which bond is now lost or mislaid, so that it cannot be found to be delivered up to the said C. D. to be cancelled); and I do hereby release and discharge the said C. D. from all demands which I have against him by virtue of said bond.

In witness whereof I have hereunto set my hand and seal, this — day of —, A. D. 184--.

Signed, sealed and delivered

in presence of

A. B. (L. S.)

J. S.

S. D.

123. *Release of errors.*]

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., &c. do release to C. D., &c. all writs of error which I may or can have to reverse a

judgment by him obtained against me in the superior court of judicature, holden at — on the — Tuesday of —, 184—, for sixty dollars debt or damage, and costs of suit taxed at ten dollars, and all errors in said judgments.

In witness, &c.

**RELEASE OF ALL RIGHT TO LANDS. See Quitclaim Deed, page 369.**

**125. Conditions of sale of personal property at auction.]**

Conditions of sale of the goods and personal property to be sold at auction, — —, 184—.

1. The highest bidder shall be the purchaser; and if any dispute arise as to the last or highest bidder, the lot in dispute shall be put up at a former bid.

2. No person shall advance less at any bid than —, or retract his bid.

3. The purchaser shall within — days take away the goods purchased by him, and pay the purchase money of the same before they are removed.

4. If the purchaser shall fail to comply with these conditions, the seller shall be at liberty to sell the goods again at auction; and the loss, if any, upon such re-sale, and all expenses thereof, shall be paid by the purchaser, and may be recovered as liquidated damages.

**126. Conditions of sale of real estate at auction.]**

Conditions of sale of the several parcels of real estate described in the advertisements hereto annexed, at public auction, — —, 184—.

1. The highest bidder shall be the purchaser; and if any dispute shall arise as to the last, or highest bidder, the premises in dispute shall be put up at a former bid.

2. No person shall advance less at any bid than —, or retract his bid.

3. Twenty-five per cent. shall be paid in cash on delivery of the deed, and the residue of the purchase money shall be paid in three equal payments, in one, two and three years, with interest annually; and shall be secured by notes, with satisfactory sureties, or by mortgage upon the property.

4. The deeds and securities for the purchase money shall be made within — days after the sale; and on failure, the property shall be again sold at auction, and the bidder shall be responsible for any deficiency in the price on such sale, and for the expenses of the sale.

5. Deeds of the property, upon payment and security of the purchase money as aforesaid, shall be made to the purchaser in fee, with the usual covenants in deeds of warranty; (or, with covenants against all persons claiming under —.)

6. The purchaser shall forthwith sign a contract for the sale and purchase of the property struck off to him; otherwise the same shall be forthwith set up again, and the bidder shall pay the deficiency on such second sale, and his bid shall not be again received.

**127. Form of contract of sale and purchase at auction.]**

The property called —, bounded, &c., being struck off to C. D., at — dollars, said C. D. agrees to purchase and take a deed of the same, and to pay and secure the said price therefor, according to the

conditions of sale ; and said C. D. thereupon agrees to execute a conveyance thereof to him in fee, according to said conditions.

**128. Form of a surrender to a reversioner.]**

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of, &c., in consideration of —, to me paid by C. D., of, &c., do grant and surrender to the said C. D. and his heirs, a certain, [here describe the premises] and all my right and interest in the same premises. To have and to hold the said premises with the appurtenances, unto the said C. D., and his heirs forever.

In witness whereof I have hereunto set my hand and seal, this — day of —, 184--.

Signed, sealed and delivered

in presence of

J. D.

J. S.

A. B. (L. S.)

STATE OF NEW-HAMPSHIRE: Rockingham ss., — —, 184--. The above named A. B. acknowledged the foregoing instrument by him signed to be his free act and deed.

Before me: J. P., *Justice of the Peace.*

**129. Form of a surrender of a term of years.]**

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of, &c., in consideration of — dollars to me paid by C. D., of, &c., do grant and surrender to the said C. D., and his heirs forever, a certain tract of land, situate, &c., bounded, &c., and all my right and interest therein, with the appurtenances. And I agree that the said C. D. and his heirs shall at all times hereafter hold and possess the said premises, with the appurtenances, without interruption of me, the said A. B., or of any person claiming under me.

In witness whereof I have hereunto set my hand and seal, the — day of —, 184--.

Signed, sealed and delivered

in presence of

J. D.

J. S.

A. B. (L. S.)

STATE OF NEW-HAMPSHIRE: Rockingham ss., — —, 184--. The said A. B. acknowledged the foregoing instrument by him signed to be his free act and deed.

Before me: J. P., *Justice of the Peace.*

**130. Form of a declaration of trust.]**

KNOW ALL MEN BY THESE PRESENTS, That whereas A. B., of, &c. by his deed bearing date the — day of —, 184--., in consideration of — dollars therein mentioned to be paid to him by me, C. D., of, &c. did grant, bargain, sell and convey to me, the said C. D., and my heirs, a certain tract, &c. [Here describe the premises.] Now know ye, that I, the said C. D., do hereby declare that the said sum of — dollars in said deed mentioned was the proper money of E. F., of, &c. only ; and that the said deed was made to me, the said C. D., only in trust for the said E. F., his heirs and assigns. And I, the said C. D., do hereby declare and agree that I and my heirs will stand and continue seized of said premises in trust for the said E. F., his

- heirs and assigns forever, and that neither I, the said C. D., nor my heirs, will grant, assign or release the said premises to any other person or persons than him, the said E. F., his heirs and assigns.

In witness whereof I have hereunto set my hand and seal, this — day of —, 184--.

Signed, sealed and delivered

in presence of

C. D. (L. S.)

[Two witnesses.]

Acknowledged in common form.

131. *Form of a declaration of trust and assignment.*

KNOW ALL MEN BY THESE PRESENTS, That whereas A. B., of, &c. by his deed of mortgage bearing date the — day of —, 184--., in consideration of the sum of — dollars therein mentioned to be paid to him, the said A. B., by me, the said C. D., of, &c., did grant, bargain, sell and convey to me, the said C. D., my heirs and assigns, a certain [Here describe the premises] on condition that if the said A. B., his heirs or assigns, should pay to me, the said C. D., my heirs or assigns, the sum of — dollars, then the said deed should be void. *Now know ye*, that I, the said C. D., do hereby acknowledge and declare that the sum of — dollars in said deed mentioned was all the proper money of E. F., of, &c., only, and that the said deed was made in my name only in trust for the said E. F., his heirs and assigns. And therefore I, the said C. D., in pursuance of the trust reposed in me as aforesaid by the said E. F., and also in consideration of one dollar to me paid by the said E. F., do hereby grant, sell and assign to the said E. F., his heirs and assigns, the before-mentioned premises, and all my estate, right and interest in said premises. So that neither I, my heirs or assigns, at any time hereafter, shall claim any interest in the said premises by reason of said mortgage, or any matter therein contained.

In witness whereof I have hereunto set my hand and seal, this — day of —, 184--.

Signed, sealed and delivered

in presence of

C. D. (L. S.)

J. D.

J. S.

Acknowledgment in common form.

