THE

COUNTY AND TOWN OFFICER,

OR

A CONCISE VIEW OF THE DUTIES AND OFFICES

OF

COUNTY AND TOWN OFFICERS

IN THE STATE OF NEW-YORK,

WITH APPROPRIATE PRECEDENTS.

IN TWO PARTS.

By JOHN TAPPEN, COUNSELLOR AT LAW.

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SOUTHERN DISTRICT OF NEW-YORK, ss.

BE it remembered, That on the sixth day of March, in the fortieth year of the Independence of the United States of America, John Tappen, of the said district, hath deposited in this office the title of a book, the right whereof he claims as author and proprietor, in the words following, to wit:

"The County and Town Officer; or, A Concise View of the Duties and Offices of County and Town Officers in the state of New-York, with appropriate Precedents: In Two Parts. By John Tappen, Counsellor at Law."

In conformity to the act of Congress of the United States, entitled "An act for the encouragement of Learning, by securing the copies of Maps, Charts and Books to authors and proprietors of such copies, during the time therein mentioned." And also to an act, entitled "An act supplementary to an Act, entitled an Act for the encouragement of Learning, by securing the copies of Maps, Charts and Books to the authors and proprietors of such copies, during the time therein mentioned, and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints."

THERON RUDD, Clerk
of the Southern District of New-York.

PREFACE.

IN a government like our own, founded on the immutable principles of justice and duly recognizing the rights and privileges of its citizens, it must confessedly be of primary importance, that the correspondent duties of civil officers—the guardians and executors of the laws, should be well understood and correctly administered. Impressed with the force of this interesting fact, I have been long persuaded, as well from my own observation, as the information of others, that the errors and inaccuracies which have been frequently committed by county and town officers in the exercise of their several official duties, might in many instances have been avoided, through the aid of a Manual, such as this book presents to the public. Hence I have been induced to believe, that I could not render my fellow-citizens a more essential service, than by the work now humbly submitted for their use. To subserve a purpose thus salutary, has been the cardinal object of my ambition while preparing and systematising it for the press. How far I have succeeded in accomplishing that desirable end, it remains for the community to determine. In a work of this kind, novel and original in its character, embracing topics inexhaustible in their nature and diversified in their established arrangement, framed in the closet by means only of individual research and reflection, and in a manner without any extraneous assistance or advice, it cannot be matter of surprise, that defects should be incorporated with it, and that amidst a variety of readers of different dispositions and opinions, there should be those who are insensible of its public utility, and those who may depreciate its merits. To all such I would observe, that whatever demerit they may discern in the following pages, that should they not be willing to give me credit for the purity of intention which conduced to their publicity, I humbly crave that they would at least absolve me from the odious imputation, that they were dictated by the vain, supercilious and reprehensible ambition to be distinguished as an author. So far from being actuated by a motive so ignoble, I would rebut that invidious allegation, with assuring the candid

reader, that I have not been unmindful of the impressive precept of a wise man of old; "whatever thy hand findeth to do, do it with thy might; for there is no work, nor device, nor knowledge, nor wisdom, in the grave whither thou goest." And I would ask, what efforts can be more worthy the pursuit of a citizen of a free government, than to elucidate and inculcate the principles of civil liberty? For where these are correctly discerned and truly practised, there, and there alone, may mankind be said to enjoy their inalienable rights of life, liberty, and the pursuit of happiness. But where these are not understood, or the civil laws obscured in the view of the people, or not comprehended by them, there these principles and those laws, not only lose their beauty and value, but a way is opened to public degeneracy and ruin. Besides, civil liberty is the parent and guardian of religious freedom and toleration. Where that is suffered to be prostrated, there one is apt to behold a wretched debasement of human intellect, exposed to all the horrors of religious persecution. With propriety, therefore, might a celebrated writer say, "where liberty dwells, there is my country." An elucidation of a theme thus noble, I must confess, might have received a more appropriate treatment from an abler pen and more competent lawyer: But I have waited, and waited in a vain expectation, to see a delineation of it according to my view of its conduct and arrangement. Much as the common law of England is appreciated by many of our jurists, it cannot be denied, that it receives its intrinsic merit from being engrafted on our free institutions. In a digest, therefore, of our jurisprudence, intended to direct our County and Town Officers in a correct discharge of their several official duties, that law must be an imperfect guide indeed, when unaccompanied with the details of its modifications by our legislature and minute expositions of the laws of our own land. How far the force of this fact has been recognized or evinced in the American edition of the *Conductor Generalis*, published some years ago, or the late edition of the *New-York Justice*, (the only American books that have hitherto appeared having any relation to the subject matter of the following work,) we leave it to the public consideration to judge. It will, however, we believe, be found, that neither of those books are of general practical utility to the County or Town Officer, whatever may be their use to professional gentlemen. For them, in my opinion, they may be better adapted, than for plain country farmers, who have not always a lawyer near them to expound the common law learning they contain. And here it may not be improper to remark, that as to a knowledge of the technical terms which abound in that law, I consider it not material for any County or Town Officer whom-

soever, except, perhaps for a judge of the common pleas; inasmuch as it is the business of the district attorney to draw all bills of indictment on offences in the county, upon which it is the province of the jury, under the direction of the court, or the court solely, to pronounce a decision; and that in relation to the country magistrate, it cannot be expected, and ought not to be required, that he should define all crimes which happen to be cognizable before him, with all the minutia of legal precision or technical nicety. All law being a rule of action, prescribed by the rulers, and which it is incumbent on the ruled to obey, it follows that the more plainly it is worded, the better will it be understood, and the more readily conformed to. The reader will find the following pages to have been conducted on that plan, as supposed to be the most proper to introduce our citizens to a familiar acquaintance with the laws of our state; than which, no subject can be more interesting to every individual; in that while it indicates his duty, his interest and his happiness, it developes those inestimable principles of civil liberty embraced by the constitution of this great and free state, which protects him in the enjoyment of all his political immunities and domestic comforts. All here enjoy equal rights, and hence all are equally concerned in the due administration of the laws. But surely, none can, or ought to have a more immediate concern on this topic, than the servants of the people, or the officers to whom are confided the management of the interests of the community. If to such this book should be auxiliary in the discharge of their official duties, I shall experience the happy consolation, of having been useful to my fellow citizens, which I consider the greatest of all rewards.

JOHN TAPPEN.

Kingston, *Oct.* 14, 1816.

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THE

COUNTY AND TOWN OFFICER.

PART FIRST.

CHAP. I.

OF THE CIVIL DIVISIONS OF THE STATE OF NEW-YORK.

BEFORE we proceed to examine the various subjects which constitute the chief objects that are contemplated in this work, it is proper that we should consider the Civil Divisions of this State and the general principles of Government and jurisprudence which have been adopted for the civil conduct of its citizens. It must always be remembered, that in every civilized society the constitution of its government, which it is supposed has emanated directly from the will and consent of the community, is the fundamental pillar of its laws, and is of paramount obligation. An edict or statute which is contrary to the constitution, is properly considered of no binding force; for where an administration violates its injunctions, or the legislature enact laws according to their own caprice, there the liberties of the people are in danger.

This state is divided into towns, counties and districts. The component parts and connections of the two first it is not material for us now to investigate. We would merely observe, that the constitution and laws of this state, have engendered political relations between the two last, which it may be proper here to notice.

The second article of the constitution of this state ordains, that the supreme legislative power, shall be vested in two separate and distinct bodies of men: the one to be called the Assembly of the state of New-York; and the other to be called the Senate of the state of New-York; who together shall form the Legislature, and meet once at least in every year for the dispatch of business.

By the fourth article of the said constitution, it was ordained,

that the Assembly should consist of at least seventy members, to be annually chosen in the several counties, and that as soon after the expiration of seven years, subsequent to the termination of the revolutionary war, as might be, a census of the electors and inhabitants in this state should be taken under the direction of the legislature. And if on such census it should appear, that the number of representatives in assembly from the said counties were not justly proportioned to the number of electors in the said counties respectively, that the legislature should adjust and apportion the same by that rule. And further, that once in every seven years, after the taking of the said first census, a just account of the electors resident in each county should be taken; and if it should thereupon appear that the number of electors in any county, should have increased or diminished one or more seventieth parts of the whole number of electors, which on the said first census should be found in this state, the number of representatives for each county should be increased or diminished accordingly, that is to say, one representative for every seventieth part as aforesaid.

It is nevertheless provided, that the number of Senators shall never exceed one hundred, nor the number of Assemblymen three hundred.*

Hence originates a First Civil Division of this state into one or more counties, for the purpose of choosing members of Assembly.

The twelfth article of the constitution declares, that so much of this state as is parcelled into counties, shall be divided into four great districts; to be called, *the Southern District, the Middle District, the Western District*, and *the Eastern District*; which constitutes a Second Civil Division of this state.

A Third Civil Division has been made, in pursuance of the constitution of government of the United States, by various acts of our state legislature; the last of which that has come under our observation was passed April 2, 1813, and is entitled, "An act for regulating the election of representatives for this state, in the house of representatives of the Congress of the United States;" and thereby this state is divided into twenty-one districts for electing members of congress.

It is thus to be seen, that independent of town sections, this state consists of three Civil Divisions. Let us briefly examine them in detail.

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* The Constitution, as amended at Albany, October 27, 1801, declares, that the number of members of Assembly to be elected, shall be 100 and never exceed 150, and that the number of Senators, shall be permanently 32.

I.—STATE DIVISION.

This state contains the following Counties, Electors, and population.

(STATE CENSUS 1814.)

COUNTIES.	*Electors.*	*Population.*
Albany,	5476	33885
Allegany,	619	3833
Broome, (Owego not returned)	1324	8482
Cayuga,	5526	37318
Chatauque,	640	4259
Chenango, (Eastern Greene and Pharsalia not returned)	3113	20219
Clinton,	1283	7764
Columbia,	5317	33979
Cortland,	1540	10993
Delaware, (Franklin not returned)	2810	19239
Dutchess,	6685	43707
Essex, (Jay and Seroon not returned)	1197	7807
Franklin,	452	2568
Genesee,	3985	23978
Greene,	2861	20200
Herkimer,	3438	20837
Jefferson,	2787	18564
Kings,	1225	7655
Lewis,	1184	6848
Madison,	4012	26276
Montgomery,	6437	40630
New-York,	13941	95519
Niagara, (not returned)		
Oneida, (Florence not returned)	6847	44833
Onondaga,	4678	30801
Ontario,	9096	56892
Orange,	4478	31284
Otsego,	6402	40587
Putnam,	1499	9353
Queens,	3210	19269
Rensselaer,	5924	36833
Richmond,	824	5502
Rockland,	1146	7817
Saratoga,	5120	31139
Schenectady,	1773	10896
Schoharie,	4638	19325

Counties.	*Electors.*	*Population.*
Seneca,	3270	21401
St. Lawrence, (Oswegatchie, Rossie and Russel not returned)	1254	7095
Steuben,	1831	11121
Suffolk,	3709	21368
Sullivan,	1047	6233
Tioga,	1589	10438
Ulster,	4189	26328
Warren,	1321	7838
Washington,	5487	36359
Westchester,	4290	26367
	157,354	1,014,633

Number of Assemblymen Elected in the several Counties.

An act of the legislature, entitled, "An act apportioning the members of Assembly of this state according to the rule prescribed by the constitution," passed April 8, 1815, declares, that the number of Assembly to be chosen in each of the counties of this state, shall be as follows, to wit:

Counties.	No. Members.
City and Co. of New-York,	11
Suffolk,	3
Queens,	3
Kings,	1
Richmond,	1
Westchester,	3
Rockland,	1
Orange,	4
Putnam,	1
Dutchess,	5
Columbia,	4
Ulster and Sullivan,	4
Delaware,	2
Greene,	2
City and Co. of Albany,	4
Schenectady,	2
Montgomery,	5
Saratoga,	4
Rensselaer,	5
Washington and Warren,	5
Essex,	1
Clinton and Franklin,	1
St. Lawrence,	1
Lewis,	1

Counties.	No. Members.
Oneida,	5
Jefferson,	2
Herkimer,	3
Madison,	3
Otsego,	5
Schoharie,	3
Chenango,	3
Cortland,	1
Broome,	1
Tioga,	1
Allegany and Steuben,	1
Chautaugue, Cattaraugus and Niagara,	2
Seneca,	3
Genesee,	3
Ontario,	7
Cayuga,	4
Onondaga,	4

And the said act further declares, that until other legislative provision be made, the electors of the said counties of Ulster and Sullivan, Washington and Warren, Clinton and Franklin, Steuben and Allegany, and Niagara, Chatauque and Cattaraugus, shall give their votes for the number of members of assembly as above designated, in the same manner as if the said annexed counties were originially formed: And that the clerks of the said respective counties of Sullivan, Warren, Franklin, Allegany, Chautauque and Cattaraugus, shall within fourteen days after the time appointed for the inspectors of the several towns in the counties respectively, for delivering to them the certificates of the number of votes given in such towns for each candidate for the assembly, deliver, or by a sworn deputy cause the said certificates to be delivered, at the clerk's office of the said counties of Ulster, Washington, Clinton, Steuben, and Niagara, to the clerks of the said counties respectively, who shall calculate the same together with the votes given in their respective counties, within ten days after the time hereby limited for the delivery of the certificates aforesaid, and shall then from the whole of the certificates delivered to him, determine the persons duly elected by the greatest number of votes, as members of assembly for the said counties of Washington and Warren, Ulster and Sullivan, Clinton and Franklin, Steuben and Allegany, and of Niagara, Cattaraugus and Chatauque, respectively, and shall proceed therein as is directed by the act for regulating elections.

II.—STATE DIVISION

FOR THE ELECTION OF SENATORS.

By the act, entitled, "An act respecting the four great Senatorial Districts of this state," passed April 17, 1815, it is enacted, that from and after the first Tuesday in May, in the year one thousand eight hundred and fifteen, the four great districts of this state for the election of senators, shall respectively comprehend the following counties, to wit:

DISTRICTS.

SOUTHERN.	*No. Members.*	MIDDLE.	*No. Members.*
City & Co. New-York,		Orange,	
Kings,		Ulster,	
Queens,		Sullivan,	
Suffolk,		Delaware,	
Richmond,	6	Greene,	
Westchester,		Schoharie,	9
Putnam,		Columbia,	
Dutchess, &		Otsego,	
Rockland.		Chenango, and	
		City & Co. of Albany,	
WESTERN.		EASTERN.	
Oneida,		Rensselaer,	
Madison,		Washington,	
Onondaga,		Warren,	
Cayuga,		Essex,	
Seneca,		Franklin,	
Ontario,		Clinton,	
Niagara,		Saratoga,	8
Genesee,	9	Schenectady,	
Chatauque,		Montgomery,	
Allegany,		Herkimer,	
Steuben,		Lewis,	
Tioga,		Jefferson, and	
Cortland,		St. Lawrence.	
Broome, and			
Cattaraugus.			

III.—STATE DIVISION

FOR THE ELECTION OF MEMBERS OF CONGRESS.

The act of 1813, for regulating the election of representatives for this state to congress, provides, that for the election of such representatives, this state shall be divided into the following districts, to wit:

First District. Suffolk, Queens, Kings, Richmond, and the first and second Wards of the city of New-York.

Second District. The third, fourth, fifth, sixth, seventh, eighth, ninth, and tenth Wards of the city of New-York.

Third District. Westchester and Rockland.

Fourth District. Putnam and Dutchess, exclusive of the towns of Redhook, Rhinebeek and Clinton.

Fifth District. Columbia and the towns of Redhook, Rhinebeek, and Clinton in Dutchess.

Sixth District. Orange.

Seventh District. Ulster and Sullivan.

Eighth District. Greene and Delaware.

Ninth District. Albany County.

Tenth District. Rensselaer.

Eleventh District. Saratoga.

Twelfth District. Washington, Warren, Essex and Clinton.

Thirteenth District. Schenectady and Schoharie.

Fourteenth District. Montgomery.

Fifteenth District. Otsego, Chenango and Broome.

Sixteenth District. Oneida.

Seventeenth District. Herkimer and Madison.

Eighteenth District. Lewis, Jefferson and St. Lawrence.

Nineteenth District. Onondaga and Cortland.

Twentieth District. Cayuga, Seneca, Tioga and Steuben.

Twenty-first District. Ontario, Allegany, Genesee, Niagara, Cattaraugus and Chatauque.

We subjoin that the ratio of representation in the House of Representatives in Congress, is one member for every 35,000 of the representative population of the United States. The members are apportioned, according to the third census, by the act of the 21st December, 1811, as follows:

New-York,	27	Maryland,	9
New-Hampshire,	6	Virginia,	23
Massachusetts,	20	North-Carolina,	13
Vermont,	6	South-Carolina,	9

Rhode-Island,	2	Georgia,	6
Connecticut,	7	Kentucky,	10
New-Jersey,	6	Ohio,	6
Pennsylvania,	23	Tennessee,	6
Delaware,	2	Louisiana,	1
	99		83
			99
			182

CHAP. II.

OF THE GOVERNMENT AND LAWS OF THE STATE OF NEW-YORK.

I.—THE GOVERNMENT.

It is proper to remark, that there is a radical distinction between the government, and the administration of the body politic, inasmuch as the former is predicated on the fundamental principles of the constitution, and embraces all its provisions; whereas the latter implies the mere exercise of the powers which it derives from the former. A government may be good, when the administration is bad. The one may be compared to a fountain from whence the stream issues, and the other to the enjoyment of it. As long as a fountain remains pure, we know it will emit salutary waters; but the moment it is polluted, they become obnoxious. So with a government. While a people rally around it as the anchor of their rights and preserve inviolate their constitutional privileges, so long will they preserve the blessings of liberty. But where a depraved administration undermine or pervert the elementary ingredients of the government, there the rights of man are jeopardized.

The government of this state consists of three distinct branches: *The Executive; the Legislative*, and *the Judicial*. The first is committed to the management of the governor; the second to the senate and members of assembly, and the third to the judges and the courts of law, from the supreme court, down to the most inferior tribunals, according as it becomes the legal province of any of them to pronounce judgment.

It remains to be inquired how these three branches of our state government are constituted.

The Governor. The seventeenth article of the constitution

declares, that the supreme executive power and authority of this state, shall be vested in a governor, and that statedly once in every three years, and as often as the seat of government shall become vacant, a wise and discreet freeholder of this state shall be by ballot elected governor by the freeholders of this state, possessed of freeholds of the value of one hundred pounds, over and above all debts and charges thereon.