132. *Will of lands and goods.*

In the name of God, amen. [Or, Be it remembered that] I, A. B. of, &c., being weak in body, but of sound and perfect memory [or, considering the uncertainty of this mortal life, and being of sound, &c.] blessed be Almighty God for the same, do make and publish this my last will and testament, in manner and form following, that is to say :

First : I give and bequeath unto my beloved wife, J. B., the sum of — dollars.

I do also give and bequeath unto my eldest son, G. B., the sum of — dollars.

I do also give and bequeath unto my two younger sons, J. B. and F. B., the sum of — dollars apiece.

I also give and bequeath to my daughter-in-law, S. H., single woman, the sum of — dollars.

Which said several legacies or sums of money I will and order to be paid in six months after my decease.

I further give and devise to my eldest son, G. B., his heirs and assigns, all my real estate, situate in —, in the county of —. To have and to hold the same to him, the said G. B., his heirs and assigns forever.

I further give and bequeath to my two younger sons, J. B. and F. B., their heirs and assigns, all my real estate situate in —, in the county of —. To have and to hold to them and their heirs and assigns forever.

And lastly, as to all the rest, residue and remainder of my personal estate whatsoever, after payment of all my just debts, I give and bequeath the same to my said beloved wife, J. B., whom I hereby appoint my sole executrix of this my last will and testament: hereby revoking all former wills by me made.

In witness whereof I have hereunto set my hand and seal, this — day of —, 184--.

Signed, sealed and declared by the above named A. B. to be his last will and testament, in the presence of us; who, at his request and in his presence, have subscribed our names as witnesses thereto.

A. B. (L. S.)

C. D.

E. F.

G. H.

### 133. *Will of lands and goods.*]

In the name of God, amen. (Or: Be it known that) I, A. B., of —, in the county of —, &c., do make and publish this my last will and testament, in manner following:

First: I resign my soul to the hands of Almighty God, hoping and believing a remission of sins by the merits and mediation of Jesus Christ. And my body I commit to the earth, to be buried at the discretion of my executor hereinafter named. And my worldly estate I give and devise as follows:

First: I give and devise to my eldest son, B. B., all my homestead farm, situate in —, in the county of —, whereon I now live; to have and to hold the same to him, the said B. B., and his heirs and assigns forever.

Also, I give and devise to my son, C. B., all my land which I purchased of P. Z., situate in —, in the county of —; to have and to hold the same to him, the said C. B., his heirs and assigns forever.

Also, I give and devise to my daughter, M. B., my farm, situate in — in the county of —; to have and to hold to my said daughter, M. B. and her assigns, for and during the term of her natural life, without impeachment of waste; and from and immediately after her decease I give and devise the same unto my eldest son and his heirs and assigns forever.

Also, I give and bequeath to my son, J. B., the sum of — dollars.

Also, I give and bequeath to my daughter, N. R., wife of J. R., the sum of — dollars.

To be paid unto them respectively at the expiration of one year after my decease.

Also, I forgive unto L. M. the sum of — dollars, out of the principal sum of — dollars which he owes me upon bond.

Also, I give to my wife, E. B., during her natural life, the use of all my household goods, bedsteads, bedding and other furniture : and after her decease to remain to my son, B. B.

All the rest and residue of my personal estate (after payment of my debts and legacies) I do give and bequeath unto my wife, E. B., her executors, administrators and assigns, to her and their own use and benefit forever.

And I do hereby constitute and appoint my said wife, E. D., sole executrix of this my last will and testament.

In witness whereof I have hereunto set my hand and seal, this — day of —, 184--.

Signed, sealed and declared by  
the above mentioned A. B.  
to be his last will and tes-  
tament, in the presence of us ;  
who, at his request, in his  
presence, have subscribed our  
names as witnesses thereto.

A. B. (L. S.)

C. D.  
E. F.  
G. H.

In these general forms any other clauses may be inserted, of which a few examples are added ; as

134. *Bequest of money to be put at interest, &c.]*

Also, I give to my grand-daughters, M. B. and R. B., children of my daughter C. B., the sum of — dollars each, to be paid to them respectively at their respective ages of twenty-one years, or days of marriage, which shall first happen ; the same to be put out at interest at the discretion of my executor, and the interest accruing thereby to be applied to their education and maintenance respectively, until their said respective ages or marriages. And in case either of them shall die before the age of twenty-one years, or marriage, then I give the share of her so dying unto the survivor of them. And if both of my said grand daughters shall happen to die before attaining the age of twenty-one years, or marriage, then I give and bequeath the whole of the said several sums unto —.

135. *Appointment of a person to manage the estate of a minor.]*

Also, I do hereby authorize and direct my said executor, from and after my decease until the aforesaid G. B. shall attain his age of twenty-one years, to manage and improve the estate of the said G. B. by me hereby given him for his use and benefit, and to lease all or any part of his lands, and to lend and place out at interest upon good security, or otherwise improve according to his discretion, all or any part of the monies belonging to or arising from the said estate of the said G. B., and to account for and pay to the said G. B. for all such rents, interest and income as shall arise from the estate hereby given and devised to him, when he shall attain his age of twenty-one years.



And my will is, that my said executor shall not be accountable for more of the aforesaid monies or estates than he shall actually receive, or shall come to his hands by virtue of my will, or for any loss which shall happen of the said monies or estates, hereby by me given to the said G. B., so as such loss happen without his wilful default and neglect.

*136. Authority to executors to sell lands.]*

Also, I authorize my executor, with all convenient speed after my decease, to bargain, sell and alien in fee simple all those my lands called —, situate in —.

*137. Devise of land subject to an annuity.]*

Also, I devise unto my grandson, C. B., my farm, situate in —, containing — acres, more or less, called the — farm, with the appurtenances: To have and to hold (subject nevertheless to and chargeable with the annuity of sixty dollars, hereinafter mentioned) to him, the said G. B., his heirs and assigns forever. And I do hereby devise to my wife, E. B., and her assigns, during the term of her natural life, an annuity of sixty dollars, free of all taxes and deductions, to be issuing and payable out of the said farm, and to be paid and payable by equal half yearly payments, on the — day of — and on the — day of —, in each year; the first payment thereof to be on such of said days as shall first happen next after my decease; and I do hereby charge and subject the said farm to and with the payment of the said annuity of sixty dollars accordingly. And in case the said annuity, or any part thereof, shall be unpaid for the space of — days next after any of the said days of payment whereon the same ought to be paid as aforesaid, it shall be lawful for my said wife and her assigns into all and singular the premises charged with the said annuity as aforesaid, to enter, and the rents, issues and profits thereof to receive and take, until she be thereby, or by the person who shall then be entitled to the possession of the premises, paid and satisfied the same and every part thereof, and all the arrears thereof incurred before, and that shall incur during such time as she shall receive the rents and profits thereof, or be entitled to receive the same by virtue of such entry, together with her costs, damages and expenses laid out and sustained by reason of the non-payment thereof.

*138. Devise to a wife in lieu of her dower.]*

Also, I devise to my wife, E. B., the house in which I now live, and the buildings appurtenant to the same, and the household furniture of every kind now being in said house, and the following described tract of land, &c. To have and to hold to her, the said E. B., for the term of her natural life, in lieu and in full satisfaction of her dower, and of all her right of dower in and out of all the lands and tenements whereof I shall die seized [or of all her right of dower in any and all lands and tenements whereof I now am or have been, or hereafter shall be, seized during my marriage to my said wife.]

*139. Devise of lands in trust.]*

Also, I give and devise to N. B., &c. a certain, &c. [Here describe the premises.] To have and to hold to the said N. B. and his heirs in trust, that the said N. B. shall carry on and improve the same to the best advantage, and yearly and every year pay over to my son,

R. B., the clear annual income of said premises, after deducting the necessary expenses of carrying on and improving the same, in such sums and at such times as the said N. B. shall think most beneficial to the said R. B. and his family, during the lifetime of said R. B.; and in case my said son should die leaving children under age, then in trust to carry on and improve said premises and pay over and apply the clear annual income thereof in manner aforesaid, to and for the support, maintenance and education of said children, until their respective ages of twenty-one years; and in case the said children or any of them shall arrive to the age of twenty-one years, then in trust to convey and assure to each of said children his equal share and proportion of said estate in fee. But if the said N. B. shall die leaving no children, or if his said children shall die under twenty-one years of age, then I give and devise the same premises to the said N. B. and his heirs, to his and their sole use and benefit forever.

140. *Form of a codicil.*]

Whereas I, A. B., of —, have made and duly executed my last will and testament, in writing, bearing date the — day of —, now I do hereby declare this present writing to be a codicil to my said will, and direct the same to be annexed to and taken as part thereof. I do hereby give and bequeath to C. D., of, &c., the sum of — dollars. And whereas by my said will I did give and bequeath to E. F. the sum of — dollars; now I do hereby revoke the said legacy, and do give unto said E. F. the sum of — dollars, and no more.

In witness whereof I have hereunto set my hand and seal, this — day of —, 184—.

Signed, sealed and declared by  
the above named A. B. to be  
a codicil to be annexed to his  
last will and testament: in  
presence of us, who, at his re-  
quest, in his presence, have  
subscribed our names as wit-  
nesses thereto.

A. B. (L. S.)

R. S.  
W. T.  
Y. W.

141. *Form of a nuncupative will.*]

The last will and testament of —, in the county of —, deceased, declared by him by word of mouth in the time of the last sickness of said deceased, and in his usual dwelling, on the — day of —, in the presence of us, who at the time of pronouncing the same were requested by the testator to bear witness that such was his will, and who have subscribed our names as witnesses thereof: My will is that [Here insert the very words.]

In witness whereof we have hereunto set our hands, the — day of —, 184—.

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

## ADDENDA.

### *Form of affidavit of possession taken on mortgage.]*

I, A. B., depose that on the — day of —, A. D., 184--., in presence of C. D. and E. F. I made a peaceable entry upon a tract of land, situate in —, containing —, bounded, &c., conveyed to me in mortgage by G. H., by his deed dated —, 184--., recorded in the — Registry, vol. —, page —, for condition broken, and for the purpose of foreclosing the right in equity of said G. H. to redeem the same; and at the same time publicly declared the purpose and object of my said entry and of the possession so taken. (The said G. H. was present and did not object.)

A. B.

We, C. D. and E. F., severally depose that we were present, and witnessed the proceedings stated in the foregoing affidavit, and that the facts therein stated are true.

C. D.

E. F.

H— ss., —, 184--. Personally appeared A. B., C. D. and E. F., and made oath that the facts stated in the foregoing affidavits are true.

Before me: J. P., *Justice of the Peace.*

### *Form of notice of possession, taken on mortgage.]*

#### FORECLOSURE OF MORTGAGE.

BE IT KNOWN, That on the — day of —, 184--., I peaceably entered upon and took possession of a tract of land, &c., situate, &c., bounded, &c., conveyed to me in mortgage by G. H., of, &c., by his deed dated —, 184--., recorded in the H. Registry, vol. — page —, for condition broken, and for the purpose of foreclosing the right in equity of said G. H. to redeem the same; and at the same time publicly declared the purpose and object of said entry and possession.

If the mortgagor is suffered to remain in possession, a formal indenture of lease should be made to him in duplicate, which may be in the usual form of such instruments.

It is advisable, at the close of the description of the premises, to insert an additional clause, stating the facts. The following form is suggested:

#### *Recital of possession taken in lease.]*

the said — lessor, having on this — day of —, A. D. 184--., by the assent of said lessee, peaceably entered upon and taken possession of said premises by virtue of a deed of mortgage thereof, made to him by said lessee, dated —, 184--., recorded in the H. Registry, vol. —, page —, for condition broken, and for the purpose of foreclosing the right in equity of said lessee to redeem the same.

#### 60. *Passing a counterfeit bank-note.]*

feloniously did pass (or offer to pass) as true, a certain false and counterfeit bank-note, purporting to be issued by a certain bank called The President, Directors and Company of the Grafton Bank;

which said false and counterfeited bank-note is as follows, that is to say: "No. —. The President, Directors and Company of the Grafton Bank promise to pay —, or bearer, ten dollars. Haverhill, —, 184—. John A. Page, Cashier: Mills Olcott, President;" the said T. R. then and there well knowing the same bank-note to be false, forged and counterfeited, with intent that said T. C. should be defrauded.

See page 312, form 60; and make reference.

## FEES OF JUSTICES, &c.—REVISED STATUTES 470, &c.

§ 1. Justices of the peace shall be allowed the following fees in civil cases:

For every writ of summons or attachment with summons, 17 cents;

For writ of subpoena, ten cents;

For the entry of every action or complaint, including filing papers, entering appearance and judgment, and recording, fifty cents;

For granting an appeal, seventeen cents;

For each execution, seventeen cents;

For a writ of possession, twenty-five cents;

For entering satisfaction of a judgment on record, ten cents;

For swearing each witness, and caption of deposition, 34 cents;

For writing deposition, each page, seventeen cents;

For travel to swear witnesses, each mile three and a half cents;

For taking and certifying the acknowledgment of any deed or other instrument by one or more persons at one time, seventeen cents;

For granting warrant of appraisement and swearing the appraisers, twenty-five cents;

For actual trial upon issue joined, either of law or fact, fifty cents;

For administering oaths in all cases and certifying the same, except the oaths of office of town officers and oath administered to witnesses in the trial of causes before the justice, seventeen cents;

For every adjournment, seventeen cents;

§ 3. To all recording or certifying officers there shall be allowed for each page of two hundred twenty-four words copied or recorded, twelve and a half cents;

For any part less than a page, eight cents;

For every certificate on a copy of a whole case, ten cents.

§ 6. The following fees shall be allowed in each bill of costs taxed before a justice:

For each writ, complaint or plea, fifty cents.

§ 7. Parties shall be allowed the following fees:

For every ten miles' travel to and from court, twenty-five cents;

For each day's attendance, twenty-five cents;

For summoning witnesses, seventeen cents each.

§ 9. No more travel shall be allowed to any party than to the line of the county, unless in case of his appearance in person.

§ 10. In actions brought before justices, the plaintiff shall be allowed no more travel than if he lived within ten miles of the place of trial, unless he appears in person.

§ 11. In actions upon endorsed notes or negotiable paper, brought by an assignee, no more travel shall be allowed than if brought by the payee, unless it shall be shown that the assignee is the plaintiff in interest.