The governor has a constitutional power to convene the assembly and senate on extraordinary occasions, to prorogue them from time to time, provided such prorogations shall not exceed sixty days in the space of a year; and at his discretion to grant reprieves and pardons to persons convicted of crimes, other than *treason* or *murder*, in which he may suspend the execution of the sentence, until it shall be reported to the legislature at their subsequent meeting; and they shall either pardon or direct the execution of the criminal, or grant a further reprieve. *Con. N. Y.*

No action lies against a governor of this state in the name of the people, to recover back any part of the money received by him, under the acts of the legislature, to defray the incidental charges arising in and about administering the government of this state; for what shall be deemed incidental charges, not being defined by law, they must necessarily be left to the discretion of the executive, under the control only of the legislature, and the propriety of the expenditures is not a subject of judicial cognizance. 7. *Johns. Rep.* 73.

The Senators and Assemblymen. We have before seen how the senators and assemblymen were created our legislative body. We shall now subjoin that the former are elected by freeholders, possessing the same qualifications as those who may vote for governor, and that by the seventh article of the constitution, every male inhabitant of full age, who shall have personally resided within one of the counties of this state, for six months immediately preceding the day of election, shall at such election be entitled to vote for representatives of the said county in assembly, if during the time aforesaid, he shall have been a freeholder, possessing a freehold of the value of twenty pounds, within the said county, or have rented a tenement therein of the yearly value of forty shillings, and been rated and actually paid taxes in this state.

The Judiciary. Our constitution does not expressly organise any of our courts of law, except the court for the trial of impeachments and the correction of errors. It, however, recognises the appointment of the officers of our respective legal tribunals, and designates the tenure and duration of their several offices. It will be found that no further provision on this sub-

ject was necessary, when it is considered, that the founders of our constitution recognised the general principles of the common law of England, for the administration of which, courts had already been established under the colonial government, and which were in the full exercise of legal prerogatives at the time of the adoption of the constitution. The legislature have, however, the power to new model and regulate them as the public exigencies and nature or spirit of our laws may require.

It is the business of the judges to explain and decide the laws as they find them, and not to agitate their constitutionality; because that would be to encroach on the powers of the legislature.* In fine, it is the duty of our legislature to make laws, of the judges to determine, and the governor to execute them.

AGENCY OF THE THREE BRANCHES OF GOVERNMENT IN MAKING LAWS. All bills which have passed the senate and assembly, shall, before they become laws, be presented to the council of revision, (consisting of the governor for the time being, the chancellor and the judges of the supreme court, or any two of them together with the governor,) for their revisal and consideration. And if upon such revision and consideration, it should appear improper to the said council, or a majority of them, that the said bill become a law of this state, that they return the same, together with their objections thereto in writing, to the senate and house of assembly, in which soever the same shall have originated, who shall enter the objections sent down by the council, at large, in their minutes, and proceed to reconsider the said bill. But if after such reconsideration, two-thirds of the senate, or house of assembly shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the legislature, where it shall be reconsidered, and if approved by two thirds of the members present, shall be a law. *Provided*, that if any bill

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* When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner. Again, there is no liberty, if the power of judging be separated from the legislative and executive powers. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control. Were it joined to the executive power, the judge might behave with all the violence of an oppressor. There would be an end of every thing, were the same man, or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and that of judging the crimes or differences of individuals.—*Montesquieu's Spirit of Laws.*

shall not be returned by the council, within ten days after the same shall have been presented, the same shall be a law, unless the legislature shall by their adjournment, render a return of the said bill within ten days impracticable; in which case the bill shall be returned on the first day of the meeting of the legislature, after the expiration of the said ten days. *Con. N. Y.*

As our legislature proceed upon the same rudimental principles in framing laws, as the British parliament, it may not be amiss to furnish the reader with the following remarks of a celebrated English writer on this subject:

"To bring a bill into a house, if the relief sought by it is of a private nature, it is first necessary to prefer a petition; which must be presented by a member, and usually sets forth the grievance desired to be remedied. This petition, (when founded on facts that may be in their nature disputed,) is referred to a committee of members, who examine the matter alleged, and accordingly report it to the house; and then, (or otherwise, upon the mere petition,) leave is given to bring in the bill. In public matters the bill is brought in upon motion made to the house, without any petition at all.

"The persons directed to bring in the bill, present it in a competent time to the house, drawn out on paper, with a multitude of blanks, or void spaces, where any thing occurs that is dubious, or necessary to be settled by the parliament itself; (such, especially, as the precise date of times, the nature and quantity of penalties, or of any sums of money to be raised) being indeed only the skeleton of the bill. In the house of lords, if the bill begins there, it is (when of a private nature) referred to two of the judges, to examine and report the state of the facts alleged, to see that all necessary parties consent, and to settle all points of technical propriety. This is read a first time, and at a convenient distance a second time; and after each reading the speaker opens to the house the substance of the bill, and puts the question, whether it shall proceed any farther. The introduction to the bill may be originally opposed, as the bill itself may at either of the readings; and, if the opposition succeeds, the bill must be dropped for that sessions; as it must also, if opposed with success in any of the subsequent stages.

"After the second reading, it is committed, that is, referred to a committee; which is either selected by the house in matters of small importance, or else, upon a bill of consequence, the house resolves itself into a committee of the whole house. A committee of the whole house is composed of every member; and to form it, the speaker quits the chair, (another member being appointed chairman,) and may sit and debate as a private member. In these committees the bill is debated clause by

clause, amendments made, blanks filled up, and sometimes the bill entirely new modelled. After it has gone through the committee, the chairman reports it to the house with such amendments as the committee have made; and then the house reconsider the whole bill again, and the question is repeatedly put upon every clause and amendment. When the house have agreed or disagreed to the amendments of the committee, and sometimes added new amendments of their own, the bill is then ordered to be engrossed, or written in a strong gross hand, on one or more long rolls of parchment sewed together. When this is finished, it is read a third time, and amendments are sometimes then made to it; and, if a new clause be added, it is done by tacking a separate piece of parchment on the bill, which is called a ryder. The speaker then again opens the contents; and, holding it up in his hands, puts the question, whether the bill shall pass. If this is agreed to, the title to it is then settled; which used to be a general one for all the acts passed in the session, till the fifth year of Henry VIII. distinct titles were introduced for each chapter. After this, one of the members is directed to carry it to the lords, and desire their concurrence; who, attended by several more, carries it to the bar of the house of peers, and there delivers it to their speaker, who comes down from his woolsack to receive it.

"It there passes through the same forms as in the other house, (except engrossing, which is already done,) and, if rejected, no more notice is taken, but it passes *sub silentio*, to prevent unbecoming alterations. But if it is agreed to, the lords send a message by two masters in chancery, (or sometimes two judges,) that they have agreed to the same: and the bill remains with the lords, if they have made no amendment to it. But if any amendments are made, such amendments are sent down with the bill to receive the concurrence of the commons. If the commons disagree to the amendments, a conferrence usually follows between members deputed from each house; who for the most part settle and adjust the difference; but, if both houses remain inflexible, the bill is dropped. If the commons agree to the amendments, the bill is sent back to the lords by one of the members, with a message to acquaint them therewith. The same forms are observed, *mutatis mutandis*, when the bill begins in the house of lords."

NOTICE OF INTENDED APPLICATION TO THE LEGISLATURE. Before we dismiss the subject of legislation, it may be acceptable to our readers that we should indicate the law requiring previous notices, in certain cases of intended application to the legislature. The act, entitled "an act relative to incorporations and divisions of counties," passed March 26, 1813, pro-

vides, "That when any association shall be formed for any purpose whatever, after the first day of July next, (thereafter) shall be disposed to make application to the legislature for an act of incorporation, or any company or association already incorporated shall be disposed to make application for any alteration in the law so incorporating them, it shall be the duty of the persons so associated, or the directors or stockholders of such incorporation, or some of them, to signify such their intention by advertisement, to be inserted for at least six weeks successively, immediately before such application, in one or more of the newspapers printed in the county where the objects of such association or incorporation is carried or intended to be carried into effect, and also in the newspaper printed by the printer to the state; and if no newspaper be printed in such county, then in the newspapers or paper nearest to the same, and shall specify the objects of such incoproration, the amount of capital stock requisite to carry their objects into effect; and in case of an application for any alteration in any charter already granted, it shall be the duty of the stockholders or directors of such incorporation, to state in such notice, specifically, the alteration to be applied for; and that due proof shall be made of such notice having been published previous to leave being given to bring in any bill, to comply with any such application: *And further*, that the like notice shall be published of any application to divide any county within this state, or to erect any new county out of parts of counties."

II.—THE LAWS.

The thirty-fifth article of the constitution of this state, ordains and declares, that "such parts of the common law of England and of the statute law of England and of the acts of the Colony of New-York, as together did form the law of the said Colony, on the nineteenth day of April, in the year one thousand seven hundred and seventy-five, *shall be and continue the law of this state*; subject to such alterations and provisions as the legislature of this state, shall from time to time make, concerning the same."

In order therefore, to obtain a correct knowledge of the laws of this state, it is material for the enquirer to ascertain, what parts of the common and statute law of England were originally laws in this state, and how they have been subsequently altered, provisionally adopted, or finally rejected by our legislature.—

We take it for granted, that the elementary principles of the common law of England, contained in the commentaries of Sir *William Blackstone*, and which in fact comprise the general principles of the code of common law which we have borrowed from Great-Britain, were recognized by our constitution, subject to be altered or modified as therein expressed.

The law of this state then, may be divided into two kinds: *Statute Law*, and *Common Law*. The *Statute Law*, consists of the various acts which our legislature have from time to time passed.

The *Common Law*, may be properly defined to be a collection of antient customs and maxims, commonly known to all the realm, from whence we have derived it.

"By general custom it is, that proceedings are guided in the common courts of Justice, both with respect to property and offences. It is by custom in common law, that the eldest son* inherits from his father—that property may be purchased by writings—that a deed is void if not sealed and delivered—that money lent upon a bond, is recoverable by an action of debt, and that a breach of the peace is punishable by fine and imprisonment. These are doctrines not established by any act of parliament or any written law, but depend on immemorial usage." *Blackstone.*

"The validity of these customs or maxims is determined by the Judges in the several courts of justice. They are the depository of the laws, and bound by an oath to decide according to the law of the land. And it is an established rule to abide by former precedents where the same points come again in litigation." *ibid.*

Hence the reports of the decisions of the judges, are evidence of the common law. And according to that part of the constitution of this state which we have quoted in the beginning of this chapter, the reported judicial determinations of the British legal tribunals, which on the 19th day of April, 1775, formed a part of the law of the colony of New-York, are of course to be considered as law in this state, subject however to be altered by our legislature, and to be expounded by the judiciary of this state, according to the spirit of our constitution and the genius of our government. It must however be observed, that in all

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* By the law of descents of this state, where a person dies intestate, his real estate descends to his children, or if he leaves no children, to his next of kin, in an equal degree, share and share alike. And our statute of distribution of intestate estates, makes a similar provision for the distribution of personal property, in cases of intestacy.

litigated cases, where our legislature have not provided rules for the determination of our judges, the common law must essentially prevail.

The framers of our constitution wisely restricted our adoption of the British jurisprudence, to a definite period; it hence follows, that the subsequent legal determinations in that country, are not law in this state; and yet there is scarcely a lawyer's library among us, but contains books of that description.—These, although they are no law with us, may however not be altogether destitute of use; inasmuch as they may be auxiliary in the construction of the common law in extraordinary cases, and thus be serviceable to our judges; but they are by no means bound to conform to them. In fine, our common law is composed of such parts of the common law of England, as were the law of the colony of New-York, on the 19th day of April, 1775, as illustrated by the adjudications of our judges, as far as they extend, together with so much of the said law as is not abrogated by our statutes, or disapproved by our judiciary. These adjudications have for about fourteen years preceding this time, been embodied and published in the form of the British Reports, and are principally comprehended in Coleman's Cases, Caines' Reports, and Johnson's Reports and Cases. And it is a maxim invariably sanctioned by all common law tribunals, that where a point has been uniformly determined by the judges in the same manner, even although it be not reduced to writing, it is evidence of the common law. We shall conclude this chapter by remarking, that the forty-first article of the constitution declares, that the legislature shall establish no new court, but such as proceeds according to the course of the common law.

With these preliminary remarks, we proceed to investigate the different subjects which compose the following pages. We premise, that it is our intention to consider and delineate in this work, the several duties of County and Town Officers, as enjoined on them respectively by the constitution and statutes of this state, independent of the general provisions of the common law, or the ordinary administration of civil or political justice, as far as the same may be conducted on the broad principles of that law. For we anticipate, that a view of the diversity of topics here contemplated, according to the course of the common law, would not only swell this work far beyond our intended limits, but might perhaps not give that satisfaction to the reader, which the plan we have adopted may afford.

CHAP. III.

A CONCISE VIEW OF THE DUTIES AND OFFICES OF COUNTY OFFICERS IN THE STATE OF NEW-YORK.

The civil officers in authority in each of the counties in this state, may be enumerated as follows, to wit:

THE SHERIFF,
CORONER,
JUDGES OF THE COMMON PLEAS,
COUNTY CLERK,
SURROGATE,
JUSTICES OF THE PEACE,
LOAN-OFFICERS,
SUPERVISORS,
COUNTY TREASURER,
AUCTIONEERS, &
INSPECTORS OF COMMODITIES.

THE SHERIFF.

NATURE OF HIS OFFICE.

The Sheriff, as principal conservator of the peace, is both by common law and special commission, the first man in the county, and to him is the custody thereof committed. He may apprehend and commit to prison all who break or attempt to break the peace; and may bind any one in recognisance to keep it. He is also to defend the county against any of the people's enemies: and, for this purpose, as well as for keeping the peace and pursuing felons, he may command all the people of his county to attend him. 10 Johns. Rep. 85. Impey's Sheriff 41. Laws N. Y. 6 April, 1813.

He is invested with judicial and ministerial authority: that is, he is both a judge and bailiff. In the former capacity, he must act in person, and not by under-sheriff or deputy. His ordinary duties, however, are exercised in his ministerial capacity, that is, in the service and execution of process to him directed, yet although it be his duty to serve the people's writs, it is said not to be lawful for him to raise a force for the execution of *civil process*, unless he finds a resistance; and it is certain that he is highly punishable for using any needless violence or outrage.

His duties are more extensive than any other officer in the county.

It would exceed our purpose and intended limits to explain them at large. We shall, therefore, only take notice of such as we conceive to be connected with the objects before us. Let us first inquire into the nature of his appointment.

APPOINTMENT.

By the 26th article of the constitution, it is ordained, "that sheriffs and coroners be annually appointed; and that no person shall be capable of holding either of the said offices, more than for four years successively, nor the sheriff, of holding any other office at the same time."

No person shall be appointed sheriff of any county in this state, unless he be a substantial freeholder in such county; and all commissions to sheriffs, shall be in this form: "The people of the state of New-York, to all to whom these presents shall come, greeting, Know ye, that we have committed to our well beloved A B, our county of , with the appurtenances, to keep during the pleasure of the council of appointment. In testimony whereof, we have caused these our letters to be made patent, and the great seal of our state to be hereunto affixed." Law N. Y. 6th April, 1813.

Before the sheriff enters upon the duties of his office, he must give a bond with competent sureties, to the people of this state, for the faithful performance of his office, which must be lodged in the clerk's office of the county. *Ibid.*

And as the sheriff is annually to be appointed, the bond must annually be renewed.

OATH.

He must also take an oath before the clerk of his county, or in case of his absence or sickness, before two of the judges of the common pleas of his county, of whom the first judge must be one, well and faithfully to serve the people of this state, in

the office of sheriff, and to execute, or cause to be executed, all writs and precepts which shall be delivered to him, or come to or remain in his hands for that purpose.

It may not be improper here to remark, that the act concerning oaths requires, that every person who shall be appointed to any office, civil or military, in the state, shall, before he enters upon the execution of his trust, or office, take and subscribe the oath of office; that being enjoined as an indispensable duty on all officers, we have deemed it requisite to embody that act in this book. The reader will find it at the end of the first part.

HIS STATUTE DUTIES.

If the beasts, or goods, or chattels of any person be wrongfully taken or detained, the sheriff, by a writ of replevin, or upon complaint, shall cause the same to be replevied and delivered. And if he makes replevin before the property is tried, he forfeits two hundred and fifty dollars, besides being answerable for the trespass. Law Replevin, N. Y. 6 Feb. 1788.

In cases of forcible entries and detainers, he must be attendant on the justices, to go and assist them in the arrest of offenders. Law N. Y. forcible ent. & Det. 6 Feb. 1788.

From premises which are demised he cannot remove goods or chattels in virtue of any execution, without paying the landlord one year's rent in arrear, and he is authorized to levy and pay to the plaintiff, as well the money so paid for the rent, as the execution money. Law N. Y. Distresses, April 5, 1813.

He is to cause twenty-four good and lawful men of his bailiwick, to come before the court of Oyer and Terminer and gaol delivery, as often as the same sets in his county, to inquire for the people, and to do and receive all those things, which on the behalf of the people, shall there be enjoined on them, and also the prisoners then being in the gaol of his county with the minuments concerning them; and likewise so many good and lawful men qualified to serve as petit jurors, as may be directed to try such prisoners; and also to give notice to all justices of the peace, coroners, bailiffs and constables in his county to appear before such court with their records, &c. Law N. Y. Oyer & Terminer, April 5, 1813.

It is his duty, by the 16th section of the Jury act of 1813, to furnish any person applying, with a copy of the panel of the jurors to serve on the trial of issues in any of the courts in the said act specified; and the preceding section enjoins it upon

him to annex a panel of the jurors to all process to him directed for the trial of issues, except in cases of special juries, with their places of abode and additions.

The sheriff, together with the constables is bound to execute the sentence of special sessions of the peace, in virtue of a warrant under the hands and seals of the justices who hold the same; and the charges of prosecuting, punishing and transporting every offender, shall be defrayed by the county, so as that all the charges for each offender shall not exceed five dollars. Law N. Y. Duties Justices, April 13, 1813.

The sheriff is also, by the act of the 20th March, 1801, obliged to make fresh pursuit of all felons.

He has the custody of the gaol of his county, and is to receive all prisoners sent to the same.

He is to make arrests on all civil and criminal process, delivered to him for that purpose, and to conduct therein according to law.

It is incumbent on him to summon jurors for the trial of all civil and criminal issues, to be tried, not only at the Oyer and Terminer, as aforesaid, but also at the Circuit, Common Pleas, and General Sessions of the Peace of his county.

CONVICTS TO THE STATE PRISON.

It is the duty of the sheriff, on receiving the clerk's certificate of the sentence of court of any convict to the state prison, forthwith to convey such convict to the said prison, and deliver him, together with the said certificate, to the keeper of the said prison; and he must receive from the said keeper a receipt for such delivery of the said convict; and the sheriff shall be allowed for the support and maintenance of such convicts, at and after the rate of one dollar per day for each and every convict so conveyed and delivered by him, together with the other reasonable expences attending the conveyance of such convict or convicts, and shall in addition thereto be entitled to receive for his services in conveying such convict or convicts as aforesaid, at and after the rate of twenty-five cents per mile, to be computed from the place at which such sheriff may have received such convict or convicts; but no other or further charge of milage shall be allowed for conveying two or more convicts as aforesaid, than for the conveyance of one; all of which monies shall be paid to the sheriff performing the said services, out of any money in the treasury, not otherwise appropriated.

Law N. Y. State Prison, May 21, 1812.

And in conveying such convicts to the state prison, a sheriff has the like power to demand the assistance of any of the peo-

ple of this state in the premises, as if such sheriff was in his own county. Ibid,

The 28th section of the act, entitled, "An act for the payment of certain officers of government, and for other purposes," passed April 18, 1815, provides, that instead of the allowance to sheriffs, by the act last above referred to, for their services and expences in the transportation of convicts sentenced to imprisonment in the state prison, there be allowed and paid to them respectively for their services and expences, the following sums, to wit: for the conveying a single convict, for each mile from the county jail from which such convict shall have to be conveyed, to the state prison, fifty cents; for conveying two convicts, for each mile as aforesaid, sixty-seven cents; for conveying three convicts, for each mile as aforesaid, sixty-nine cents; for conveying four convicts, for each mile as aforesaid, seventy-one cents; and for conveying five convicts, for each mile as aforesaid, seventy-three cents; and for all additional convicts, such reasonable allowance as the comptroller may think just, which said allowances, with one dollar per day for the maintenance of each convict whilst on the way to the state prison, shall be in full of all charges and expences in the premises.

HIS FEES ON CERTAIN EXECUTIONS.

By the 27th section of the same act, it is also provided, that the sheriff's fees in the several counties in this state for serving an execution, issuing out of any court of common pleas or mayor's court within this state, for or under two hundred and fifty dollars, shall be six cents, for every two dollars and fifty cents, any thing in the act, entitled "an act regulating the fees of the several officers and ministers of justice within this state," passed April 9, 1813, to the contrary notwithstanding.

HIS ACCOUNTS WITH THE EXCHEQUER.

By the 8th section of the act, entiled, "An act relative to the court of exchequer," passed April 10, 1813, it is enacted, that all sheriffs, coroners, and other officers, who shall have received or become liable for any fines, forfeitures, issues or amerciaments, shall annually on the first day of May or October term, render a just and true account on oath to the said court of exchequer, and pay the balance, if any be found due thereon to the state, to the clerk of the said court, which account shall be audited and settled by the said court: And if any sheriff, coroner or other officer, shall not pay such balance within twenty days after the auditing of his account, execution shall issue

against him for the same; and if a balance be found in favor of any such sheriff, coroner or other officer, he shall be entitled to receive the same out of the treasury of the state, on a certificate under the hand of the judge, and under the seal of the said court. *And further*, where a fine, imposed on a grand juror, petit juror, or any other officer, for neglecting or refusing to attend a court, shall have been levied by the sheriff, and by him paid to the clerk of the said court, and shall afterwards, on the petition of the defendant, be remitted by the said court, in whole or in part, such defendant shall on a like certificate, be entitled to receive the sum so remitted out of the treasury of this state.

HIS DUTY ON WRITS OF EXECUTION.

The sheriff is to execute in his bailiwick, all legal executions, upon judgments in the courts of record in this state, to him directed, whether against the body, lands, or goods of a defendant.

By the act concerning judgments and executions, passed April 2, 1813, it is enacted, that a debtor's lands shall be bound, from the time judgment in any court of record, is docketed and filed against him, and that his goods and chattels shall be held, from the time of the delivery of the execution thereupon to the sheriff. Therefore it is made the duty of the sheriff, upon the receipt of any such execution, to endorse upon the back thereof, the day of the month and year when he received the same.

The sheriff cannot sell any real property by an execution on a judgment docketed in any court of record, before the 2d April, 1813, after ten years shall have expired from the 9th day of April, 1811, nor upon any judgment entered after the said 2d day of April; 1813, when and after ten years from the docketing and filing the same, shall have expired.

It is his duty to sell the personal property of a defendant, in virtue of any *fieri facias* to him delivered, before he disposes of the realty. The under sheriff, in case of the sheriff's death, is authorised to execute any writ of execution.

Where the lands of several are bound by a judgment, and one pays more than his part, the sheriff, when commanded, must inquire of the value of all the lands bound by such judgment, and return his inquisition thereupon; upon which the justices of the supreme court will cause the debt due by such judgment to be proportioned according to equity and justice, and to be levied accordingly.

ON SALE OF LANDS BY EXECUTION.

By the said statute, last above quoted, no lands or tenements

shall be sold by virtue of any execution, unless such sale be at public vendue, between the hours of nine in the morning, and the setting of the sun of the same day, nor unless such sale has been publicly advertised for six weeks, by a notice in three of the most public places in the town where such lands shall be sold, and by a similar notice in a newspaper, if any, of such county. And if such lands be unoccupied, and lie in the Eastern or Western districts of this state, then such notice must be published for such time by the state printer at Albany. In all which notices, such lands must be described with common certainty: such as the number of the lot, the name of the township, and where situated. And if any sheriff shall sell any lands or tenements by virtue of any such execution, otherwise than in manner aforesaid, or without such previous notice, or if any person shall take down or deface any such notice, previous to the day of sale thereon specified, unless upon satisfaction of the judgment on which such execution issued, or with consent of the plaintiff therein, the sheriff so offending, shall for every such offence, forfeit and pay the sum of one thousand two hundred and fifty dollars; and every person so offending, by taking down or defacing such notice, shall forfeit and pay thirty-seven dollars and fifty cents, to be respectively recovered with costs of suit, by any person who will sue for the same; which sum or sums when recovered, shall be for the use of the person so prosecuting for the same. *Provided however*, That no such offence shall be deemed to effect the validity of any such sale.

ON SALE OF GOODS BY EXECUTION.

The said statute last aforesaid provides, that no goods or chattels shall be sold by virtue of any execution, unless upon six successive days previous notice being given, in three of the most public places of the town where such sale is to be, specifying the time and place when and where such goods and chattles are to be sold; and any person who shall take down or deface any such notice, shall be liable to the same penalty, as for taking down or defacing such notice of sale of lands as above mentioned.

EXEMPTION FROM EXECUTION.

All sheep to the number of ten, together with their fleeces, and the cloth manufactured from the same, one cow, two swine, and the pork of the same, all necessary wearing apparel and bedding, necessary cooking utensils, one table, six chairs, six knives and forks, six plates, and six cups and saucers, owned by

any person being a householder, shall be **exempted* from execution and distress for rent, any law to the contrary notwithstanding. Law N. Y. April 18, 1815.

It is not lawful for the sheriff to purchase any real or personal property on any sale by virtue of any execution, and any such purchase is by law declared to be void.

DUTY ON COUNTY TREASURER'S WARRANT.

Every sheriff to whom any warrant is directed against any delinquent collector, must immediately execute the same, and make return thereof to the county treasurer, within the time limited, and pay him the money levied by virtue thereof, after deducting five cents upon every dollar of the sum levied, for his fees, and no more. And if the whole sum is not levied, he must endorse on the warrant the amount so levied, exclusive of his fees, and that such collector has not more lands or tenements, goods or chattels in his county, whereon he could cause the residue of the money therein mentioned to be levied or made. And if he cannot find any goods or chattles, lands or tenements of such collector, whereof he can cause any part of the sum mentioned in such warrant to be made or levied, he must make return thereof accordingly. In case any sheriff is negligent in the premises, he becomes liable to the people of this state in an action for money, had and received to their use, and for the whole sum directed to be levied by such warrant, together with costs of suit. Law N. Y. Assessment and Collection of Taxes, April 5, 1613.

WHEN TO DELIVER A COPY OF HIS FEE BILL.

It is enacted by the 9th section of the act concerning counsellors, attorneys and solicitors, that no attorney, solicitor, sheriff, or coroner, shall commence any action for the recovery of any fees or charges, until eight days after he shall have delivered to the party to be charged therewith, or left for him at his dwelling house or place of abode, a bill of such fees and charges, written in a common legible hand, in the English tongue, except law terms and names of writs, and in words at length, except times and sums and such abbreviations as are commonly used

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* By an act passed 17 April, 1816, no spinning-wheels, weaving-looms or stoves, placed or put up for use, and kept for use in any dwelling house, shall be levied upon, taken or sold by virtue of any execution, nor distrained for rent.

in the English language, subscribed with the proper hand writing of such attorney, solicitor, sheriff or coroner.

For a more particular detail of the sheriff's statute duties, we refer the reader to the act, entitled "an act concerning sheriffs and their duty, in respect to process, arrests and keeping of prisoners," passed April 6, 1813.

POINTS ADJUDGED IN THE SUPREME COURT OF JUDICATURE OF THIS STATE.

SHERIFF.

EXECUTION.

After the return day is past, the sheriff cannot levy on goods by a fi. fa. 2 Caine's Reports. 245.

If the sheriff levy a fi. fa. after the return day, by the direction of the plaintiff's attorney, both he and the attorney are trespassers. 4 Johns. Reports, 450.

A sheriff cannot with his own money pay the plaintiff on an execution, and afterwards levy the execution out of the property of the defendant; nor can he take a bond or other security, and afterwards enforce payment by the execution of the money advanced. 7 Johns. Rep. 426.

A sheriff who levies a fi. fa. is not bound to leave goods on the premises sufficient for the payment of the rent in arrear, without notice for that purpose from the landlord. 11 Johns. Rep. 185.

DEED.

A sheriff's deed is considered conditional until the consideration be paid. 2 Johns. Rep. 248.

GAOL LIBERTIES.

Where a prisoner in execution, on gaol liberties, went beyond the limits knowingly and voluntarily, on pretence of avoiding a bank of snow which obstructed his usual walk, it was held to be an escape for which the sheriff was liable. 5 Johns. Rep. 89.

The sheriff is entitled to recover against the sureties on the bond for the gaol liberties, not only the amount of the debt and

costs in the original suit, but also the costs of defending the suit against him for the escape. 7 Johns. Rep. 168.

The bond for the liberties of the gaol may be taken in double the amount of the execution, together with the sheriff's poundage fees. 8 Johns. Rep. 111.

The bond is merely for the sheriff's indemnity: he may wave it and grant the liberties without taking security. 6 Johns. Rep. 121.

If a prisoner admitted to the liberties without giving security, goes beyond the limits, but returns before suit brought, the sheriff is not liable for an escape. 5 Johns. Rep. 89.

The liberties having been appointed, it is the duty of the sheriff to take the bond; but it is not his duty, but the duty of the prisoner, to ascertain the lines, and to observe them. 7 Johns. Rep. 168.

DEPUTY SHERIFF.

An action lies against the sheriff for the act of his deputy in taking more fees on an execution than are allowed by law. 7 Johns. Rep. 35.

A sheriff is not liable on an execution delivered to his deputy. 9 Johns. Rep. 96.

An under sheriff may depute a person to serve a writ, or do a particular act. 5 Johns. Rep. 137.

On the renewal of the sheriff's commission, no new appointment or bond of the under sheriff is necessary, and the former bond stands as security against subsequent breaches. 5 Johns. Rep. 137.

OLD AND NEW SHERIFF.

The old sheriff cannot return a writ executed by him, after he is out of office. 7 Johns. Rep. 137.

The old sheriff should deliver the writ to his successor, who ought to return it into court, with the former sheriff's return thereon. Ibid.

And if the new sheriff, before the return day of the writ, let the defendant to bail, he should add to the former sheriff's return, stating the fact. Ibid.

If a writ, delivered to the old sheriff, is not specified in the indenture of assignment, the new sheriff is not bound to take or detain the defendant thereon. Ibid.

If a levy be made on lands, the sheriff will be entitled to his poundage on the sum endorsed, though in consequence of a compromise he do not sell. 1 Caines' Rep. 192.

The sheriff is entitled to poundage on a ca. sa. on serving the execution, and he has a right to call on the attorney for such poundage, without resorting to the party. 5 Johns, Rep. 182.

COMMON LAW POINTS.

SHERIFF.

An execution being an entire thing, cannot be superseded after it is once begun. After a sheriff has once levied by fi. fa. it is his duty to complete the execution.

If goods be once seized and in custody of the law, they cannot be seized again by the same or any other sheriff. 1 Show. Rep. This must mean *legally seized;* for if any thing happen to disaffirm the first seizure, and to shew it was not legal, it is considered as no seizure in law. 4 Term Rep. Kenyon.

Seizing part of the goods in a house on a fi. fa. in the name of the whole, is good. Ld. Raym.

On a fi. fa. the sheriff cannot deliver the goods to the plaintiff. Ibid.

Seizing goods on a fi. fa. will not discharge a co-obligor, unless they are sold and the plaintiff satisfied. Ibid.

If two writs of fi. fa. be delivered to the sheriff, he must execute the former first, or an action will lie against him. Ibid.

If the sheriff sells goods under a fi. fa. that was last delivered, the property is bound, and he cannot afterwards seize them under the former writ; but in such case, the party who delivered the first fi. fa. has a remedy by action against the sheriff. Ibid.

There were two joint partners in trade; judgment was against one; and on a fi. fa. against him, all the goods undivided were seized in execution. By the court. The sheriff can sell no more than the moiety, for the property of the other moiety was not affected by the judgment, nor can it be taken in execution. Ibid.

If a sheriff on a fi. fa. sells a lease or term of a house, he cannot turn the lessee out of possession, but the vendee in such case must bring his ejectment. 2 Show. Rep.

The sheriff cannot take in execution goods pawned or gaged for debt, nor goods demised or letten for years, nor goods distrained, nor the goods of a stranger on the premises; for the sheriff has power to dispose of the goods and chattles of the debtor only. Ibid.

Where a fi. fa. is delivered to the sheriff to levy 20*l.* and he takes an entire thing in execution, as a horse worth 30*l.* and sells it for so much, and returns that he levied the 20*l.* he may retain the other 10*l.* till the defendant demands it; for the sheriff is not bound to look after the defendant. But if on a fi. fa. for 20*l.* the sheriff levy five oxen, worth each of them 5*l.* and sells them for so much, the defendant may have an action of trespass against the sheriff. Salk.

If the sheriff levies money upon a fi. fa. though he make no return upon the writ, yet an action of debt or account lies against him. Rol. Abr.

By virtue of a fi. fa. the sheriff on seizure of the goods hath such a property in them, that he can maintain trespass or trover; for he has the goods to sell, that he may have the money in court; and therefore, when once he seizes them, he has the property in them for that purpose. And if the defendant dies after the writ delivered to the sheriff, he may execute the same on the goods in the hands of his executor or administrator. Salk.

The sheriff may not break open any outer door to execute a fi. fa. but must enter peaceably and may then break open any inner door, trunk or cupboard belonging to the defendant, to take the goods. Palmer.

The protection of a man's house, extends only to himself and family; for if a stranger, to elude execution, receives the defendant's goods into his house, then the sheriff's authority shall reach them, because a design to elude the law, and in such case the defendant waves the benefit of the law. Sid.

PRECEDENTS.

NO. I.

BOND FOR THE SHERIFF'S OFFICE.

KNOW ALL MEN by these presents, That we, A B, C D, E F and G H, all of K, in the county of U, are held and firmly bound to the people of the state of New-York, in the penal sum of five thousand dollars, of lawful money of the said state, to be paid to the said people; for which payment we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.—Sealed with our seals, and dated this day of in the year, &c.

Whereas the above bounden A B, hath been appointed to the office of sheriff of the said county of U, on the day of last past.

NOW THEREFORE, the Condition of the above obligation is such, that if the said A B, shall well and faithfully in all things perform and execute the office of sheriff of the said county of U, during his continuance in the said office by virtue of the said appointment, without fraud, deceit or oppression, then the above obligation to be void, or else to remain in full force and virtue.

Sealed and delivered in the presence of

A B, (L. S.)
C D, (L. S.)
E F, (L. S.)
G H, (L. S.)

NO. II.

INDENTURE FOR SETTING OVER PRISONERS AND WRITS BETWEEN THE OLD AND NEW SHERIFF.

THIS INDENTURE, made the day of , in the year, &c. between J O, Esq. late sheriff of the county of U, of the one part, and W K, Esq. present sheriff of the said county of U, of the other part, WITNESSETH, that the said late sheriff hath deli-

vered, and the said present sheriff hath received from the said late sheriff, at the time of his going out of office, the bodies of the several persons herinafter named, charged with the cause or causes hereinafter mentioned, that is to say: A B is taken and held by virtue of a writ of *Capias ad satisfaciendum*, returnable before the justices of the people of the supreme court of judicature of this state, in the term of August, 1815, to satisfy C D, for 500 dollars, which in the said court were awarded to him for his damages, &c. whereof the said A B is convicted, &c.; C D is detained by virtue of another writ of *Capias ad satisfaciendum*, returnable before the judges and assistant justices of the court of common pleas for the said county of U, in the term of May, 1815, to satisfy J H for damages, &c. which in the said court were awarded to him and whereof the said C D is convicted, &c.; K I, he is also detained by virtue of a writ of *Attachment*, returnable before the said justices of the supreme court on the day of last, to answer the said justices concerning divers trespasses, contempts, and offences by him lately done and committed, at the suit of R G, for not paying the several sums of, &c. In Witness whereof, the said parties to these presents, have hereunto set their hands and seals the day and year first above written.

Sealed and delivered in the presence of } J O, (L. S.) W K, (L. S.)

I acknowledge to have in my custody the bodies of the several persons herein before named, except A B and C D, against whose names the word *discharged*, and J B, the word *deceased*, is written in the margin of this deed, the prisoners in my custody being in number twelve. Witness my hand the day of , in the year, &c. J K, Gaoler.

Witness,

NO. III.

GAOLER'S BOND.

KNOW ALL MEN by these presents, that I, J K, of Kingston, in the county of Ulster, and state of New-York, am held and firmly bound unto C A, sheriff of the said county of Ulster, in the sum of one thousand dollars, of lawful money of the said state, to be paid to the said C A, his heirs, executors, administrators or assigns; for which payment well and truly to be made, I bind myself, my heirs, executors and administrators, and each of them, firmly by

these presents. Sealed with my seal, and dated this day of in the year, &c.