## OF ACTIONS.

**Revised Statutes, Ch. 180, Page 357.**

§ 1. All personal or transitory actions, where both parties are inhabitants of this state, may be commenced in the county where either of the parties to the writ may be an inhabitant, and not elsewhere.

§ 2. Actions of scire facias, upon any judgment or other proceeding before a justice, may be commenced in the court of common pleas, where the amount of the judgment or other demand claimed, including costs and interest, shall exceed thirteen dollars and thirty-three cents.

§ 3. An action of debt may be maintained, if commenced within six years, upon any judgment upon which an execution has been issued and returned satisfied, where it shall appear that the property levied or extended upon was not liable to be so levied or extended upon, for the amount equitably due and costs of levying, and such levy shall not be a discharge of such debt for any purpose.

§ 4. Any co-partner or joint owner may maintain an action of assumpsit against one or more of his co-partners or joint owners, to recover his just share of any goods or chattels, choses in action, or the proceeds thereof, received by such co-partners or joint owners, and not accounted for, delivered, paid or otherwise settled for on demand.

§ 5. Any co-tenant of real estate may recover by action of assumpsit against one or more of his co-tenants, his just share of the value of any tree destroyed, or cut or carried away by such co-tenant, which were standing, lying or growing on such real estate, or of any other property attached thereto and destroyed, severed or carried away by such co-tenant.

§ 6. If any co-tenant of any real estate shall hold the exclusive possession and income thereof, against the will and without the consent of his co-tenant, the co-tenant so excluded may, in an action of assumpsit, recover of the person holding such possession, the full amount of all damages he may have sustained thereby.

§ 7. No action shall be maintained upon any contract for the sale of lands, unless the agreement upon which such action shall be brought, or some memorandum thereof, is in

writing, and signed by the parties to be charged therewith, or by some other person thereunto lawfully authorized by writing.

§ 8. No action shall be brought in the following cases—

*First.* To charge any executor or administrator upon any special promise to answer damages out of his own estate ;

*Second.* To charge any person upon any special promise to answer for the debt, default or miscarriage of another person ;

*Third.* To charge any person upon an agreement made upon consideration of marriage ;

*Fourth.* To charge any person upon any agreement that is not to be performed within one year from the time of making it :

Unless such promise or agreement, or some memorandum or note thereof, is in writing, and signed by the party to be charged therewith, or by some person thereunto by him lawfully authorized.

§ 9. No action shall be brought upon any contract for the sale of any goods, wares or merchandise, for the price of thirty-three dollars or upwards ; and no such contract shall be valid unless the buyer shall accept part of the property so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment, or unless some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized.

§ 10. No bill of exchange, negotiable promissory note, order or draft, except such as are payable on demand, shall be payable until days of grace have been allowed thereon, unless it appear in the instrument that it was the intention of the parties that days of grace should not be allowed.

§ 11. If any person shall be compelled to pay any sum of money, on the account of the escape of any prisoner, he may maintain an action therefor against such prisoner and all persons aiding such escape.

§ 12. An action upon the case, and no other, shall be commenced against any sheriff, deputy sheriff, coroner or other officer, for any damages arising from any default or misconduct in his office.

## OF THE LIMITATION OF SUITS.

Revised Statutes, Ch. 181, Page 359.

§ 1. No action for the recovery of any real estate shall be maintained, unless such action is brought within twenty years after the right first accrued to the plaintiff or to any person under whom he claims, to commence an action for the recovery thereof.

§ 2. If the person first entitled to maintain an action for the recovery of such real estate, was within the age of twenty-one years, a married woman, or insane, at the time such right accrued, such action may be commenced within five years after such disability is removed.

§ 3. Actions for words and for any assault, battery, wounding or imprisonment, shall be brought within two years after the cause of action accrued, and not afterwards.

§ 4. All other personal actions shall be brought within six years after the cause of action accrued, and not afterwards.

§ 5. Actions of debt, founded upon any judgment or recognizance, or upon any contract under seal, may be brought within twenty years after the cause of action accrued, and not afterwards.

§ 6. Actions upon notes secured by mortgage may be brought so long as the plaintiff is entitled to commence any action upon the mortgage.

§ 7. Writs of error may be commenced within three years after judgment rendered, and not afterwards.

§ 8. Any infant, married woman, or insane person, may commence either of the personal actions aforesaid, within two years after such disability is removed.

§ 9. If the defendant, at the time the cause of action accrued, or afterwards, was absent from and residing out of the state, the time of such absence shall be excluded in the computation of the several times before limited for the commencement of personal actions.

§ 10. If judgment shall be rendered against the plaintiff, in any action commenced within the times before limited, or upon any writ of error brought thereon, he may commence a new action thereon within one year thereafter, in case his right of action is not barred by such judgment.

§ 11. The provisions of this chapter shall not apply to any case in which, by any statute, a different time is limited.

## OF SUITS BY AND AGAINST ADMINISTRATORS.

**Revised Statutes, Ch. 161, Page 319.**

§ 1. No action shall be sustained against any administrator, if commenced within one year after the original grant of administration, nor unless the demand shall have been exhibited to the administrator, and payment demanded.

§ 2. No such action shall be sustained, unless the demand shall have been exhibited to the administrator within two years after the original grant of administration.

§ 3. If the administration on any estate shall be suspended, any demand may be exhibited within two years, exclusive of the time of such suspension.

§ 4. If the estate has been represented insolvent within said two years, no such exhibition thereof shall be necessary to entitle the creditor to have the same allowed by the commissioner.

§ 5. No suit shall be maintained against any administrator, for any cause of action against the deceased, unless the same is commenced within three years next after the original grant of administration, exclusive of the time such administration may be suspended, except in cases where he shall have retained estate in his hands for the payment of such claim by order of the judge.

§ 6. Demands against such estate, not due or depending on any contingency, may be filed in the court of probate, and the judge, after due notice, may require the administrator to retain in his hands on settlement of his account such sum as may be necessary to pay the same, unless the widow, heirs or legatees shall give bond to the judge for the payment thereof when such contingency shall happen, to the extent of the assets received by them respectively.

§ 7. If the right of action existed against or in favor of the deceased at the time of his death, and survives, an action may be brought by, or against the administrator, at any time within two years after the original grant of administration.

§ 8. No action shall be commenced or prosecuted against an administrator, where the estate is decreed to be administered as an insolvent estate; but the cause of action may



be presented to the commissioners, and allowed, with the costs of any action pending at the time of such decree.

§ 9. Actions of review may be prosecuted notwithstanding such insolvency, and the amount recovered against the estate shall be added to the list of claims, by the judge, and the court shall issue no execution therefor.

§ 10. Any person interested in the estate of any person deceased, may commence an action as administrator thereof, which shall not be abated nor the attachment lost by reason that such person is not administrator thereof, nor by his decease, if the administrator then or afterwards appointed shall, at the first or second term of the court, endorse the writ and prosecute the same as plaintiff.

§ 11. Suits in which an administrator is party shall not be abated by reason of his death, or of the extinguishment or revocation of his trust, but may be prosecuted or defended by the administrator who may succeed to the trust, who may be called into court by scire facias, in the same manner and with the like effect as in cases of the death of other parties.