Whereas the said C A, sheriff as aforesaid, hath appointed the said J K, gaoler of the common gaol of the said county of Ulster.

NOW THEREFORE, THE CONDITION of the above obligation is such, that if the above bounden J K, gaoler as aforesaid, shall and do from time to time take and receive into his custody within the gaol in the county of Ulster aforesaid, all such person and persons, prisoner and prisoners, which shall be committed and sent to the said gaol, or committed to the custody of the said gaoler by the said sheriff or his deputy, or by any justice or justices of the peace, or by any other having lawful authority to commit persons or prisoners to the said gaol, and the said persons and prisoners so committed as aforesaid, do well and truly, duly and sufficiently, by his own proper person, or by his deputy or deputies, so keep, that the said C A, his heirs, executors and administrators, and each of them, shall be saved harmless from all losses, penalties, amerceaments, and damages whatsoever, as well against the people of the said state, as also against all other person or persons of, for and concerning the custody of the said gaol and prisoners; and likewise do discharge, save, and keep harmless the said C A, his heirs, executors, and administrators, from time to time, and at all times hereafter, as well of convict persons, reprieves and felons, as of all other persons committed for any contempts, condemnations, trespasses, or misdemeanors, which may happen, or chance hereafter to be committed to the said gaol for any of the said causes, during the time the said C A, shall be sheriff of the said county; and likewise that the said J K, or any other by his consent, privity or appointment, shall not in any wise let to bail or mainprize any prisoner or prisoners to him committed as aforesaid, not bailable by law, without the special commandment or appointment of the said sheriff; and if the said J K, or his sufficient deputy, be ready to give his attendance upon the said sheriff, and his deputy at all times necessary and convenient, and all and every thing and things that he shall be required to do by the said sheriff or his deputy, touching or concerning the affairs or business wherewith the said sheriff is or shall be charged or employed, in or about the keeping the said gaol or prison, then the above obligation to be void, otherwise to be in full force and virtue.

J. K. (L. S.)

Sealed and delivered, }
in the presence of }

NO. IV.

BAIL BOND.

KNOW ALL MEN by these presents, that we, A B, and C D, are held and firmly bound unto C A, Esq. sheriff of the county of , in the sum of , lawful money of the state of New-York, to be paid to the said C A, or to his certain attorney, executors, administrators or assigns; for the which payment well and truly to be made and done, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals—dated the day of , in the year, &c.

The Condition of the above obligation is such, That if the above bounden A B, shall personally appear at the next Supreme Court of Judicature, to be held for the state of New-York, at the City hall, in the city of New-York, before the justices thereof, on the , then and there to answer unto (Or if the suit be in the Common Pleas, say: shall personally appear at the next court of Common Pleas, which is to be held at the court-house, in , in and for the county of before the judges and assistant-justices of the same court, on the, &c. as before); then this obligation to be void and of none effect; otherwise to remain in full force and virtue.

A B, (L. s.)
C D, (L. s.)

Sealed and delivered in the presence of

ASSIGNMENT.

Know all men by these presents, That I, C A, Esq. the sheriff within named, do hereby, for myself, executors and administrators, assign and set over unto , the plaintiff in the condition of the within written bond or obligation named, his executors, administrators and assigns, the within written bond or obligation, pursuant to a law in that case made and provided. In witness whereof, I have hereunto set my hand and seal, this day of , in the year, &c.

C A, (L. s.)

Sealed and delivered in the presence of

NO. V.

RECEIPT FOR A BAIL BOND.

I do hereby acknowledge to have received from R C, Esq. sheriff of the county of U, the bail bond for the appearance of E M, before the judges and assistant justices of the court of common pleas of the said county of U, at the court-house in K, in the said county, (the return) to answer unto J K, in a plea of trespass on the case, to his damage 100 dollars, together with an assignment thereon endorsed, pursuant to the statute in such case made and provided.

J M, Pltff's Atty.

NO. VI.

BOND FOR GAOL LIBERTIES.

KNOW ALL MEN by these presents, that we, J R, and S P, of, &c. are held and firmly bound to N D, Esq. sheriff of the county of U, in the sum of , to be paid to the said N D, or his attorney, executors, administrators or assigns; to the which payment, well and truly to be made and done, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.—Sealed with our seals. Dated the day of in the year, &c.

Whereas, pursuant to an act of the legislature of the state of New-York, entitled "an act respecting the liberties of gaols," passed the sixth day of April, in the year of our Lord one thousand eight hundred and thirteen, the court of common pleas, in and for the county of U, have appointed a certain reasonable space of ground, adjoining the gaol of said county, for the liberties of the said gaol, and have caused the same to be designated by posts and visible marks on the outer lines thereof: And whereas the above bounden J R, is now confined in the said gaol of the said county, in the custody of the above named sheriff, by virtue of a

Now the Condition of the above obligation is such, That if the above bounden J R, shall remain a true and faithful prisoner within the limits of the said gaol, and shall not at any time, or in any wise, escape or go without the limits of the said liberties, until he shall be from thence discharged by due course of

law, then the above obligation is to be void, or otherwise to remain in full force and virtue.

Sealed and delivered in presence of } J R, (L. s.) S P, (L. s.)

NO. VII.

SHERIFF'S DEED OF LANDS.

To all to whom these presents shall come, I, C B, sheriff of the county of U, send greeting. Whereas by a writ of execution, issued out of the to me directed and delivered, tested the day of , in the year , I was commanded to make of the goods and chattels of G D, in my bailiwick dollars and cents, which R F had recovered against him in the said court, for and that if sufficient goods and chattels could not be found, that then I should cause the said to be made of the lands and tenements whereof the said G D was seized on the day of , in the year , or at any time afterwards in whose hands soever the same might be, as by the said writ of execution more fully appears. *And whereas*, after the coming of the said writ to me, and before the day of the return thereof, I did by virtue of the said writ seize and take the lands hereinafter particularly described, and have for want of goods and chattels in my bailiwick of the said G D, to satisfy the said sold the said lands as is hereinafter mentioned at public auction, according to the statutes in such case made and provided, to G R, for , being the highest sum bid for the same. Now know ye, that I the said C B, the sheriff aforesaid, by virtue of the said writ of execution, and of the statutes in such case made and provided, in consideration of the said sum of to me in hand paid by the said G R, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain and sell unto the said G R, and to his heirs and assigns forever, all with the appurtenances, and all the estate, right, title and interest which the said G D had in the said land and premises, on the said day of in the year , or at any time since had or now hath: To have and to hold the said land and premises and every part thereof with the appurtenances, unto the said G R, his heirs and assigns forever, as fully and absolutely as I the said C B, as sheriff aforesaid, and under the authority aforesaid, might, could

or ought to sell and convey the same. In witness whereof, I have hereunto set my hand and seal the day of , in the year, &c.

Sealed and delivered } C B, (L. S.)
in the presence of }

NO. VIII.

BOND OF INDEMNITY TO SHERIFF FOR PAYMENT OF MONFY UNDER A FIERI FACIAS.

KNOW ALL MEN by these presents, That we, A B and C D, of the county of Ulster, are held and firmly bound unto H D, Esq. sheriff of the said county of Ulster, in the penal sum of four hundred dollars, of lawful money of the state of New-York, to be paid to the said H D, or to his heirs, executors or administrators, for which payment well and truly to be made, we bind ourselves jointly and severally, and our joint and several heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated this day of , in the year, &c.

Whereas, by virtue of a writ of fieri facias, issued out of the supreme court of judicature of the people of the state of New-York, directed unto the above named sheriff, commanding him, that he should cause to be made of the goods & chattels of C B in his bailiwick, as well a certain debt of five hundred dollars which the above bounden A B had recovered against him before the said people's justices of the said court, as also thirty dollars which in the same court was awarded to the above bounden A B, as well for his damages which he sustained by reason of the detaining of the said debt as for his costs and charges by him about his suit in that behalf expended, and that the said sheriff should have that money on the second Monday in August last past, at the capitol, in the city of Albany, to render to the above bounden A B for the debt and damages aforesaid, whereof the said C B was convicted. And whereas by virtue of the said writ, the above said sheriff hath taken the gooods and chattels of the said C B, and sold the same for the sum of five hundred dollars, being the best price he could get for the same. And the above bounden A B hath applied to and requested of the said sheriff to pay him the monies so levied, on being properly indemnified, which the said sheriff hath agreed to do. *Now the Condition* of this obligation is such, that if the said A B and C D, their and each of their heirs, executors and administrators, shall and do

well and truly save harmless and keep indemnified him, the said sheriff, his under-sheriff, bailiffs, and officers of, from and against all manner of action and actions, suit and suits, either at law or in equity, brought or to be brought against them or either of them, for or by reason of the levy or payment of the said sum of five hundred dollars to the above bounden A B, and also of, from and against costs, charges, damages, and expences they or either of them may be put to, for or on account thereof, then this obligation to be void, otherwise to be and remain in full force and virtue.

Sealed and delivered in the presence of } A B, (L. S.) C D, (L. S.)

ENDORSEMENT.

Rec'd, on the day of the date of the within obligation, from H D, sheriff within named, the sum of five hundred dollars, on payment as within mentioned.

A B.

Witness,

SHERIFF'S FEES IN THE SUPREME COURT.

For serving a writ, fifty cents.

Every mile, going only, six cents, to be computed, in the county of Tioga, from the house of Thomas Baker, in the town of Chemung. In the county of Washington, from the dwelling house now or late of Peleg Bragg, in Argyle; but when any person is committed to the gaol of said county, on any suit or process, it shall be lawful for the sheriff to compute his milage from such gaol. In the county of Sullivan, from the place appointed by law for holding courts in said county. In the county of Madison, from the place where the court-house and gaol are built, or are directed to be built. In the counties of Saratoga, Delaware, Broome, Chenango, Seneca, Lewis, Essex, Onondaga, Otsego and Ontario, from the court-houses in the said counties respectively; and in every other county from the sheriff's place of abode.

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

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

Summoning a jury, one dollar.

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

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

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

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

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

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

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

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

Attending a view, one dollar and eighty-seven and a half cents per day.

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

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

Copy of a writ when demanded, nineteen cents.

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

Serving a notification, issued by the comptroller on any person to account for monies received to the use of the people of this state, the like fees as on serving common process; and all services done by them in their offices, for the public, whether in the supreme court, or elsewhere, the like fees as are allowed for the like services in causes between private parties: *Provided*, That no sheriff shall be allowed any fee for the service or execution of any *mesne* process, returnible on the first day of any term, unless the same shall be returned during such term, nor

on any such process returnable on any subsequent day of any term, unless the same shall be returned within twenty days after the return day.

SHERIFF'S FEES IN THE COMMON PLEAS.

For serving a writ, thirty-seven and a half cents; milage to be computed as in the supreme court, six cents per mile.

Every bail bond, thirty-seven and a half cents.

Returning a writ, if served, nine cents.

Summoning a jury, seventy-five cents.

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

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

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

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

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

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

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

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

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

Serving an attachment against the estate of an absconding or absent debtor, so much as the judge who issues the warrant shall certify to be reasonable: *Provided*, That no sheriff shall be allowed any fee for the service or execution of any *mesne* process, returnable on the first day of any term, unless the same shall be returned during such term, nor on any such process, returnable on any subsequent day of any term, unless the same shall be returned within twenty days after the return day.

CHAP. IV.

THE CORONER.

NATURE OF HIS OFFICE.

The Coroner, as we have before seen, is appointed in like manner as the sheriff, annually for four years successively, but is not, like the sheriff, restricted from holding any other office at the same time. Coroners, in former days, were the principal conservators of the peace within their counties; and now may bind to the peace any person who makes an affray in their presence. 2 Haw. P. C. c. 28. s. 5.

Competent men must be appointed as coroners in every county in this state, whose duty it is to go to the places where any persons be slain, or suddenly dead or wounded, or where houses are broken open, or treasure is said to be found, and forthwith to command 24 good and lawful men of his county to appear before him at such place therein as he shall appoint, and upon their oath, or the oaths of 12 or more of them; and upon view of the body of any person slain, or suddenly dead, and the proof of witnesses, to inquire how, and in what manner, and when and where, such person was slain or died, and who such person was, and of all the circumstances attending such death, and who were guilty thereof, either as principal or accessary, and in what manner, and to take and commit to the gaol of such county, every one so found guilty, and also every one suspected of the death of any person, or of doing hurt to any person, so as to endanger his life, and to make the like inquiry of persons who shall die in prison, or be killed by misfortune, and to bind all finders or suspected finders of treasure, with at least two sufficient sureties, to appear before the next justices of oyer and terminer and gaol delivery, to answer the premises. And every coroner, upon any inquisition found, shall put in writing the effect of the evidence given to the jury before him, and bind the witnesses to appear and testify at such court last

aforesaid. And in case any coroner shall neglect his duty in the premises, he shall be fined in the discretion of such justices. Law N. Y. Coroners, 21 March, 1801.

Where any person shall be found suddenly dead in any town, where no coroner has qualified, one or more of the justices of the peace of such town are by common law authorised to take inquisition upon the premises.

DUTIES.

In cases of persons supposed to be drowned or found suddenly dead, it is the coroner's duty on view of such bodies, according to the statute, to inquire whether they were so drowned or slain, or strangled, by the sign of a cord tied straight about their necks, or about any of their members, or upon any other hurt found upon their bodies. Also all wounds ought to be viewed, the length, breadth and deepness, and with what weapons, and in what part of the body the wound or hurt is, and how many are culpable, and how many wounds there be, and who gave the wounds; all which the coroner must minute in his proceedings on the view.

He cannot inquire of any accessary after the fact, but he may make inquiry of the accessaries before the fact.

He ought to inquire of all the circumstances of the party's death, and also of all things which occasioned it.

Upon any inquisition found before him, whereby any person shall be indicted for murder or manslaughter, or as accessary before the offence committed, he must put in writing the effect of the evidence given to the jury before him, being material, and bind over the witnesses by recognizance to the next general sessions or gaol delivery to be holden for such county, there to testify against the party so indicted, and he must certify as well the same evidence as such recognizance together with the inquisition or indictment taken before him.

The coroner's inquest ought in all cases to hear the evidence upon oath, as well that which maketh for, as that which maketh against the prisoner, and the whole evidence ought to be returned with the inquisition. Hal. P. C. 62.

PERSONS DYING IN GAOL.

The coroner ought also to inquire of the death of all persons

who die in prison; that it be known whether they died by violence, or any unreasonable hardships; for if a prisoner, by the duress of the gaoler, comes to an untimely death, it is murder in the gaoler, and the law implies malice in respect of the cruelty. 3 Inst. 52. 91.

And this inquest upon prisoners ought to consist of a party jury, that is, six of the prisoners, if there be so many, and six of the next town, not prisoners.

If a prisoner in gaol die a natural death, yet the gaoler ought to send for the coroner, to inquire, because it may be presumed, that the prisoner died by the ill usage of the gaoler.

Hal. C. P. 58.

SUDDEN DEATHS,

Are of these kinds: 1. By the visitation of God: 2. By misfortune, where no other had a hand in it; as if a man falf from a horse or cart: 3. By his own hand, as *felo de se*: 4. By the hand of another unknown: 5. By the hand of another known. Ibid.

The dying suddenly is not to be understood of a fever, apoplexy, or other visitation of God, for then the coroner might be sent for in every case. Ibid.

If the inquisition find, that he died by the visitation of God, there is no more to be done, only the inquisition, together with examinations, are to be returned to the next gaol delivery. Ib.

If the party be slain and the felon is not known, the inquisition must contain that fact, and the first finder of the body must be bound over, and his examinations returned together with the inquisition, to the next gaol delivery. Ibid.

If the coroner find any person guilty, either as principal or accessary before the fact, he must commit him to the sheriff.

Ibid.

DEFINITIONS OF CERTAIN CRIMES.

A man, who, by his command, counsel, contrivance, consent or encouragement, moves another to commit a felony, tho' he be not present when it is done, will be *an accessary before the fact*. 2 Inst. 182.

In the case of poisoning, he who counsels another to give poison, if absent, is only an accessary before the fact: but he

who gives or lays the poison, is a principal, tho' absent when taken. Hale 435.

Felo de se, or *Suicide*, is where a person of the age of discretion, and sound mind, kills himself, by stabbing, poison, or any other way. Ibid.

If a man gives himself a mortal stroke while he is not of sound mind, and recovers his understanding, and then dies, he is not a destroyer of himself; for tho' the death complete the homocide, the act must be that which makes the offence. Ibid.

Murder, is defined to be, when a person of sound memory and discretion, unlawfully killeth any reasonable creature in being, with malice aforethought, either express or implied. 3 Inst. 47.

Manslaughter, is defined, unlawful killing of another without malice, either express or implied. Hale.

Accidental Death. If a man driving a cart kills, if he saw the danger, it is *murder;* if he did not, through heedlessness, *manslaughter;* if he took all due care, *accidental death.* Foster, 263.

CORONER'S COURT.

The court of the coroner is a court of record, to inquire when any one dies in prison, or comes to a violent or sudden death, by what manner he came to his end. And this he is only entitled to do on a view of the body. 4 Inst. 271.

When notice is given to the coroner of a violent death, casualty, or misadventure, he then issues his precept or warrant to any constable of the town where the party lies dead, to summon 24 able and sufficient men, of the same, to appear before him, at the hour and place there stated, to do and execute all those things that shall be given them in charge, on behalf of the people, &c. touching the death of the person named; and the constable is to return the warrant with the names of the jurors summoned, on the day prefixed.

Opening of court. On the day appointed, the coroner attends, and having received the return of the jurors and precept, &c. the first thing he does is to direct the constable to open the court by proclamation, "Oyez," three times: "You good men of this county, summoned to appear here this day, to inquire for the people of the state of New-York, when, how, and by what

means A B, came to his death, answer to your names as you shall be called, every man at the first call, upon pain and peril that shall fall thereon."

The coroner then proceeds to call over the jury, marking those who appear.

If the jurors make default, or the constable does not return the precept, they are to be presented to the next Oyer and Terminer.

It is usual for the jurors to choose their foreman, when done, he is called to the book and first sworn. The coroner generally saying to the rest of the jurors, "gentlemen, hearken to your foreman's oath; for the oath he is to take on his part, is the oath you are severally to observe and keep on your part."

Oath of jury. "You shall diligently inquire, and true presentment make, of all such matters and things as shall be given you in charge, on the behalf of the people of the state of New-York, touching the death of A B, now lying dead, of whose body you shall have the view; you shall present no man for hatred, malice, or ill will, nor spare any through fear, favor, or affection; but a true verdict give, according to evidence, and the best of your skill and knowledge: So help you God."

The rest of the jurors, three at a time, are sworn thus: "The same oath your foreman has taken on his part, you and each of you are, severally, well and truly to observe and keep on your parts: So help you God."

It is said to be prudent to swear an odd number, to avoid the inconvenience of an equal number, which may happen on a division of the voices, and thereby retard the finding or not finding of an inquisition.

Charge to jury. After they are sworn, it is usual for the coroner to give a charge, acquainting them with the purpose of the meeting, as thus: "Gentlemen—You are sworn to inquire on the behalf of the people, &c. how and by what means A B came to his death: your first duty is to take a view of the body of the deceased, wherein you will be careful to observe, if there be any marks of violence thereon, from which, and on the examination of the witnesses intended to be produced before you, you will endeavour to discover the cause of his death, so as to return me a true verdict upon this occasion."

View and call for evidence. When the charge is finished, the coroner goes with the jury to take a view and examination of the body of the deceased. After which, the constable calls silence, and repeats after the coroner, thus: "If any one can give evidence, on behalf of the people of the state of New-York, when, how, and by what means A B came to his death, let them come forth, and he shall be heard."

OATH OF WITNESSES. The evidence appearing, the coroner takes down his name, place of abode, and occupation, and then the constable tenders him the following oath: "The evidence you shall give to this inquest, on the behalf of the people of the state of New-York, touching the death of A B, shall be the truth, the whole truth, and nothing but the truth: So help you God."

CAPTION OF INFORMATIONS. The examination is first entitled, which the coroner prepares, previous to the sitting of the court, in this form: "Informations of witnesses severally taken and acknowledged on the behalf of the people, &c. touching the death of A B, at the dwelling house of J L, in the town of M, in the county of U, on day, the day of , in the year, &c. before P G, gentleman, one of the coroners for the said county, on an inquisition then and there taken, on view of the body of the said A B, then and there lying dead, as follows, to wit:"

WITNESS'S SIGNATURE TO HIS EXAMINATION. Before the witness signs his examination, let it be read over to him, and ask him if it be the whole of the evidence he can give: he signs it to the right hand of the paper.

The coroner generally asks the jurors, before the witness signs, whether they have any questions for him to ask the witness.

When the witness has signed his name to the examination taken, the coroner then writes thus to the left hand side: "All the above informations were severally taken and acknowledged, the day, year, and place above mentioned, before P G, coroner."

ADJOURNMENT. It seems, if all the witnessess do not attend, the coroner may adjourn the jury to another day, to the same, or any other place, to take and receive other evidence, first taking the jurors in a recognizance for their appearance at the adjourned time and place, further to consider of their verdict, thus: "Gentlemen, you acknowledge yourselves severally to owe to the people, &c. the sum of 25 dollars, to be levied on your goods and chattels, for the use of the said people, *upon condition*, that you and each of you, do personally appear here again (or other adjourned place) on day, the day of instant, at 10 of the clock in the forenoon precisely, then and there to make further inquiry on behalf of the said people, touching the death of the said A B, of whose body you have already had the view: Are you all content?" The coroner then adjourns the court, thus: "Gentlemen, The court doth dismiss you for this time, but requires you severally to appear here again (or at such other adjourned place) on day the day of instant, at 10 of the clock precisely, upon pain of 25 dol-

lars a man, on the condition contained in your recognizance entered into."

WARRANT TO BURY, &c. The coroner may in his discretion grant his warrant to bury the deceased, to prevent infection.—Then the constable adjourns the court, by making proclamation, thus: "Oyez," three times "All manner of persons who have any thing more to do at this court, before the people's coroner now here, may depart hence, and give their attendance here again (or other adjourned place) on day the day of instant, at 10 of the clock in the forenoon precisely."

CORONER'S MINUTES. The coroner will make a proper entry in his minutes, of his *adjournment*, both of time and place. The caption of these minutes should be prepared before the court sits, thus: "At a court of inquest held at the dwelling house of J L, in the town of M, in the county of U, on day the day of in the year, &c. touching the death of A B, then and there lying dead, before P G, one of the coroners of Ulster."

THE COURT OPENED AFTER ADJOURNMENT. When the jury are met at the adjourned time and place, the constable opens the court by proclamation, as in the first instance, with this addition: "And you, gentlemen of the jury, who have been impannelled and sworn on this inquest, to inquire touching the death of A B, severally—answer to your names and save your recognizance."

The coroner first proceeds to business, by calling over the names of the jury, declaring the further purpose of the meeting. After the witnesses are examined and the evidence gone through, he sums up the evidence to the jury, and directs them to consider of their verdict. If they withdraw, the constable is sworn to take care of them, thus:

CONSTABLE'S OATH. "You shall well and truly keep the jurors of this jury, without any meat, drink, or fire; you shall not suffer any person to speak to them, nor speak to them yourself, unless it be to ask them, whether they have agreed to their verdict, until they shall be agreed to their verdict: So help you God."

The constable takes them to a convenient room, and attends the door on the outside, until they are agreed; when agreed they return, and the coroner calls over the names, and afterwards asks them, if they be agreed on their verdict: the foreman replies in the affirmative; the coroner asks them, "who shall say for you?" to which they will reply, "our foreman."

VERDICT OF JURY. Then the coroner says, Mr. Foreman, How do you find A B came to his death, and by what means? The foreman then relates the verdict, which the coroner records.

It seems twelve at least must agree, if there be no division; but if there be a division, the coroner collects their voices and

declares the majority, into which the minority sinks, and the finding is considered the verdict of all.

INQUISITION. When the verdict is given, the inquisition is drawn up by the coroner in form, and thereunto he and the jurors sign their names opposite the seals. To the coroner's name he adds P G, coroner.

The inquisition thus being completed, he addresses the jury, thus: "Gentlemen—Hearken to your verdict, as delivered by you, and as I have recorded it. You find, &c." (here repeat the substance of the verdict.)

BINDING OVER WITNESSES & DISCHARGE, &c. If it is a case that will come to the sessions, he binds all proper persons over in a recognizance, to prosecute and give evidence.

He then makes out his warrant to bury the dead, if not done before.

The constable then makes proclamation, thus: "You good men of this county, who have been impannelled and sworn of the jury, to inquire for the people, &c. touching the death of A B, and who have returned your verdict, may depart and take your ease."

The jury are thereupon thanked for their attendance, and dismissed. Impey's Coroner.

CORONER'S EXTRA DUTY.

In certain cases it is incumbent on the coroner to exercise the sheriff's office of his county—that is, in the service, execution and return of process on all such legal proceedings, in which the sheriff is either a party, or is in any wise interested.

Any one coroner of any county is authorised to make a return to any process from any court of record, directed to the coroners of such county, with the same effect, as if all such coroners had done the same. Law N. Y. Coroner, March 21,1801.

PRECEDENTS.

NO. I.

PRECEDENT FOR JURY.

Ulster County, ss. To any of the constables of the county of Ulster. By virtue of my office, these are in the name of the people of the state of New-York, to charge and command you, that on sight hereof, you summon and warn, twenty-four able and sufficient men of the county of Ulster, to be and appear before me, on the day of at 10 o'clock in the forenoon, at the house of G H, in the town of M, in the said county, then and there to do and execute all such things that shall be given them in charge on behalf of the said people, touching the death of A B, and for so doing this shall be your warrant: And that you also attend at the time and place above mentioned, to make a return of the names of the persons whom you shall have so summoned: and further, to do and execute such other matters as shall be then and there enjoined you: and have you then and there this warrant. Given under my hand and seal this day of 1816. C H, coroner, (L. S.)

N. B. The coroner should furnish summonses like No. 2, underneath, to the constable to serve the jurors with, which are printed.

NO. II.

Ulster County, ss. By virtue of a warrant under the hand and seal of C H, gentleman, one of the coroners of the people of the state of New-York for the county of Ulster, you are hereby summoned personally to be and appear before him, as a juryman, on the day of at six of the clock in the evening precisely, at the house of known by the sign of the in the town of Esopus, in the said county, then and there to inquire, on the behalf of the said people, touching the death of A B, and further to do and execute such other matters and things as shall be then and there given you in charge, and not to

depart without leave. Hereof fail not, at your peril. Dated the day of 1816. G L, Constable.
To B M, of the county of Ulster.

NO. III.

INQUISITION BY DROWNING.

Ulster County, ss. An inquisition, indented, taken for the people of the state of New-York, by the grace of God free and independent, at the town of Hurley, in the county of Ulster, the fifth day of June, in the year, &c. before G H, one of the coroners of the said people for the said county, on view of the body of A B, then and there lying dead, upon the oath of C F, (here name the jurors sworn) good and lawful men of the said county, duly chosen, and who being then and there duly sworn, and charged to inquire for the said people, when, where, how, and in what manner, the said A B, came to his death, do upon their oath say, That the said A B, not being of sound mind, memory and understanding, but lunatic and distracted, on the fifth day of June, in the year aforesaid, at the town and in the county aforesaid, to wit, into the Esopus Creek, there did cast and throw himself, by means of which said casting and throwing he the said A B, in the water of the said creek, was then and there suffocated and drowned, of which said suffocation and drowning he the said A B then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said A B, in manner and by means aforesaid, not being of sound mind, memory and understanding, but lunatic and distracted, did drown and kill himself. In Witness whereof, as well the said coroner as the jurors aforesaid, have to this inquisition set their hands and seals, on the day and year, and the place above mentioned.

G H, coroner, (L. S.)
A B, C D, E F, &c. Jurors. (L. S.) (L. S.) (L. S.)

NO. IV.

INQUISITION BY HANGING.

(*As in the former precedent to the words*, upon their oath say): "That the said R F, not having the fear of God before his eyes, but moved and seduced by the instigation of the devil, on the fifth day of August, in the year aforesaid, with force and arms, at the town of Kingston, in the county aforesaid, in and upon *himself*, in the peace of God and of the people aforesaid, then and there being, feloniously, wilfully and of his malice forethought, did make an assault; and that the said R F, one end of a certain piece of small cord of no value, unto a certain iron bar then and there fixed in the ceiling of the "round house," then and there situate and being (wherein the said R F was then and there a prisoner in custody charged with felony) and the other end thereof about his own neck, did fix, tie, and fasten, and therewith did then and there hang, suffocate and strangle *himself*; of which said hanging, suffocation, and strangling, he the said R F, did then and there die. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said R F, in manner and by the means aforesaid, feloniously, wilfully, and of his malice forethought, did kill and murder *himself*, against the peace of the people of, &c. and their dignity. In witness, &c."

NO. V.

INQUISITION BY POISONING.

"That the said R F, &c. (as before, &c.): And the said R F, a certain quantity of white arsenic, being a deadly poison, into a certain quantity of tea infused in warm water, feloniously, wilfully, and of his malice forethought, did then and there put and mix, and then and there, well knowing the said white arsenic to be a deadly poison, and that the said R F a great quantity of the said tea in which the said white arsenic was so put and mixed as aforesaid, afterwards, to wit, on the same day, in the same year, at the town, in the county aforesaid, feloniously, wilfully, and of his malice forethought, did take, drink, and swallow down, by means whereof he the said R F then and there became sick and distempered in his body; and of the said poison and the said sickness and distemper thereby occasioned, from the day of in the year aforesaid, until the day of the same month

in the same year, at the town and county aforesaid, he the said R. F. of the poison, sickness and distemper aforesaid, did die; And so the jurors aforesaid, &c. (as before to). In witness, &c."

NO. VI.

INQUISITION BY CUTTING HIS THROAT.

"That the said R. F. not having the fear of God, &c. (as before, until you come to the word assault). And that the said R. F. with a certain razor, made of iron and steel, of the value of twelve cents, which he the said R. F. then and there had and held in his right hand, the throat or gullet of him the said R. F. did then and there strike and cut, thereby then and there giving himself with the razor aforesaid, in and upon the said throat and gullet of him the said R. F. one mortal wound, of the length of threee inches and depth of one inch, of which said mortal wound he the said R. F. then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said R. F. in manner and by the means aforesaid, feloniously, wilfully, and of his malice forethought, did kill and murder himself, against the peace of the people of the state of New-York and their dignity."

NO. VII.

INQUISITION BY SHOOTING.

"That the said R. F. not having, &c. (as before, until you come to the word assault, then proceed): And the said R. F. a certain pistol of the value of two dollars, charged with gunpowder and a leaden bullet, which the said R. F. then and there had and held in his right hand, feloniously, wilfully, and of his malice forethought, to and against the head of him the said R. F. did then and there shoot off and discharge; and that by means of the shooting off and discharging the pistol aforesaid, he the said R. F. did then and there give unto himself with the leaden bullet aforesaid, so as aforesaid discharged, and shot out of the pistol aforesaid by the force of the gunpowder aforesaid, in and upon the head of him the said R. F. one mortal wound, of the breadth of one inch, and depth of three inches; of which said mortal wound, he the said R. F. then and there instantly

died. And so the jurors aforesaid, upon their oath aforesaid, do say, &c. (as the former, to). In witness; &c.

NO. VIII.

WARRANT TO BURY WITHOUT VIEW.

Ulster County, ss. To the minister, &c. Whereas I am credibly informed, that on the day of instant, A. B. died suddenly in the street, to wit, in (name the street) in the town of K. in the county of U. aforesaid, as supposed by a fit of apoplexy, or other sudden visitation of God; and that he came not to his death by any violent means or manner whatsoever: These are therefore to certify, that in case of the county charge, you may permit the body of the said A. B. to be buried; and for your so doing, this shall be your warrant. Given under my hand and seal this day of 1815.

G. F. Coroner, (L. S.)

NO. IX.

WARRANT TO BURY A FELO DE SE, AFTER INQUISITION.

Ulster County, ss. To Constable, &c. Whereas by an inquisition taken before me, one of the people's coroners for the county of Ulster, this day of in the year, &c. at K. in the county of U. on view of the body of J. D. then and there lying dead: the jurors in the said inquisition named have found that the said J. D. feloniously, wilfully, and of his malice forethought, killed and murdered himself. These are therefore by virtue of my office, to will and require you forthwith to cause the body of the said J. D. to be buried in some public highway, and thereof certify to me the place, and for your so doing this shall be your warrant. Given under may hand and seal this day of 1815.

G. F. Coroner, (L. S.)

NO. X.

WARRANT TO APPREHEND A PERSON FOR MURDER.

Ulster County, ss. To the Constables of county, and each of them. Whereas by an inquisition taken before me, one of the people's coroners for the county of , this day of at in the said county, on view of the body of G. R. then and there lying dead, one C. D. late of the town of , in the said county, stands charged with the wilful murder of the said G. R. These are therefore by virtue of my office, in the name of the people, &c. to charge and command you, and every of you, that you, or some one of you, without delay, do apprehend and bring before me the said coroner, or one of the people's justices of the peace for the said county, the body of the said C. D. of whom you shall have notice, that he be dealt with according to law. And for your so doing this shall be your warrant. Given under my hand and seal this day of 1815.

G. F. Coronor, (L. S.)

XI.

WARRANT OF COMMITMENT.

Ulster County, ss. To the Constables of the county of Ulster, and each of them. Whereas by an inquisition taken before me, one of the people's coroners for the county of Ulster, the day and year hereunder mentioned, on view of the body of R. L. lying dead in the town of in the county aforesaid, I. K. late of the town of in the said county, laborer, stands charged with the wilful murder of the said R. L. These are therefore, by virtue of my office, in the name of the people, &c. to charge and command you, forthwith safely to convey the body of the said I. K. to the gaol of the said county, and safely to deliver the same to the keeper of the said gaol: and these are likewise, by virtue of my said office, in the name of the said people, to will and require you the said keeper to receive the body of the said I. K. into your custody, and him safely to keep in the said goal, until he shall be thence discharged by due course of law. And for your so doing this shall be your warrant. Given under my hand and seal this day of 1815.

F. G. Coroner, (L. S.)

NO. XII.

RECOGNIZANCE TO APPEAR, &c.

Ulster County, ss. Be it remembered, that J. S. of, &c. yeaman, and W. V. of the same place, taylor, Do severally acknowledge to owe to the people, &c. the sum of one hundred dollars each, of lawful money of New-York, to be levied on their several goods and chattels, lands and tenements, by way of recognizance, to the use of the said people, in case default shall happen to be made in the condition hereunder written.

The *Condition* of this recognizance is such, that if the above bounden J. S. and W. V. do severally personally appear at the next session of the peace to be holden at the court house in Kingston, in and for the county of Ulster, and the said J. S. shall then and there prefer, or cause to be preferred, to the grand jury a bill of indictment against C. D. late of the said town and county, laborer, and now in custody for the wilful murder of A. B. late of, &c. baker, and that the said J. S. and W. V. do then and there severally personally appear to give evidence on such bill of indictment to the said grand jury: And in case the said bill of indictment be found by the grand jury, a true bill, that then the said J. S. and W. V. do severally personally appear at the next session of gaol delivery to be holden at the court-house in Kingston, in and for the said county of Ulster: and the said J. S. shall then and there prosecute or cause to be prosecuted, the said C. D. on such indictment: And the said J. S. and W. V. do then and there severally give evidence to the jury that shall pass on the trial of the said C. D. touching the premises: And in case the said bill of indictment shall be returned by the grand jury, *not found*, that then they do severally personally appear at the said session of gaol delivery to be then and there holden for the said county, and then and there give evidence to the jury that shall pass on the trial of the said C. D. upon an inquisition taken before me, one of the people's coroners for the said county, on view of the body of the said A. B. and not depart the court without leave, then this recognizance to be void, otherwise to remain in full force.

Taken and acknowledged this day of 1815, before me, G. F. Coroner.

J. S.
W. V.

CORONER'S FEES.

For the view of each body, taking and returning the inquisition, ten dollars.

Drawing every subpœna or warrant, twenty-five cents.

Drawing every summons for a jury, thirty-seven and a half cents.

Swearing every witness, six cents.

Taking every recognizance, twenty-five cents, and each coroner shall moreover be allowed all reasonable and necessary expenses inccured by him for removing any dead body to the place for taking such inquest, and for the use of any house or building in which the same shall be taken.

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

CHAP. V.

THE JUDGES OF THE COURT OF COMMON PLEAS.