§ 12. Writs of attachment and execution against administrators, where the cause of action was against the person deceased, shall run only against the goods or estate of the deceased; and the administrator shall not be arrested or his estate attached or levied upon in such action.

§ 13. Upon return of "no goods," or "waste," made by the sheriff on such execution, an execution may be awarded on scire facias against the goods, estate and person of the administrator, as for his own debt, to the amount of such waste, if it can be ascertained; otherwise, for the whole debt.

§ 14. The estate of any person deceased and the administrator thereof shall be liable upon joint demands against the deceased and any other person, as they would be if such demands were joint and several, unless it shall appear that it was the intention of the parties that the survivor only shall be liable.

§ 15. A joint administrator or guardian may have an action of account or assumpsit against the other administrator or guardian, who shall refuse to apply the estate in his hands to the discharge of the just demands against the same, or who shall refuse to account therefor, and shall recover the amount thereof to which he shall be entitled.

§ 16. Every administrator may prosecute or defend any action pending in any court against the deceased, in case the cause of action does by law survive ; and in such case any appeal or writ of review to which such deceased person was entitled, or which might be prosecuted against him at the time of his decease, may be prosecuted by or against such administrator.

§ 17. If such administrator, having been duly served with a scire facias, shall neglect or refuse to become a party to the suit, judgment may be rendered against the estate of the deceased, in the same manner as if the administrator had voluntarily become a party to the suit.

§ 18. In all cases where an administrator shall become a party to a suit then pending, he shall be entitled to one continuance of course.

§ 19. The administrator may, as such, maintain any action necessary and proper to be brought in relation to real estate set off to him for debts due the estate, and to the real estate of the deceased, in cases of insolvency, until the administration is closed.

§ 20. The administrator, as such, may prosecute and defend all real actions pending at the decease of the testator or intestate, and may, within one year after such decease, bring a review of any real action in which there shall be a right of review at such decease, and prosecute the same for the use of the persons interested in such estate.

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## OF OFFENCES AGAINST THE STATE.

**Revised Statutes, Ch. 213, Page 432.**

§ 1. If any person, owing allegiance to this state, shall levy war, or conspire to levy war against the same, or shall in any way give aid and comfort to the enemies of this state, and shall be thereof convicted, either upon confession in open court, or by the testimony of two or more witnesses to the same overt act of treason of which such person may be indicted, such person shall be adjudged guilty of treason, and shall be punished by solitary imprisonment not

exceeding three years, and by confinement to hard labor for life.

§ 2. If any person shall know that any other person has committed or is intending to commit treason, and shall not, within fourteen days from the time of his having such knowledge, give information thereof to the governor or to some justice of the peace of this state, he shall, on conviction thereof, be adjudged guilty of misprision of treason, and shall be punished by confinement to hard labor not exceeding seven years, or by fine not exceeding two thousand dollars.

§ 3. No person shall be tried for treason or misprision of treason, unless the indictment therefor be found within two years next after the commission of the offence.

§ 4. If any public officer, being a receiver of public money under any law of this state, shall fraudulently convert the same to his own use, or pay or deliver the same to any person, knowing that such person is not entitled to receive the same, he shall be punished by confinement to hard labor not exceeding two years, or by imprisonment in the common jail not exceeding one year, and by fine not exceeding two thousand dollars.

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## OF OFFENCES AGAINST THE LIFE OR PERSON.

Revised Statutes, Ch. 214, Page 433.

§ 1. All murder committed by poison, starving, torture or other deliberate and premeditated killing, or committed in the perpetration or in the attempt at the perpetration of arson, rape, robbery or burglary, is murder of the first degree; and all murder not of the first degree is of the second degree. If the jury shall find any person guilty of murder, they shall also find by their verdict whether it is of the first or second degree.

§ 2. If any person shall plead guilty to an indictment for murder, the court having cognizance thereof shall determine the degree.

§ 3. The punishment of murder in the first degree shall be death, and the punishment of murder in the second de-

gree shall be solitary imprisonment not exceeding three years, and confinement to hard labor for life.

§ 4. If any person shall be guilty of manslaughter he shall be punished by fine not exceeding one thousand dollars, or by fine not exceeding five hundred dollars and imprisonment in the common jail not exceeding one year, or by solitary imprisonment not exceeding six months, and confinement to hard labor for life, or for a term not less than one year, according to the aggravation of the offence.

§ 5. If any person by assault, or by violence and putting in fear, shall feloniously steal, rob and take from the person of another any money, goods, chattels, or other property which is the subject of larceny, he shall be punished by solitary imprisonment not exceeding six months, and by confinement to hard labor for life.

§ 6. If any person shall ravish and carnally know any woman, committing carnal copulation with her by force against her will, or if any man shall unlawfully and carnally know and abuse any woman child under the age of ten years, he shall be punished by solitary imprisonment not exceeding six months, and by confinement to hard labor for life.

§ 7. If any person, with intent to maim or disfigure, shall maliciously cut off an ear, cut out or maim the tongue, put out an eye, cut off or slit the nose or lip, or cut off or disable any limb or member of any person, he shall be punished by solitary imprisonment not exceeding six months, and by confinement to hard labor for a term not less than one year nor more than twenty years.

§ 8. If any person shall make an assault upon another with intent to commit any crime described in this chapter, the punishment whereof may be death or confinement to hard labor for life, or shall attempt to commit any such crime by any means not constituting an assault, he shall be punished by solitary imprisonment not exceeding six months, and by confinement to hard labor for a term not less than one year nor more than ten years.

§ 9. If any woman shall be privately delivered of a child, which if born alive would be a bastard, and shall endeavor privately to conceal its death, and the manner or cause thereof, she shall be punished by confinement to hard labor not exceeding two years, or imprisonment in the common jail not exceeding two years, or by fine not exceeding two thousand dollars.

§ 10. The murder of such child and the offence described in the preceding section, may be charged in the same indictment, and the person accused may be found guilty of either offence, as the evidence may warrant.

§ 11. If any person, without lawful authority, shall forcibly or secretly confine or imprison any other person within this state, against his will, or shall forcibly carry or send such person out of the state, or shall forcibly seize, inveigle or kidnap any person, with intent either to cause such person to be sent out of the state against his will, or to be sold or in any way held to service against his will, he shall be punished by confinement to hard labor not exceeding ten years.

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## OF OFFENCES AGAINST PROPERTY.

Revised Statutes, Ch. 215, Page 435.

§ 1. If any person shall wilfully and maliciously burn any dwelling-house, or any out building adjoining thereto, or any building whereby any dwelling-house shall be burned, he shall be punished by solitary imprisonment not exceeding six months, and by confinement to hard labor for life, or for a term not less than seven years.

§ 2. If any person shall wilfully and maliciously burn any vessel lying within the body of any county, or any bridge, or any building other than those described in the preceding section, he shall be punished by solitary imprisonment not exceeding six months, and by confinement to hard labor for a term not less than two years nor more than twenty years.

§ 3. If any person shall wilfully and maliciously place any obstruction on the track of any railroad, or remove any rail therefrom, or in any way injure such rail-road, or do any other thing thereto whereby the life of any person may be endangered, he shall be punished by solitary imprisonment not exceeding six months, and by confinement to hard labor for life or for a term not less than two years.