Before we proceed to explain the office and duties of the Judges of the Court of Common Pleas, we would premise, that those officers, as also the justices of the peace, county clerk and surrogate, are all commissioned by the Governor, in virtue of appointments by the council of appointment, consisting of the governor for the time being and four such members as are chosen by the House of Assembly, out of the body of the Senate, from each of the four great districts of this state, mentioned in chapter one, that the said council constitutes all military officers *during pleasure*, and all civil officers *during good behaviour*—and that where the duration of any office is not ascertained, it shall be construed as held *during pleasure: Provided*, That new commissions shall be issued to judges of the county courts (other than the first judge) and to justices of the peace, once at least in every three years.

The judges of the courts of common pleas in this state, may perhaps in contemplation of law and of their various duties, not be improperly divided into three classes:—The First Judge—the Judges—and the Assistant Justices.

FIRST JUDGE, AND POWER OF THE COMMON PLEAS.

The First Judge, is appointed in form as before mentioned, by a special commission, during good behaviour, or until he shall attain the age of sixty years. He is prohibited from holding any other office, excepting that of senator, or delegate to the general congress. All attornies, solicitors and counsellors at law to be appointed, are to be appointed by the court, and licensed by the first judge of the court in which they shall respectively plead or practise; and be regulated by the rules and orders of the said courts. And all writs and other proceedings shall be tested in the name of the chief judge of the court from whence the same shall issue. Const. N. Y.

It hence follows, that every court of common pleas is constituted a legal tribunal, to determine the competency and qualifications of its practitioners, and to frame rules and orders for its own conduct and government.

The duties of the first judge as distinct from the other judges of the common pleas, consist of but a few particulars, namely: He is to license all attornies that are appointed by the court: he is authorised to make any order in vacation of term, touching any suit or proceeding in such court, in like manner and with like effect, as is now practised by the justices of the supreme court at chambers in any suit or proceeding in the same court. The same power and authority is, however, given to any other judge of such court, being of the degree of counsellor at law of the supreme court. Law N. Y. C. P. Courts, 5 April, 1813.

He shall, on application, and by and with the advice and consent of the attorney general or district attorney of the district including such county, be authorised to let to bail any prisoner confined in any such county for any crime or offence, in like manner as has been heretofore exercised by a justice of the supreme court, and for that purpose is authorised to allow the writ of *habeas corpus* to bring before him any such prisoner on such application. Ibid.

THE ASSISTANT JUSTICES.

The Assistant Justices have concurrent powers with the other judges, only as members of the court, viz: to assist their associates by their advice and opinions, examinations of witnesses, and instructions and charges to the jury, in the trial of all such actions as are cognizable before them, and to take the acknowledgement of bail in causes depending in such court and in the supreme court and exchequer.

Ibid. & L. N. Y. Bail, 25 Feb. 1813.

Agreeable to the fee bill of this state, the first motion fee in every cause, in the court of common pleas, is to be divided among the *judges* who are present when the service is done.—There can be no question but the assistant justices are entitled to a participation of those fees when they preside: they being *ex officio*, although not nominally judges of the court. For other matters, see the next title, and titles: Acknowledgement of Bail: Surrender of Defendant: and, Affidavits.

THE JUDGES OF THE COMMON PLEAS.

The judges of the courts of common pleas, being the first judge, the other judges, and the assistant justices, or any three of

them, of whom one of the judges of the court of common pleas shall always be one, shall have power to hold courts of common pleas in their respective counties, and are authorised and empowered to *hear, try and determine, according to law, all actions, real, personal and mixed,* arising within such counties; and also *all transitory actions,* although the same may not have arisen in such counties: *Provided,* That no new trial shall be granted, otherwise than for irregularity, unless one of the judges present and concurring, shall be of the degree of a counsellor at law of the supreme court. Law N. Y. C. P. 5 April, 1813.

DUTY TO RETURN HABEAS CORPUS.

It is the duty of the judges of the court of common pleas, to make return to all writs of *habeas corpus* to them directed by the supreme court, pursuant to the act entitled, "an act to prevent abuses in suing out writs of *habeas corpus* and *certiorari,*" passed 24 Feb. 1801: *Provided,* That no personal action depending in any such court, on any bond or specialty or any other cause, where the sum mentioned in the condition of such bond or specialty, with the interest thereof, or matter or thing in demand, shall not exceed two hundred and fifty dollars, shall before judgment be stayed or removed into the supreme court by any such writ: *And provided further,* That such writ be delivered before interlocutory or other judgment, and before one juryman be sworn to try the issue, if any, in such case.

DUTY TO SEAL BILLS OF EXCEPTION.

The sixth section of the act, entitled, "an act for regulating trials of issues, and for returning able and sufficient jurors," passed Feb. 25, 1813, enacts, that when any one who is or shall be impleaded before any judges or justices, doth allege an exception, praying that the justices will allow it, and they will not allow it, if he who alleged the exception doth write the same exception, and require that the justices will put their seals to it for a witness, the justices shall do so: and if one will not, another of the said justices shall: and if a writ be brought to reverse the judgment in such case, and the same exception be found in the roll, and the plaintiff shew the exception written with the seals of the justices put to it, the justice or justices who sealed the same, shall be commanded to appear at a certain day, either to confess or deny his or their seal: and if such justices cannot deny the same, the court shall proceed to judgment according to the same exception as it ought to be allowed or disallowed.

DUTY TO PROCLAIM FINES.

The eighteenth section of the said act enacts, that every grand or petit juror, constable or other officer, whose duty it shall be to attend any of the courts of record in this state, and who shall refuse or neglect to attend accordingly, shall be liable to be fined by such court in a sum not exceeding twenty-five dollars; and in every case where such fine shall be imposed by any of the said courts, such court shall immediately cause public proclamation of such fine to be made, and if such delinquent juror, constable or other officer who shall be fined as aforesaid, shall not during the term or sittings of said court in which such fine shall be imposed, shew a satisfactory reason or excuse to the said court for his default or attendance, then such fine so imposed shall be estreated into the court of exchequer, in order that the same may be levied and paid into the treasury, for the use of the people of this state.

It would be foreign to our present views to detail the various common law duties of the judges of the common pleas as members of that court; we shall therefore in the future treatment of this subject confine ourselves to their chamber duties only.—These may be generally embraced under the following heads:

1st. Their duties on taking acknowlegement of Bail, and herein of their signing Judgments and taxing Costs.
2d. On surrender of a Defendant in exoneration of his Bail.
3d. In taking Affidavits.
4th. On superceding a Prisoner.
5th. On Appeal touching Highways.
6th. On Petition under the Insolvent Act.
7th. On Acknowlegement of Deeds.
8th. On Cancelling of Mortgages.

ACKNOWLEGEMENT OF BAIL.

We do not find that the judges of the common pleas of any county, are authorised by any statute of this state, to take the acknowlegement of bail in any action instituted in any such court. We infer, that the legislature contemplated that they already possessed that power in their constitutional prerogative of regulating the practice of their respective courts, as we have above seen. By an act, entitled, "an act relative to the acknowlegement and surrender of bail in the supreme court, and proceedings on recognizance of bail," passed Feb. 25, 1813, it is enacted: 1st. That no acknowlegement of bail shall be taken by any

magistrate or court having authority to take the same, unless the bail piece thereof be first duly signed by the person or persons acknowleging the same, with his, her or their proper name or names—2d. That the several judges and assistant justices of the courts of common pleas in this state, be authorised to take every such recognizance of bail as any person may be desirous to make before them, in any action in the supreme court or exchequer, in such manner and form and by such recognizance or bail piece, as the judges of the supreme court usually take the same.—3d. That the said bail piece shall be filed in the clerk's office of the supreme court within 14 days after taking the same.—4th. That the said judges and justices shall, when required by any person interested, examine the sureties to any such bail, touching such sureties estate and circumstances.—5th. That the same time of exception to the bail be allowed, as before one of the judges of the supreme court.

Of Signing Judgment and Taxation of Costs. The judges of the common pleas are *ex officio* authorised (but the assistant justices are precluded by statute) to liquidate and tax according to law and the practice of such court, all costs and charges which accrue on any proceedings that are had in their court, and to sign all judgments which are rendered in the same. And a statute enjoins it on every judge or officer of any court of record who shall sign any judgment, that he shall at the time of signing the same, without any fee, set down the day and year of his signing the same judgment upon the margin of the roll or record where the same judgment shall be entered.

ON SURRENDER OF A DEFENDANT.

Although an assistant justice may take the acknowlegement of bail, he cannot sanction the surrender of a principal in exoneration of his surety: that can only be done by one of the judges of the common pleas.

When a surety wishes to surrender the person for whom he is bail, he must in the first instance call at the clerk's office of the county and procure a certified copy of the original bail piece on file and which he formerly acknowledged: that being in his hands of the same effect as a writ against the defendant, he serves on him, who is then a prisoner. Thereupon he goes with him to the sheriff or his deputy, who accompany them before a judge. The certified copy of the bail piece is produced to the judge, and thereon he endorses a *committitur* and then enters a discharge or exoneratur on the original bail piece filed in the clerk's office: which being done, the bail is exonerated accordingly.

By the statute of this state from which we have last above

granted, it is made lawful for the defendant in any action in the supreme court, to surrender himself, or for his bail to surrender him before any judge of the court of common pleas for the county where the defendant shall or may be found; and the judge before whom the surrender shall be made, shall thereupon by a committitur to be endorsed on a copy of the bail piece, commit the defendant to the gaol of the county accordingly; and the sheriff shall also endorse on the said copy of the bail piece a receipt that the defendant hath been delivered to him by such committitur, and which copy of the bail piece, the receipt of the sheriff thereon being first acknowledged by him, or proved by a subscribing witness thereto, before the judge who shall so commit the defendant, being filed in the office of one of the clerks of the supreme court, a judge of the said court will make an order for the discharge of the said bail.

AFFIDAVITS.

We find no statute provision, empowering the judges of the courts of common pleas to take affidavits, to be read in the courts in which they severally preside. We take it for granted that they are, from the nature and constitution of their offices, authorised to take all such affidavits, either in term, or vacation of term; but it does not appear that the assistant justices have that power, or that they have a right to exercise any of the prerogatives of the court by implication.

The judges of the common pleas have co-equal powers with the judges of the supreme court to take and certify affidavits which are to be read in any court of common pleas or general sessions of the peace in any county in this state.

Law N. Y. Courts C. P. & G. S. April 5, 1813.

They are also authorised by statute to take affidavits to be read in the supreme court, and are empowered to take affidavits, of notices of sale of mortgaged premises.

Law N. Y. Mortgages, March 9, 1813.

As magistrates of the county, they are severally licensed upon application of either party to a suit depending in any court of judicature in any other of the United States, and information, that any person residing within the county is a material witness in the suit, to issue a summons to such person, requiring him or her to appear and make affidavit of all such matters and things as he or she may know concerning the same, and to transmit the affidavit to the court where the cause is depending, in such manner as the practice of such court may require, to render such affidavit legal testimony: *Provided*, That the judge or magistrate nearest the place of residence of such witness shall

take such affidavit, and such witness be entitled to receive four shillings for every day of his attendance; and that in case of the refusal of such witness to appear and make affidavit upon such summons, a warrant shall issue from such judge or magistrate, to compel his appearance, and if on his appearance, he shall refuse to make affidavit of the premises, he shall be committed to the gaol of the county for the term of six calender months.

Law N. Y. April 10, 1784.

ON SUPERCEDING A PRISONER.

In the 12th section of the act, entitled, an act for the relief of debtors with respect to the imprisonment of their persons, passed 9th April, 1813, it is enacted, "That if any plaintiff shall obtain judgment in any court of record, in any action against any defendant, in custody of any sheriff or other officer, either upon the process in the same action, or upon being surrendered in discharge of the bail, or otherwise, and shall not charge such defendant so remaining a prisoner in execution, within three months next after such judgment obtained, then such defendant so remaining in prison may be discharged out of custody by a *supercedeas, to be allowed by one of the judges of the court* in which such judgment shall be obtained: and where any defendant shall be surrendered in discharge of his bail after judgment obtained against him, and be thereupon committed to gaol; and the plaintiff shall not charge such defendant so surrendered and remaining in gaol in execution, within three months next after such surrender, such defendant remaining in prison may be discharged out of custody by a *supercedeas*, to be allowed as aforesaid."

ON APPEAL TOUCHING HIGHWAYS.

The act to regulate highways, passed March 18, 1813, provides, that whenever any person shall conceive himself aggrieved by the determination of the commissioners of highways, either in laying out, altering or discontinuing, or in refusing to lay out, alter or discontinue any road, he may within 40 days thereafter, *appeal* to any three of the judges of the court of common pleas for the county in which such road is situated, whose duty it shall be to convene as soon as may be convenient and decide such *appeal*, and their decision or that of any two of them, shall be conclusive in the premises; for which services every judge shall be entitled to receive two dollars for every day employed therein; to be paid by the party appealing where the determination of the commissioners is affirmed; but where such determination

shall be reversed, the same shall be collected and paid as part of the contingent charges of the county.

See, title Commissioner Highways, Appeal, &c.

An appeal also lies to the court of common pleas by the commissioners of highways, against the determination of the supervisors, touching an allowance for any bridges.

Law N. Y. Highways, March, 1813.

ON PETITION UNDER THE INSOLVENT ACT.

The act for giving relief in cases of insolvency, passed 12th April, 1813, makes it lawful for the first judge or any one of the judges of the court of common pleas, to receive a *petition* from any insolvent debtor with so many of his creditors in the United States, whose debts against him amount at least to *two thirds of all the money* owing by such insolvent, whether the same be then due or to become due thereafter, praying that such insolvent's estate may be assigned and such insolvent discharged according to the said act: *Provided*, That to every such petition be annexed an affidavit of each petitioning creditor, made before a master in chancery, or one of the justices of the supreme court, or one of the judges of the court of common pleas of any county, that the sum annexed to the name of such petitioning creditor is justly due to him, or will become due to him at some future time to be specified in such affidavit, and that he or any other person to his use hath not received from such insolvent or any other person, any payment of part of his demand against such insolvent in money, or by sale, conveyance, assignment or delivery of any lands, tenements, hereditaments, goods, chattels, or any thing in action, or any gift or reward whatsoever, upon any express or secret or implied contract, promise, trust or confidence that he should become a petitioner for and in behalf of such insolvent; and every such petitioning creditor shall in his or her affidavit of the debt due to him or her from such insolvent, specify the nature of his or her demand, whether arising on obligation, note, account, or otherwise, with the general ground of such indebtedness: *And Provided further*, That every such insolvent shall deliver or cause to be delivered to such judge at the time of presenting such petition, a full, just and true account of all his creditors and the monies he owes them respectively; and also a full, just and true inventory of all his estate both real and personal, in law and equity, and of all books, vouchers and securities relating to the same. Whereupon such judge shall administer to such insolvent, an oath to the following effect: "I, A. B. do swear, that the account of my creditors and the inventory of my estate which are both herewith deliv-

ered, are in all respects just and true, and that I have not at any time or in any manner whatsoever, disposed of or made over any part of my estate for the future benefit of myself or my family, or in order to defraud any of my creditors, and that I have in no instance created or acknowledged a debt for a greater sum than I honestly and truly owed, or with intent to aid my discharge under the act for giving relief in cases of insolvency."—Which oath being taken, such insolvent and the petitioning creditors, or one of them, shall cause an advertisement to be published for six weeks successively in the newspaper printed by the printer of this state and such other newspaper as such judge may direct, and shall also cause a copy of such advertisement to be put up six Mondays successively on the outer door of the court house or gaol of the city or county in which such insolvent shall reside or be imprisoned, and by which advertisement all the creditors of such insolvent shall be required to shew cause if any they have by such a day as shall be appointed by any first judge of any county, or if such affidavit is made before a judge of the court of common pleas, then at the next term of such court to be held next after the expiration of the said six weeks, specifying the time and place when and where such term shall be held, why an assignment of the said insolvent's estate should not be made, and he discharged according to the said act.*

ON ACKNOWLEDGEMENT OF DEEDS.

The act concerning deeds, passed 12th April, 1813, enacts, that every deed or conveyance of lands or real estate within this state, in order to entitle it to be recorded, be duly acknowledged by the party executing the same, or proved by one or more of the subscribing witnesses thereto, before, &c. [*See title, Coun-*

* The act for the relief of debtors with respect to the imprisonment of their persons, passed April 9th, 1813, provides that every person not being a freeholder, who shall be confined in gaol upon any execution or other process, or by virtue of any judgment or order of any court of justice for any debt, sum of money, fine or forfeiture, not exceeding 25 dollars, exclusive of costs, and shall have remained in gaol for 30 days, if not detained for any other cause, shall be discharged from imprisonment by the gaoler on application: *Provided*, That nothing therein contained shall extend to cases under the 25 dollar act. And by the said act first aforesaid, any person charged in execution for a sum not exceeding 500 dollars, may on petition to the court from whence the process issued, be discharged from imprisonment, on giving 14 days notice of such application to his creditor.

by Clerk] or any judge of any court of common pleas in this state, and that a certificate of such acknowledgment or proof, signed by such judge, shall be endorsed thereon and recorded with the said deed or conveyance: *Provided however*, That no such acknowledgement shall be taken, unless the officer taking the same shall know or have satisfactory evidence, that the person making such acknowledgement is the person described in, and who has executed such deed or conveyance, and that no such proof shall be taken, unless the officer taking the same shall know the person making such proof, or have satisfactory evidence that he is a subscribing witness to such deed or conveyance, and that such witness knows the person who executed the same, all of which shall be inserted in the said certificate of such acknowledgment or proof; and in case of the examination of witnesses, it shall be the duty of such officer to set forth in such certificate what witnesses were examined before him, and the substance of the evidence by them given. It is also in the said act provided, that no estate of a married woman shall pass by her deed, without her previous acknowledgment on private examination before such judge, apart from her husband, that she executed such deed freely without any fear or compulsion of her husband, which shall in like manner be contained in the certificate of such acknowledgement, to be endorsed on such deed. And it is declared by statute, that if any judge shall be guilty of any neglect or misdemeanor in the premises, he shall be liable to pay treble damages with costs, to the party aggrieved.

ON CANCELLING MORTGAGES.

Whenever any registered mortgage is redeemed or discharged, a certificate thereof must be signed by the person or persons to whom such mortgage was given, or by his or their executors, administrators or assigns, in the presence of two or more witnesses; which certificate must be proved or acknowledged in the same manner as the execution of such mortgage, (being the same as a deed) before one of the judges of the court of common pleas, or other officer authorized to take the same: and such certificate being produced to the clerk of the county where such mortgage is registered, will authorise him to cancel the same on record. Law N. Y. Mortgages, March 19th, 1813.

Before we conclude this chapter, we would observe, that perhaps it may not be considered an improper digression to close it with a quotation of the 7th section of the act, entitled, an act concerning courts of common pleas and general sessions of the peace in the several counties of this state, passed April 5th,

1813. It is as follows, "And be it further enacted, That if at any time hereafter, a sufficient number of persons authorised to hold any of the said courts of common pleas or general sessions of the peace, shall not attend for that purpose before five of the clock in the afternoon of the day on which such court is to be held, it shall be lawful for such one or more of them as shall attend, to adjourn the same court to the next day, and if a sufficient number to hold such court do not attend before five of the clock in the afternoon of such next day, then it shall be lawful for such member or members of the same court as shall attend, to adjourn the same court to the next term or session thereof, or for the longest time that such court can by law be adjourned."

POINTS ADJUDGED IN THE SUPREME COURT.

JUDGES OF THE COMMON PLEAS.

Bill of Exceptions. If a court of common pleas refuses, without sufficient grounds, to annex their seal to a bill of exceptions, it is a contempt for which this court will award compulsory process. But if it appears from the affidavit on the part of the defendant, that the bill of exceptions which was tendered was untrue, it is sufficient cause for the judges to refuse affixing their seal to the same. Coleman's Cases, 135. 1 Caines' Reports, 511.

The facts on which a bill of exceptions is taken must be reduced to writing during the trial, or at least during the term. 9 Johns. Rep. 345.

Prerogative. Each court has a control over its own process, and if there be any irregularity, the proper remedy is to apply to the court where it issued. 3 Johns. Rep. 141.

A court of common pleas may set aside a regular judgment by default, where there has been a fraud or surprise. 4 Johns. Rep. 136.

A judge of the common pleas may take an affidavit out of his county, when it is to be read in the supreme court. 5 Johnson's Rep. 234.

In the common pleas where none of the judges was a counsellor at law, and after verdict refused to give judgment, the supreme court granted a *mandamus*. 2 Johns. Rep. 371.

Judge's Charge. Where the charge of a judge of an inferior court is exceptionable, the remedy is by an application for a new trial. 2 Caines' Rep. 168.

Appeal. A *certiorari* lies to the judges of the common pleas, to remove proceedings on an appeal to them from commissioners of highways. 2 Caines' Rep. 334.

DEEDS.

Date. A mistake in the date of a deed does not injure it. 2 Johns. Rep. 280.

The real date of a deed is the time of delivery. Ibid.

A deed takes effect from the time of execution, not from the date. Ibid.

Parties. A grant, to be good, must be to some certain person named, who can take by it and hold in his own right, or as trustee. 8 Johns. Rep. 385.

Under a grant to A, B, and C, for themselves and their associates, being a settlement of *friends*, the legal estate vests only in the three persons named. 2 Johns. Cases, 321.

So, a grant to the inhabitants of a town not incorporated, is void. 9 Johns. Rep. 73.

So, a proviso or reservation to the inhabitants of R, in a deed from A to B, is void. Ibid.

Consideration. The words, "*a certain sum of money in hand paid,*" sufficiently expresses the consideration, without specifying the sum. 2 Johns. Rep. 230.

The want or failure of consideration, cannot be set up at law, to impeach a speciality. 2 Johns. Rep. 177.

Where the consideration is expressly stated in a deed, and it is not also said "*and for other good considerations,*" proof of any other consideration is inadmissible. 7 Johns. Rep. 341.

If the consideration be not truly stated, the party must seek relief in equity, as for fraud or a mistake. Ibid.

Nature of Grant. The words "*grant, bargain, sell, alien and confirm,*" do not import a covenant of title. It is implied only by the word "*give.*" 2 Caines' Rep. 188.

Where a deed contains no words of inheritance, the grantee takes only a life estate, and after his death the land reverts back to the grantor. 3 Johns. Rep. 388.

Description of lands in a Deed. On a contract to convey a certain lot of 600 acres in the township of Lyssander, which on survey was found to contain only 451 acres, it was held, that the quantity of acres was mere matter of description, and that the deed for the lot according to its known description, was a performance of the contract. 2 Johns. Rep. 37.

The term "*northerly*," in a grant, was construed to mean "*due north*." 1 Johns. Rep. 156.

If a lot of land be granted, specifying its number in a certain patent, and referring to a map on which it is laid down, the whole lot will pass, although described in the deed to contain a less number of acres than it actually does. 1 Caines' Rep. 493.

If in the description there are particulars sufficiently ascertained to designate the thing intended to be granted, the addition of circumstances false or mistaken, will not frustrate the deed. 7 Johns. Rep. 217.

Where there was a mistake in inserting the 12th, instead of the 21st general allotment, but the lot intending to be conveyed was sufficiently designated by the former part of the description, as well as by the courses and distances; it was held, that the premises being in the 21st general allotment, passed by the deed. Ibid.

If the words "*with the dwelling house thereon*," be inserted in the description, when in fact there is no dwelling house on the premises claimed under the deed, it is merely a false circumstance, which does not control the rest of the description. Ibid.

Covenant in a Deed. In an action on a deed for breach of the covenant of *seisin* and for *quiet enjoyment*, the plaintiff can only recover the consideration money paid with interest and costs of ejectment, and not damages for the improvements he has made, or the increased value of the land. 4 Johns. Rep. 1.

Execution of a Deed. No estate of freehold, either for life or in fee, can pass by an instrument not under seal. 12 Johns Rep. 73.

Nothing passes by a deed executed which is retained by the grantor, until payment be made. 1 Johns. Cases, 114.

After a deed is executed, it may be altered in a material part, without injuring its force. 4 Johns. Rep. 54.

Where it was shown that the grantor was very ignorant and illiterate, and could not read writing, and the deed was not read to him, it was held not sufficient to avoid the deed, unless he requested it to be read. 2 Johns. Rep. 404.

A possession adverse to the grantor, at the time of executing the deed, renders the conveyance void. 2 Caines' Rep. 183.

But the title of the grantor is not thereby extinguished or devested. 5 Johns. Rep. 489.

Proof of a Deed. In a certificate of the proof of a deed before a master in chancery, or other officer, it is not necessary to state, that the officer personally knew the subscribing witness. 11 Johns. Rep. 434.

And when the objection was, that it did not appear that the master knew the person who made the proof, the court on mo-

tion for a new trial, intended that the certificate of the master stated, that he had satisfactory evidence of the person being the subscribing witness. Ibid.

Proof of the execution of a deed cannot be taken by a judge of this state, out of the jurisdiction of the state. 1 Johns. Rep. 489.

The certificate of the proof of a deed, taken before a judge, being necessarily *ex parte* (or in the absence of the other grantors) is not conclusive: but the party affected by the deed, may contest its validity, and the force and effect of the formal proof. 4 Johns. Rep. 161.

PRECEDENTS,

WITH EXPLANATORY REMARKS.

BAIL.

After the return of the original process in any civil action in the supreme court, exchequer, or common pleas, the bail calls at the judge's chamber and tells him, that he is disposed to become bail for A. B. defendant in such action. The judge then takes his recognizance in the following form:

"You do undertake that if A. B. shall be condemned in this action, at the suit of C. D. he shall pay the costs and condemnation money, or render himself to the custody of the keeper of the gaol of the county of or you will do it for him."

"Are you content."

The bail piece, if in the common pleas, is then made up in the following form.

Ulster Common Pleas.

Of the term of (when the writ was returned) in the year, &c.

Ulster County, ss. A. B. is delivered to bail on the taking of his body to D. B. of Kingston, in the county of Ulster, merchant, and John Doe of the same place, yeoman, at the suit of C. D. D. B.

Taken and subscribed this day of 1815, before me } J. S. one of the Judges.

To this the judge will request the bail to subscribe his name at the right hand, and to the left, under the words "Taken &c. before me," he may set his own name, without any addition; but if the suit be in the supreme court or exchequer, he must add the words, " one of the judges of the court of common pleas of the county of," &c.

The forms of the bail pieces in the different courts are the same, excepting the caption. If the action be in the supreme court, the caption is thus:

Supreme Court.

Of the term of (return of the writ) in the year of, &c.

If in the exchequer, with the title of that court.

After the bail piece is complete, the judge will hand it to the party, or by his request he may deliver it to the clerk of the court to be filed.

ON SURRENDER OF BAIL.

Committitur, to be endorsed by the judge on the certified copy of bail piece.

Ulster Common Pleas.

Ulster County, ss. To the sheriff or keeper of the gaol of the county of Ulster. The within named A. B. having this day before me, surrendered C. D. his within named principal; you are hereby authorised and required to take the said C. D. in your custody, and him safely keep, until he be hence discharged by due course of law. Given under my hand and seal this day of 1815.

A. M. one of the judges, &c.

EXONERETUR TO BE ENDORSED BY THE JUDGE ON THE ORIGINAL BAIL PIECE.

Ulster Common Pleas. The within named A. B. having this day before, surrendered C. D. his within named principal, in discharge of himself; I do hereby certify that the said A. B. is exonorated accordingly. Dated the day of 1815.

A. M. one of the judges, &c.

FORMS FOR THE ACKNOWLEDGMENT OF DEEDS.

WHERE THE GRANTOR IS KNOWN TO THE JUDGE.

State of New-York, ss. I do certify, that on the day of in the year, &c. came before me, A. M. one of the judges of the court of common pleas for the county of Ulster, J. K. known to me personally, who acknowledged before me that he had executed the within deed, as his voluntary act and deed, for the uses and purposes therein mentioned: and I having examined the same and finding no material erazures or interlineations therein (if there be any, then say except those noted prior to the execution of the said deed), do allow the same to be recorded.

A. M.

FORM, WHERE THE GRANTOR IS NOT KNOWN TO THE JUDGE AND IDENTIFIED BY A THIRD PERSON.

State of New-York, ss. I do certify, that on the day of in the year, &c. personally came before me, A. M. one of the judges, &c. A. B. and I having satisfactory evidence that he is the same person described in, and who executed the within deed, by the oath of C. D. who being duly sworn, deposeth that he knew the said A. B. and that he is the person described in the said deed (or that he is a person of that name): And the said A. B. before me acknowledged that he had executed the same as his voluntary act and deed, and I finding no material erazures or interlineations therein, do allow the same to be recorded.

A. M.

FORM, WHERE A WITNESS KNOWN TO THE JUDGE, PROVES THE EXECUTION OF A DEED.

State of New-York, ss. I do certify, that on the day of in the year, &c. personally came before me, A. M. one of the Judges, &c. T. C. well known to me, who being duly sworn, deposeth and saith, that he was present and saw A. B. the grantor, execute the within deed; that this deponent and G. F. subscribed their names as witnesses to the execution thereof; that the deponent knew the said A. B. to be the same person descri-

ded as grantor in the said deed, which to me is satisfactory evidence of the facts above stated. And I having examined the said deed, &c. (as before.) A. M.

FORM, WHERE THE WITNESS TO THE EXECUTION OF A DEED IS NOT KNOWN TO THE JUDGE.

State of New-York, ss. I do certify, that on the day of in the year, &c. personally came before me, A. M. one of the judges, &c. S. D. of . And I having satisfactory evidence that he is the subscribing witness of that name to the execution of the within deed, by the oath of L. O. who being duly sworn, deposeth, that he knew the said S. D. and that he is a person of that name: And the said S. D. made oath before me that he was present, and saw A. B. the grantor, execute the said deed: that he knew the said A. B. to be the same person described in and who executed the said deed; and that this deponent and T. P. subscribed their names as witnesses, to the execution thereof, all which is to me satisfactory evidence.—And I having examined the said deed, and finding, &c. (as above.) A. M.

FORM, WHERE A MARRIED WOMAN IS A GRANTOR WITH HER HUSBAND.

State of New-York, ss. I do certify, that on the day of in the year, &c. personally appeared before me, A. M. one of the judges, &c. A. B. of and C. D. wife of the said A. B. known to me (if such is the fact, otherwise it must be certified under oath by a witness as above) to be the same persons described in and who executed the within deed, and the said A. B. before me acknowledged that he had executed the same as his act and deed: And the said C. D. having been by me privately examined, apart from her said husband, acknowledged that she had freely executed the same, without any fear or compulsion of her said husband.—And I having examined the same, &c. (as before.) A. M.

REMARK.

If a judge takes the proof of a deed executed by husband and wife, by a subscribing witness to the same, he can only allow

it to be recorded, as far as respects the husband, for until the wife is privately examined according to the statute, the deed in respect to her is invalid and cannot acquire any force from being recorded.

OF MORTGAGES.

Mortgages although otherwise distinguished, are deeds in law, for all writings sealed and delivered, are so considered in a legal sense. A mortgage is therefore to be acknowledged or proven in the same manner as any other deed, with the exception that instead of the words, "I do allow the same to be recorded," as in case of deeds, the judge usually states, "I do allow the same to be registered, or recorded." The copy of a deed entered in the county records, is called the *record of the deed.* The copy of a mortgage entered in the same, "*the registry of the mortgage.*" But there is an appendage to a mortgage, claiming the interference of a judge, which does not belong to another deed: when paid, it must be cancelled. The certificate of the payment of the monies due on mortgage, (executed in the presence of two witnesses according to law) is usually in the following form:

"I do hereby certify, That a certain mortgage indenture, bearing date the first day of April, 1809, and made and executed by Samuel Dun, of Kingston, in the county of Ulster, and Ann his wife, to me the subscriber, and registered in the clerk's office of the county of Ulster in Lib. B. of Register of Mortgages, Pages 531, 32 & 33, on the 17th day of April, 1809, is redeemed, paid off, satisfied, and discharged. Dated this twelfth day of April, 1813."

Witnessed by — Peter Styles.
Henry Evans,
James Rea.

The above said certificate must be proved or acknowledged in the presence of a judge, before such mortgage can be discharged; which is to be done as follows, if acknowledged:

State of New-York, ss. On this twelfth day of April, 1813, before me personally came Peter Styles, known to me to be the person described in, and who executed the above certificate, who duly acknowledged that he executed the same: whereupon I allow it to be recorded. — A. M. one of the Judges, &c.

If the said certificate is proven by one of the subscribing witnesses, the judge endorses thus, (as before, and then) "before me personally came, Henry Evans, to me known, &c. who on

his oath declared that he saw Peter Styles, to him the deponent known, execute the within certificate for the uses and purposes in the same mentioned, and that he the deponent is one of the subscribing witnesses to the same: whereupon I do allow the same to be recorded.

A. M. one of Judges, &c."

If the judge does not know either the person who acknowledges to have executed such certificate, or the witness to the same, he must identify such person, or witness, by the oath of some other person who knows either the one or the other.—The same course must be pursued in respect to taking the acknowledgement or proof of the execution of any deed whatsoever.

SALE OF MORTGAGED PREMISES.

On sale of mortgaged premises by a special power in the mortgage, the following affidavits must be made before one of the justices of the supreme court, or a master in chancery, or one of the judges of the court of common pleas of the county in which the mortgaged premises shall lie. Law N. Y. Mortgages, 1813.

PRINTER'S AFFIDAVIT.

Copy Notice intended sale by Mortgage.

Ulster County, ss. J. T. printer and publisher of a newspaper in the village of Kingston, in the county of Ulster, called the "Ulster Plebeian," being duly sworn, deposeth and saith, that he hath, from about the seventeenth day of October last past, weekly for six successive months, printed and published in the said newspaper, a notice of intended sale by mortgage, a copy whereof is hereunto annexed.

J. T.

Ulster County, ss. I do certify, that on the day of May, in the year one thousand eight hundred and sixteen, J. T. in the above affidavit named, personally appeared before me and made the above contained oath.

C. D. one of the judges, &c.

FIXTURE NOTICE TO COURT-HOUSE DOOR.

Advertisement of Mortgage.

Ulster County, ss. J. J. being duly sworn, deposeth and saith, that he hath on or about the seventeenth day of October last past, fixed a copy of the advertisement of intended sale by mortgage, hereunto annexed, upon the outward door of the court-house, in the village of Kingston, in the county of Ulster.

J. J.

Ulster County, ss. I do certify, that on the day of in the year of , J. J. (as above)

C. D. one of the judges, &c.

AUCTIONEER'S AFFIDAVIT.

Advertisement of Mortgage.

Ulster County, ss. A. B. of the town of in the county of Ulster, being duly sworn, deposeth and saith, that the mortgaged premises, mentioned in the advertisement hereunto annexed, were on the day of in the year one thousand eight hundred and sixteen, exposed for sale at public auction, at the court-house in the village of Kingston in said county, at eleven o'clock in the forenoon of that day, and that he this deponent then and there at the said sale, acted as auctioneer for J. H. the mortgager in the said advertisement named—that the said premises being so as aforesaid by this deponent exposed for sale, C. D. of the said county, bid one hundred dollars for the same: then A. L. of the said county, bid one hundred and fifty dollars for the same: and then A. M. of the county of Dutchess, bid three hundred dollars for the same; and that being the highest sum bid, the said premises were accordingly struck off by this deponent, for the said sum of three hundred dollars, to the said A. M. as the highest bidder for the same.

A. B.

Ulster County, ss. I do certify, that on the day of in the year of A. B. (as before.)

C. D. one of the Judges, &c.

FEES OF THE JUDGES OF THE COMMON PLEAS.

FEES OF THE FIRST JUDGE.

For a license to an attorney, one dollar.
Signing a discharge under the insolvent act, one dollar.
Deciding on the propriety of directing an assignment, two dollars.
Receiving a petition, one dollar.

FEES TO BE DIVIDED AMONG THE JUDGES WHO ARE PRESENT WHEN THE SERVICE IS DONE.

For the first motion in every cause of the court of common pleas, thirty-seven and a half cents.

Admitting a person to practice as an attorney, one dollar and eighty-seven and a half cents.

Admitting a guardian on the act for the partition of lands, twenty-five cents.

FEES TO BE PAID TO THE JUDGE WHO DOES THE SERVICE.

For admitting an infant by guardian or next friend, nineteen cents.

Taking bail in his own court, twenty-five cents—in the supreme court, thirty-seven and a half cents.

Taking acknowledgement af satisfaction out of court, twelve and a half cents.

Attending on shewing cause of action or other special matter out of court, twenty-five cents.

Taking an affidavit, twelve and a half cents.

Allowing a warrant of attorney, twelve and a half cents.

Taking and drawing acknowledgement or proof of a deed or mortgage, lease and release to be considered or one deed, thirty-seven and a half cents.

A certificate or order concerning an insolvent debtor, thirty-seven and a half cents.

A warrant, order, report, certificate, or appointment of trustees, in pursuance of the act concerning absconding or absent debtors, thirty-seven and a half cents.