§ 4. If any person shall wilfully and maliciously burn any stack of corn, hay, grain or flax, or any fence, or any pile of boards, lumber or wood, or any trees or underwood of another, he shall be punished by confinement to hard labor for a

term not less than one year nor more than three years, or by fine not exceeding one thousand dollars and imprisonment in the common jail not exceeding one year.

§ 5. If any person shall in the night time break and enter any dwelling-house, with intent to commit any crime the punishment whereof may be death or confinement to hard labor for life, he shall be punished by solitary imprisonment not exceeding six months, and by confinement to hard labor for life, or for a term of not less than five years.

§ 6. If any person shall in the night time break and enter any dwelling-house, with intent to commit any other crime the punishment whereof may be confinement to hard labor, or to commit any larceny, he shall be punished by solitary imprisonment not exceeding sixty days, and by confinement to hard labor not less than three years nor more than ten years.

§ 7. If any person, with intent to commit any crime the punishment whereof may be confinement to hard labor, or to commit larceny, shall in the night time break and enter any office, bank, shop, store or warehouse, or any vessel lying within the body of any county, he shall be punished by confinement to hard labor for a term not less than three years nor more than ten years.

§ 8. If any person, with intent to commit any crime the punishment whereof may be confinement to hard labor, shall in the night time either break or enter, or in the day time break and enter any building or any vessel lying within the body of any county, he shall be punished by confinement to hard labor for a term not less than one year nor more than seven years.

§ 9. If any person shall in the night time break or enter, or in the day time break and enter, any dwelling-house or out-house adjoining thereto, any office, bank, shop, store, warehouse or mill, any meeting-house, court-house, town-house, college, academy, school-house, or other building erected for the public use, or any vessel lying within the body of any county, and shall therein commit larceny, he shall be punished by confinement to hard labor [for a term] not exceeding five years.

§ 10. If any person shall wilfully and maliciously kill, maim, wound, poison or disfigure any horse, cattle, sheep or swine of another, with intent to injure their owner or any other person, he shall be punished by confinement to

hard labor not less than one year nor more than three years, or by fine not exceeding one thousand dollars, and imprisonment in the common jail not exceeding one year.

§ 11. If any person shall commit any larceny from the person of another, he shall be punished by confinement to hard labor not less than three years, nor more than seven years.

§ 12. If any person shall steal, take and carry away any horse, mule, cattle, sheep or swine, the property of another, he shall be punished by confinement to hard labor not less than three years nor more than seven years.

§ 13. If any person shall steal, take and carry away of the property of another, any money, bank bills, goods or chattels, or any writing containing evidence of any existing debt, contract, liability, promise or ownership of property, of the value of twenty dollars, or of the receipt, payment or discharge of the like amount, or any writing of a like kind, which together shall contain the like evidence, he shall be punished by confinement to hard labor for a term not less than two years nor more than five years.

§ 14. If any person shall steal, take and carry away any property of another, such as is described in the preceding section, of a less amount or value than twenty dollars, he shall be punished by imprisonment in the common jail not exceeding one year, and by fine not exceeding one hundred dollars; and shall be further sentenced to pay to the owner treble the value of the property so stolen, deducting from such treble value the value of any part of said property which may be returned.

§ 15. If any person shall steal, take and carry away any deed or other writing importing to contain the conveyance, release or defeasance of any title to or interest in any real estate, or any will, policy of insurance, bill of sale of any vessel, or letter of attorney, or any writ, process, or record of any court of this state, or any public record, or any record of any corporation, public or private, he shall be punished by confinement to hard labor for a term not less than two years nor more than five years.

§ 16. If any person shall receive or conceal any property stolen as aforesaid, knowing the same to have been so stolen, he shall be punished in the same manner as if he had so stolen the same, and either before or after the conviction of the principal felon.

§ 17. If any person shall be convicted of stealing, or of receiving or concealing any property stolen as aforesaid, excepting in cases where the treble value of the property is awarded, the owner of such property, upon such conviction, shall have judgment and execution in common form against such convict for the value thereof, deducting the value of such part as may be returned. If said convict shall be committed to jail upon such execution, he shall have the same relief as if it had issued upon a judgment recovered in an action of trespass.

§ 18. If any person shall wilfully and maliciously commit any act whereby any tree placed or growing for ornament or use in any garden, yard, street, square or other place; or whereby the real or personal estate of another shall be injured, such person shall be punished by imprisonment in the common jail for a term not less than thirty days nor more than one year, or by fine not exceeding one hundred dollars, or by both of said punishments, in the discretion of the court.

§ 19. If any person shall fraudulently mortgage, pledge, sell, alienate or convey any of his real or personal estate, amounting in value to the sum of one hundred dollars, or shall fraudulently conceal his personal estate of that value, to prevent the attachment or seizure of the same upon mesne process or execution, he shall be punished by imprisonment not less than thirty days nor more than one year, or by fine not exceeding double the value of such estate, or by both of said punishments.

§ 20. If any person shall fraudulently receive any such mortgage, pledge or conveyance, or shall conceal the property of any debtor of that value, with intent to prevent such attachment or seizure, he shall be punished in the manner provided in the preceding section.

§ 21. If any person shall be guilty of any act described in the two preceding sections, where the property is of less value than one hundred dollars, he shall be punished by imprisonment not less than ten days nor more than six months; or by fine not exceeding double the value of such property, or by both of said punishments.

§ 22. In the cases mentioned in the three preceding sections, the fine shall be, the one half for the use of the complainant, and the other half to the use of the county.



## OF FORGERY AND COUNTERFEITING.

Revised Statutes, Ch. 216, Page 438.

§ 1. If any person shall falsely make or counterfeit, or fraudulently alter any public record, any writ, process or proceeding of any court of this state; any certificate or attestation of a justice of the peace, notary public, clerk of any court, town clerk or other public officer, in any matter wherein such certificate or attestation may be received as legal proof; any charter, deed, will, bond or writing obligatory, letter of attorney, policy of insurance, certificate of stock, bill of exchange, promissory note, order, acquittance, discharge for money or property; any acceptance of a bill of exchange, or any endorsement or assignment of any bill of exchange or promissory note; any certificate or accountable receipt for money or property; any warrant, order or request for the payment of money, or the delivery of any property or writing of value; or any writing whatever, purporting to contain evidence of the existence or discharge of any debt, contract or promise, with intent that any person may be defrauded, he shall be punished by solitary imprisonment not exceeding six months, and by confinement to hard labor not less than three years nor more than seven years.

§ 2. Every person who shall pass or use, or offer to pass or use, as true, any such counterfeited or altered writing, mentioned in the preceding section, knowing the same to be such, with intent that any person should be defrauded, shall be punished in the manner specified in the preceding section.

§ 3. If any person shall falsely make or counterfeit, or alter any writing, not included in the first section, or shall knowingly use the same with intent that and whereby any person may be defrauded, he shall be punished by confinement to hard labor not exceeding three years.

§ 4. If any person shall falsely make or counterfeit, or shall fraudulently alter any bank bill or note purporting to be issued by any bank, with intent that any person may be defrauded, he shall be punished by solitary imprisonment not exceeding six months, and by confinement to hard labor not less than five years nor more than twenty years.

§ 5. If any person shall pass or offer to pass, as true, or shall bring into this state or have in his possession or custody any such false, counterfeited or altered bank bill or note described in the preceding section, knowing the same to be so false, counterfeited or altered, with intent that any person may be defrauded, he shall be punished by solitary imprisonment not exceeding four months, and by confinement to hard labor not less than two years nor more than five years.

§ 6. If any person shall make, mend or engrave, or begin to make, mend or engrave any plate, block, press, or other tool or instrument, or shall make or provide any paper or other material, adapted or designed for forging or making any such false, counterfeited or altered bank bills, or notes described in the two preceding sections, or shall have in his possession any such plate, block, press, tool, instrument, paper or material, adapted or designed as aforesaid, with intent to use the same, or cause or permit the same to be used in forging or making such false and counterfeit bank bills or notes, he shall be punished by solitary imprisonment not exceeding four months, and by confinement to hard labor not less than two years nor more than five years.

§ 7. Upon the trial of any indictment under the three sections preceding, evidence that bills or notes purporting to be issued by any bank are commonly received as currency, or other proof of the existence of any bank or banking company therein described, shall be competent evidence for the jury, of its legal establishment and existence.

§ 8. If any person shall make any false coin in imitation of any gold or silver coin current within this state by law or usage, he shall be punished by solitary imprisonment not exceeding six months, and by confinement to hard labor not less than four years nor more than ten years.

§ 9. If any person shall pass or offer to pass, as true, or shall bring into this state or have in his possession any false and counterfeit coin, described in the preceding section, knowing the same to be so false and counterfeit, and with intent that any person may be defrauded, he shall be punished by solitary imprisonment not exceeding four months, and by confinement to hard labor not less than two years nor more than five years.

§ 10. If any person shall cast, stamp, engrave, make or mend, or begin to cast, stamp, engrave, make or mend, or

shall have in his possession any mould, pattern, die, punch, engine, press, tool or other instrument adapted or designed for making false and counterfeit coin, in imitation of any gold or silver coin current within this state by law or usage, with intent that the same may be so used, he shall be punished by solitary imprisonment not exceeding four months, and by confinement to hard labor not less two years nor more than five years.

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## OF OFFENCES AGAINST PUBLIC JUSTICE.

**Revised Statutes, Ch. 317, Page 440.**

§ 1. If any person, being on oath or affirmation, in any legal proceeding before any court, justice of the peace, referee, arbitrator, auditor or other person authorized by law to administer such oath or affirmation, shall commit perjury, he shall be punished by solitary imprisonment not exceeding four months, and by confinement to hard labor not less than two years nor more than five years.

§ 2. If any person in regard to any matter or thing wherein he is required by law to make oath or affirmation, shall wilfully swear or affirm falsely, he shall be deemed guilty of perjury, and punished accordingly.

§ 3. If any person shall corruptly procure or attempt to procure another to commit perjury, he shall be punished in the same manner as for the crime of perjury.

§ 4. In every prosecution for perjury or subornation of perjury, it shall be sufficient to set forth the offence charged, before what court or person such oath or affirmation was taken, and that such court or person had competent authority to administer the same, with proper averments to falsify the matter wherein the perjury is assigned, without setting forth, otherwise than as aforesaid, any record or other proceeding in law or in equity, or the commission or authority of such court or person before whom the perjury was committed.

§ 5. If any person shall wilfully assault or obstruct any officer, or other person duly authorized, in the service of any lawful process or order in any civil case or in any crimi-

nal case the punishment of which is imprisonment in the common jail and fine, or either, or shall rescue or attempt to rescue any prisoner lawfully arrested in any such case, he shall be punished by confinement in the common jail not exceeding one year, and by fine not exceeding three hundred dollars.

§ 6. If any person shall wilfully assault or obstruct any officer, or other person duly authorized, in the service of any criminal process for any offence punishable by confinement to hard labor for a term of years, or shall rescue or attempt to rescue any prisoner lawfully arrested in any such case, he shall be punished by confinement to hard labor not exceeding one half of such term, or by imprisonment in the common jail not exceeding two years, or by a fine not exceeding five hundred dollars, or by both of the two last.

§ 7. If any person shall wilfully obstruct or assault any officer, or other person duly authorized, in the service of any criminal process for any offence punishable by death or confinement to hard labor for life, or shall rescue or attempt to rescue any prisoner lawfully arrested in such case, he shall be punished by confinement to hard labor not exceeding ten years, or by imprisonment in the common jail not exceeding two years, and fine not exceeding five hundred dollars.

§ 8. If any person shall wilfully obstruct or assault any officer, or person duly authorized, in the discharge of any duty of his office in any case not included in the preceding sections, he shall be punished by imprisonment in the common jail not exceeding six months, or by fine not exceeding one hundred dollars.

§ 9. If any person shall convey any tool or other thing into any place of confinement, or afford aid in any manner, with intent that any prisoner may escape therefrom, but without any escape, he shall be punished by imprisonment in the common jail not exceeding one year, and by fine not exceeding five hundred dollars.

§ 10. If any person shall convey any tool, weapon or other thing to any prisoner convicted of any offence punishable by death or confinement to hard labor, or into any place of confinement, with intent to aid any such convict to escape, he shall be punished by solitary imprisonment not exceeding six months and by confinement to hard labor not exceeding ten years, or by fine not exceeding five hundred dollars.

§ 11. If any person shall aid in any manner in the escape of any prisoner committed to any place of confinement for debt, he shall pay such debt and be imprisoned in the common jail not exceeding one year.

§ 12. If any person shall aid in any manner in the escape of any prisoner committed, before or after conviction, to any place of confinement, for any criminal offence not capital, he shall be liable to the same punishment to which such prisoner was or would have been liable, or to imprisonment in the common jail not exceeding one year, and fine not exceeding two thousand dollars.

§ 13. If any person shall in any manner assist in the escape of any prisoner committed, before or after conviction, to any place of confinement, for any capital offence, he shall be punished by confinement to hard labor for life, or any term of years.

§ 14. If any person, having the custody of any prisoner arrested or committed for debt or crime, shall voluntarily permit his escape, he shall be punished in the same manner prescribed in the three preceding sections, for aiding in the escape of a prisoner committed for like cause.

§ 15. If any person having the custody of any prisoner arrested or committed for crime, shall negligently suffer his escape, he shall be fined not exceeding five hundred dollars.

§ 16. If any person guilty of the offence described in either of the five preceding sections, shall, within six months after any such escape of any prisoner, recover and return such prisoner to the place of confinement from which he escaped, cases of rescue excepted, he shall be liable to such fine as the court may order, and imprisonment shall be remitted.

§ 17. 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 or shall assume to act as such, or to require any other person to aid or assist him in any matter or thing belonging to the duty of a sheriff, deputy sheriff, or other officer as aforesaid, he shall be punished by fine not exceeding three hundred dollars, one half to the use of the county, the other half to the prosecutor.

§ 18. If the clerk of any town or place shall wilfully and corruptly make a false record of any vote or other proceeding in any legal town meeting, or any false copy of any re-

cord, or any false certificate or return of votes, he shall be punished by solitary imprisonment not exceeding six months, and by confinement to hard labor not less than two years nor more than five years.

## OF OFFENCES AGAINST THE PUBLIC PEACE.

**Revised Statutes, Ch. 218, Page 443.**

§ 1. If any person shall assault or beat another, or in any way break the peace, upon complaint and conviction thereof before any justice he shall be fined not exceeding ten dollars, or imprisoned not exceeding thirty days, and shall also recognize with sufficient surety or sureties, to keep the peace and be of good behavior until the next term of the court of common pleas to be holden in the county..

§ 2. If such offence is of an aggravated nature, the justice may order such offender to recognize, with sufficient surety or sureties, to appear at the court of common pleas next to be holden in the county ; and on conviction of such offender before said court, he may be punished by fine not exceeding two hundred dollars, and imprisonment not exceeding six months, or by either of said punishments.

§ 3. If any persons shall be unlawfully, riotously and tumultuously assembled, any justice, sheriff or his deputy, or any constable, shall approach the rioters, as near as he can with safety, and command silence while proclamation is being made, and shall then make proclamation in these or like words:—"In the name of the state of New-Hampshire, every person here assembled is commanded to disperse immediately, and depart peaceably to his home or lawful employment."

§ 4. If any person shall continue so unlawfully, riotously and tumultuously assembled, after proclamation made by such peace officer as aforesaid, or shall wilfully obstruct or assault such officer, known or openly declared by himself to be such, in making such proclamation, he shall be punished by fine not exceeding one thousand dollars, and by imprisonment in the common jail not exceeding one year.

## OF OFFENCES AGAINST CHASTITY, DECENCY AND MORALITY.

**Revised Statutes, Ch. 219, Page 444.**

§ 1. If any person shall commit the crime of adultery, such person shall be punished by imprisonment in the common jail not exceeding one year, and fine not exceeding five hundred dollars.

§ 2. If any married man or woman shall commit an act, or have a connexion with an unmarried person, which would constitute adultery if both were married, such married woman or the man so offending, shall be guilty of adultery, and punished accordingly.

§ 3. If any man or woman shall be guilty of open, gross lewdness,

or lascivious behavior, such person shall be punished by imprisonment in the common jail not exceeding six months, and a fine not exceeding two hundred dollars, and shall also recognize, with sufficient sureties, to be of good behavior for a term not exceeding three years.

§ 4. Any person who shall be guilty of fornication shall be punished by fine not exceeding fifty dollars, or imprisonment in the common jail not exceeding six months: but no person shall be so convicted solely upon the testimony of a partner in guilt.

§ 5. If any person having a husband or wife alive, shall marry or cohabit with any other person, such person so marrying or cohabiting shall, except in the cases specified in the following section, be punished as in case of adultery.

§ 6. The provisions of the preceding section shall not extend to any person whose husband or wife shall be absent, and not heard of or from, for the space of three years together, or shall be reported and generally believed to be dead, or to any person legally divorced, or where the former marriage took place within the age of consent.

§ 7. All persons, being within the degrees of consanguinity or affinity, in which marriages are prohibited or declared by law to be incestuous, who shall intermarry with or carnally know each other, shall be punished as in case of adultery.

§ 8. If any person shall openly deny the being of a God, or wilfully blaspheme the name of God, Jesus Christ, or the Holy Ghost, or shall curse or reproach the word of God contained in the canonical books of the old and new testaments, he shall be fined not exceeding two hundred dollars, and may be holden to recognize, with sureties for his good behavior, for a term not exceeding one year.

§ 9. If any person shall profanely curse or swear, he shall be fined one dollar for such offence, and for any offence subsequent to such conviction, double said sum; and in default of payment of any such fine shall be committed to the house of correction for a space not exceeding ten days; but no prosecution shall be sustained, unless commenced within ten days after the commission of the offence.

§ 10. If any person not authorized by the selectmen, overseers of the poor, or a justice of the peace of the town, or by any law, or by a relative or friend for the purpose of re-interment, shall dig up, remove or convey away any human body, or the remains thereof, or shall conceal the same, knowing it to have been so illegally dug up, he shall be punished by confinement to hard labor not exceeding one year, or by fine not exceeding two thousand dollars, and by imprisonment in the common jail not exceeding one year.

§ 11. If any person shall wrongfully destroy, mutilate, deface, injure or remove any tomb, monument, grave stone or other structure in any place used or intended for the burial of the dead, or any fence, railing or curb for the protection of any such structure, or any enclosure for any such place of burial, or shall wrongfully injure, cut, remove or destroy any tree or shrub growing within any such enclosure, he shall be punished by imprisonment in the common jail not exceeding six months, or by fine not exceeding five hundred dollars, or by both of said punishments.

§ 12. If any person shall wilfully and maliciously kill, maim, beat or wound any horse, cattle, sheep or swine, he shall be punished by fine not exceeding one hundred dollars, or by imprisonment not exceeding ninety days, or by both of such punishments.

## OF OFFENCES AGAINST PUBLIC POLICY.

**Revised Statutes, Ch. 320, Page 446.**

§ 1. If any person shall make or put up any lottery, or shall dispose of any estate, real or personal, by lottery, he shall be fined not exceeding five hundred dollars nor less than fifty dollars.

§ 2. If any person shall sell, dispose of, offer or keep for sale, any ticket or part thereof in any lottery, or shall print or publish an account thereof, or of the place where or person by whom any ticket therein or any part of such ticket is kept for sale, or to be otherwise disposed of, he shall be fined not exceeding one hundred dollars nor less than twenty-five dollars.

§ 3. If any person shall keep any gaming house or place, and shall suffer and permit any person to play at cards, dice, billiards, or at any bowling alley or any game whatever therein, for money, hire, gain or reward, or to bet on the hands or sides of such as are so playing, such person shall be punished by a fine not less than ten dollars, nor more than two hundred [dollars,] or by imprisonment in the county jail not exceeding one year.

§ 4. Every person who shall be convicted of winning, at any one time or sitting, by gaming or by betting on the sides or hands of such as are gaming, any money or goods to the value of five dollars or more, and of receiving the same or any security therefor, shall forfeit to the use of the town where the offence shall have been committed, double the value of the money or goods so won and received.

§ 5. Every person who shall be convicted, on complaint before a justice, of winning as aforesaid, any money or goods of less value than five dollars, and of receiving the same or any security therefor, shall forfeit to the use of the town where such offence is committed, not less than two dollars nor more than ten [dollars.]

## GENERAL PROVISIONS CONCERNING CRIMES.

**Revised Statutes, Ch. 331, Page 447.**

§ 1. If any person shall aid in, counsel, hire or procure the commission of any offence, or shall be accessory thereto before or after the fact, he shall be punished in the same manner as the principal offender, and may be tried and convicted thereof, either before or after the conviction of the principal offender.

§ 2. If any person shall attempt the commission of any offence which may be punishable by confinement to hard labor for life, he shall be punished by solitary imprisonment not exceeding six months, and confinement to hard labor not exceeding ten years nor less than one year.

§ 3. If any person shall attempt the commission of any other offence, he shall be liable to a punishment not exceeding one half of that which may be inflicted for the commission of the same offence.

§ 4. If any person shall attempt the commission of any offence by the counsel, hiring or procurement of any other person, the person so counselling, hiring or procuring such attempt, shall be punished in the same manner as the person making such attempt.



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