Signing a judgment, twelve and a half cents.

Taxing a bill of costs, twenty-five cents; but no judgment shall be signed, or taxation of costs made, by any assistant-justice of any court.

CHAP. VI.

THE COUNTY CLERK.

The ordinary duties of the County Clerk, may be properly considered as comprehended under four general heads, viz.

1st. As he is the keeper, recorder and depository of the public records, minutes and files of the courts of common pleas and general sessions of the peace of his county.

2d. As clerk of the court of common pleas of his county.

3d. As clerk of the court of general sessions of the peace of his county.

4th. As clerk of the circuit court and the oyer and terminer and general gaol delivery of his county.

HIS DUTY AS KEEPER AND DEPOSITORY OF THE PUBLIC RECORDS OF HIS COUNTY.

Besides the records of deeds and mortgages, there are a variety of other records, whereof the county clerk is keeper and depository, some of which we shall here enumerate, as follows: All judgments in the common pleas of his county, are entered in his office.—Last wills and testaments, whereby real estate is devised, can only be recorded in his office; for the surrogate of the county, as we shall see when we come to consider his office, cannot take the proof of a will as far as it respects real estate, and no farther than as it may relate to a disposition of personal property. Law N. Y. Wills, March 25, 1813.—The proceedings in partition of lands in his county according to statute, are to be filed in his office.—The bonds for the due execution of the sheriff's office, loan-office, county treasurer's office, and all licenses to practice physic and surgery in his county, must be deposited in his office.—The style and title of the incorporation of all religious societies in his county, must be recorded in his office.—The rolls or records of the qualification of all the officers, civil and military in his county, are directed to be in his

keeping.—All the certificates of election for governor, lieutenant governor, senators and members of assembly, returned by the inspectors of election from the different towns in his county, are to be recorded in his office.

It is his duty from time to time and at all times, to make, keep and preserve all such records in proper books provided for such purpose, in fair and legible manuscripts in the English language, and in such order of arrangement, that prompt and convenient access may be had to the same, for or in behalf of any person or persons whomsoever, that may desire to have the same or any of them searched. And it is incumbent on him personally, or by a lawful deputy, daily to attend his said office at seasonable hours, as well to facilitate such search for any person who may request the same to be made, as to receive and record such instruments as are intended for county records.

HIS DUTY AS THE COUNTY RECORDER OF DEEDS.

By the act concerning deeds, passed April 12th, 1813, it is enacted, that every deed, conveyance or writing, concerning any lands within this state, in order to entitle it to be recorded, shall be duly acknowledged or proved (in manner as we have stated under the title of judges of the courts of common pleas) before one of the judges of the supreme court of the United States, or before one one of the justices of the supreme court of this state, or before one of the judges or justices of the supreme or superior courts of any state or territory within the United States, or before the first judge of the district of Columbia, or a master in chancery of this state, or the first judge or any other judge of the court of common pleas of any county in this state, or before the mayor or recorder of the cities of New-York, Albany, or Hudson, or the mayor of Schenectady*: which proof or acknowledgement being duly certified on such instrument in writing, the same may be recorded in the clerk's office of the county wherein the lands are situated. And every such writing shall be recorded in the order and as of the time when the same shall be delivered to such clerk, and shall be considered as recorded from the time it was so delivered. The statute enjoins that the clerk shall make an entry in the margin of the record thereof, of the day, month and year, and the time of the day when the same is so recorded; and endorse and sign a certificate of such wri-

* By an act of the legislature of this state, 12 April, 1816, a foreign accredited minister of the United States, is authorised to take the proof or acknowledgment of deeds of this state.

ting, of the particular time when, and the book and page in which the same is so recorded.

It will be found very inconvenient for any such clerk to write all the said requisites of such certificate in the margin of his record book; we therefore venture to presume, that the spirit of the said statute will be sufficiently complied with, by entering such certificate in the said book at the foot or bottom of such record.

When a deed is brought into the clerk's office to be recorded, his duty in the first instance is to inspect it and to satisfy himself of its authenticity, or see whether it be duly proved or acknowledged; finding it correct, he endorses the date of its receipt as aforesaid, and then records it together with such proof or acknowledgment, word for word, without any variation, in his book of records of deeds, distinguishing the same by some certain name, as Liber A. or B. of Records for county.

Unless a deed be thus acknowledged or proved, it is not lawful for such clerk to record it. And if he is guilty of any neglect or misdemeanor in the premises, he is liable to pay treble damages with costs of suit to the party injured.

It is declared by statute that deeds which have been proved or acknowledged before the 6th April, 1801, according to any law of this state then in force, shall be entitled to be recorded.

HIS DUTY IN RESPECT TO THE REGISTRY OF MORTGAGES.

The act concerning mortgages, passed the 19th March, 1813, enacts, that the clerks in the respective counties in this state, shall from time to time find and provide fit and convenient books for the registry of mortgages; in which shall be entered the names of the mortgagers and mortgagees, the mortgage money, the time or times when payable, the description and boundaries of the lands, the times when such mortgages are registered, and a minute of the certificate of the proof or acknowledgment thereof; to which register all persons at proper seasons may have recourse. And it is made the duty of such clerk to record at length the special power of sale together with the registry of such mortgage. And in case of neglect so to do, he shall answer to the party injured all damages.

His fee for registering a mortgage is one dollar, and for recording such power of sale, at the rate of nineteen cents for each folio of one hundred and twenty-eight words thereof; amounting generally to twenty-five cents: that is, one dollar and twenty-five cents for registering a mortgage and recording the power of sale therein contained.

A mortgage must be proved and acknewledged in the same

manner as a deed, and be registered in the county where the lands are situated.

Whenever any such certificate of payment of a mortgage (as is mentioned under the title of common pleas judges) is produced to the county clerk, and being duly authenticated, such clerk shall enter in his book or register of mortgages a minute of such discharge and certificate. And it is declared by statute not to be necessary for such clerk on entering such minute, or on registering a mortgage, to record or register at length such certificate of the proof or acknowledgment of such mortgage, or of the payment thereof.

If application shall be made to any such clerk of the county where mortgaged premises lie, to record a printer's affidavit of publication and affidavit of fixing a copy of notice of sale by mortgage at the outer door of the court-house, then it shall be the duty of such clerk to record in his register of mortgages, such affidavit at full length, together with the certificate of the judge annexed to the same. Law N. Y. Mortgages, 1813, sec. 9.

HIS DUTY AS CLERK OF THE FILES OF THE COURTS OF COMMON PLEAS AND GENERAL SESSIONS OF THE PEACE.

As clerk of the peace he is not in the ordinary receipt of papers for file, touching the business of the court of sessions. The minutes and documents of that court and all indictments and recognizances, &c. he generally files during the sessions, and preserves on file to be acted upon in subsequent sessions or at the next court of oyer and terminer and general gaol delivery, as the cases may lawfully require.

As clerk of the common pleas he is the only lawful receiver in vacation of term, of all the pleadings which are conducted in such court, and of all appearances and bail pieces entered or taken in the same. For which purpose it is not only his duty to endorse the date of the precept of any such pleading, appearance or bail piece, at the time when the same is delivered in his office, but also to enter the same in proper books to be provided for that purpose. And when required, it is incumbent on him to furnish a transcript or copy of any such pleading, bail piece or file, duly certified under his hand.

His fees for this service are: filing every declaration or other pleading, six cents: copy of a declaration, when required, thirty-seven and a half cents: copies of all other pleadings, when required, six cents for each sheet containing seventy-two words. *See title Clerk's Fees, hereafter.*

HIS DUTY AS CLERK OF THE COURT OF COMMON PLEAS.

Duty to seal Process. We have before seen that the county clerk, as clerk of the common pleas, is the filacer and keeper of all the pleadings which are transacted in the said court. We shall under this head subjoin, that as clerk of the said court, it is his duty on application to issue all the mesne and final process of the said court under the seal of the same.

Duty under the jury act. In conformity to the act, entitled "An act for regulating trials of issues, and for returning able and sufficient jurors," passed 25th Feb. 1813, it is enacted, that before the coming or holding any court of record in any of the counties of this state the names of the jurors for the trial of issues therein, shall be drawn openly and publicly, without venire or application from the sheriff; and that the clerks of the said respective courts, shall give public notice of the time and place of such drawing, by an advertisement to be put up at the outward door of the court-house for the space of ten days previous to such drawing; and at the time and place specified in such notice, the said clerks shall proceed to draw the names of the jurors who are to be summoned at the then next court, and deliver the panel thereof to the sheriff, at least eight days before the sitting of any such court. The statute provides, that the fees of the clerk for drawing every such jury and making the panel, shall be paid by the sheriff or other officer at whose request it shall be done; and the sheriff or other officer shall be allowed for the same in his account with the people of this state.

Duty previous to opening court. Before the term, the clerk must provide for the use of the judges, a calendar of the causes with the notes of issues joined in the same respectively, to be tried at such next term, and arrange the same on such calendar in the order of time when they were joined, placing the senior before the junior. The venires for the jury in the said causes, sealed by the clerk, are presumed to have been delivered to the sheriff by the attornies upon whose precepe's the clerk has made them out. The subpœnas, sealed by the clerk, for the witnesses to testify on the trial of the said issues, are also supposed to have been served by the parties concerned. So that nothing then remains for the clerk to do previous to the opening of the common pleas, but to furnish himself with a calendar of the constables, (which it is the duty of town clerks to return to his office) and also to prepare a few blank sheets of paper, by stitching them together and writing a caption thereon, for his court minutes.

Duty on opening court. A sufficient number of judges having appeared in the court-room, and the sheriff, constables and ju-

rors being also there convened, the clerk being requested by one of the judges to open the court, tells the crier to repeat after him, as follows: "Hear ye, hear ye, hear ye; all manner of persons who have any business to do at this court of common pleas, holden here this day for the county of Ulster, let them come forth and they shall be heard. If any new civil commission has been issued for the county, the clerk then openly reads it in court. After which he directs the crier to proclaim thus: "Sheriff of the county of . return the several writs and precepts to you directed and delivered and returnable here this day, that the court may proceed thereon."

The constables elected and returned for the several towns are then called by proclamation according to the calendar, and the clerk marks such as do not answer. He then calls the petit jurors by proclamation thus: "You good men who are impannelled and returned here this day, to try the several issues joined at this court of common pleas, holden here this day, for the county of , answer to your names and save your fines."—After which he calls them, name after name, according to the sheriff's panel, until the whole are called, marking those who do not appear. He then enumerates to the court the defaulters of jurors and constables; whereupon if no proper excuse is shewn, the crier repeats after the clerk as follows: "Hear ye, hear ye, hear ye, the court have set a fine of dollars upon each of the following persons, for their non-attendance at this court as jurors, to wit: J. F. of the town of Farmer, &c." The like proclamation is made in relation to the defaulting constables.

He then swears the attending jurors, three at a time thus:—"You do swear, in the presence of Almighty God, that you will well and truly try the several issues joined in the several causes to be tried at this court of common pleas, held here for the county of , and true verdicts give therein respectively according to evidence, so help you God."

Duty after opening of court. To every witness who is called to testify before the jury, he administers the following oath:—"You do swear in the presence of Almighty God, that the evidence you shall give in this issue joined, between A. B. plaintiff, and C. D. defendant, shall be the truth, the whole truth, and nothing but the truth, so help you God." He also administers the oath to the constable in the usual form,* to take charge of the jury when they retire to consider of their verdict, and on their return receives and enters their verdict in his minutes.—

* See title Coroner, oath to constable.

He likewise enters therein all judgments and orders of the court during term.

It is made his duty by statute to assess damages upon interlocutory judgments, on any bills of exchange, promissory notes, or written contracts for certain sums, though payable in specific articles, and on any bail bonds, actions of debt on judgments or recognizances, or upon any specialties or contracts for the payment of money only; and to report such assessments to the court during term. His fee is one dollar for assessment in every such cause. He is also the proper organ of the court by which returns are made to all writs of habeas corpus for the removal of causes from this court to the supreme court. See title Judges of the Common Pleas.

On adjournment and opening of Court during term. He adjourns the court thus. "All manner of persons that have any further business to do at this court of common pleas holden here for the county of may depart hence, and appear here again on the day of next, to which time this court is adjourned."

He opens the court during term thus. "All manner of persons who are adjourned over to this hour and have any further business to do at this court of common pleas, holden here for the county of , may draw near, give their attendance and they shall be heard."

To Docket Judgments. By the third section of the act concerning judgments and executions, passed 2d April, 1813, it is enacted, that the clerks of the several courts of record in this state, shall, during every term or court, or within six days thereafter, make and put into an alphabetical docket, by the name of any party against whom any judgment shall be entered, a particular entry of all final judgments for debt or damages entered in the said courts respectively, of such term, or at the court preceding, to contain the names of the parties, their places of abode, and title, trade or profession, if any such be in the record of such judgment, and the debts, damages and costs recovered thereby; and the said respective dockets shall be fairly put into and kept in books in the office of the said clerks respectively, which may be searched by all persons at reasonable times, and every clerk for every term or court he shall omit to do his duty in the premises, shall forfeit the sum of two hundred and fifty dollars, the one moiety thereof to the party grieved, and the other moiety to the person who will sue for the same, to be recovered in any court of record, by action of debt. And further, that no judgment not docketed and entered in the books as aforesaid, shall affect any lands or tenements as to purchasers or mortgagees, or have any preference against heirs, executors

or administrators, in the administration of their ancestors, testators or intestates estates.

HIS DUTY AS CLERK OF THE SESSIONS.

When the Sessions convene. In order to give the reader a correct view of the duties of the county clerk as clerk of the sessions, it is proper that we should refer him to the title, "General Sessions of the Peace," under the head of "Justices of the Peace." It will there be observed that the sessions are convened at the same time and place when and where the court of common pleas for the county is held. The two courts are generally opened simultaneously.

Before Opening of the Sessions. We have before remarked that the clerk of the peace is not ordinarily in the receipt of papers or documents in the recess of the sessions, which appertain to the business of that court. It is, however, his duty in the vacation of the sessions, within a reasonable time before the same are convened, to make out the precept for the grand jury, No. 2, of precedents for justices, and to deliver the same in due time to the sheriff. The venire for the petit jury No. 3, of precedents for justices, he may prepare during the sessions, in case the necessity of a trial occurs at the same: when a jury are then there empanneled from the number of petit jurors who have been summoned by the common pleas.

On opening the Sessions. After the clerk has opened the common pleas, he usually immediately thereafter opens the sessions, the crier repeating after him thus. "Hear ye, Hear ye, Hear ye; all manner of persons who have any business to do at this court of general sessions of the peace, held here this day for the county of , may draw near, give their attendance and they shall be heard." And if a new commission of the peace has been issued since the last sessions, the clerk reads it in the court. The crier then repeats after him thus. "Sheriff of the county of , return the several writs and precepts to you directed and delivered and returnable here this day, that the justices of the people may proceed thereon." After the constables are called by proclamation, the crier repeats after the clerk thus. "Hear ye, Hear ye, Hear ye; you good men who are here returned to enquire for the people of the state of New-York for the body of the county of , answer to your names, every one at the first call and save your fines." The grand jury are then called individually by their proper names and sworn as they appear. The clerk first tenders the following oath to the foreman. "You, as foreman of this grand inquest, shall deligently inquire and true presentment make of all

such matters and things as shall be given you in charge; the the counsel of the people your fellows and your own, you shall keep secret; you shall present no man for envy, hatred or malice, neither shall you leave any man unpresented for fear, favor or affection or hope of reward; but you shall present all things truly as they come to your knowledge, according to the best of your knowledge, so help you God." The rest of the jury, three at a time, are sworn thus. "The same oath which your foreman hath taken on his part, you and every of you shall well and truly observe and keep on your parts. So help you God." After the grand jury are all sworn the crier repeats after the clerk thus. "The justices of the people do strictly charge and command all manner of persons to keep silence while the charge is in giving to the grand jury, upon pain of imprisonment."

After opening the Sessions. After the grand jury are withdrawn the clerk calls the recognizances thus. "Hear ye, &c. all manner of persons that are bound by recognizance to prosecute or prefer any bills of indictment against any prisoner or others, let them come forth and prosecute, or they will forfeit their recognizances."

When a prisoner is arraigned to be tried by a petit jury, the clerk calls the panel thus. "You good men that are empanelled and returned to inquire between the people of the state of New-York and the prisoner at the bar, answer to your names upon the pain and peril that shall fall thereon."

The clerk then calls the jury, man by man, and swears each thus. "You shall well and truly try and true deliverance make, between the people of the state of New-York and the prisoner at the bar whom you shall have in charge, and a true verdict give therein according to evidence. So help you God." When twelve jurors are sworn he reads their names and the crier counts the same while they are so read. Upon which the clerk asks them if they are all sworn: he then requests the prisoner at the bar to hold up his hand, and says to the jury, "look upon the prisoner you that are sworn: A. B. stands indicted," &c. The indictment is then read to him by the clerk or district attorney, and the jury addressed thus: "Upon this indictment the prisoner hath been arraigned: upon his arraignment he has pleaded not guilty, and for his trial hath put himself upon his country, which country you are; you are therefore to enquire whether he is guilty of the larceny whereof he stands indicted, or not guilty. If you find him guilty, say so; if you find him not guilty, say so and no more. Hear the evidence which is brought before you."

The witnesses on the trial the clerk swears thus. "The evi-

dence that you shall give between the people of the state of New-York and the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth, so help you God.

When the jury return to the bar and after the clerk has entered their verdict, he says to the jury, "Gentlemen hearken to your verdict as the court hath recorded it. You say you find A. B. guilty of the larceny whereof he stands indicted, and so you all say."

Before the sessions close, if any persons attend who have been bound by recognizance and against whom no indictments have been found, they are discharged by the clerk thus.—"If any person can show any lawful cause why A. B. should be longer bound, let him come forth and he shall be heard."

In case a person let to bail on recognizance does not appear, the crier repeats after the clerk thus: "A. B. of Kingston, gentleman, come forth and save yourself and your bail, or you will forfeit your recognizance." If he does not appear, the clerk calls the bail thus. "A. M. and A. L. bring forth A. B. your principal, whom you have undertaken to have here this day, or you will forfeit your recognizances." Where a person indicted pleads not guilty, the clerk enters the plea on the indictment, and then recognizes him for appearance at the next sessions, thus: "A. B. you acknowledge to owe to the people of the state of New-York, the sum of $200, and you A. M. and A. L. (his sureties) each of you acknowledge to owe the said people, each the sum of $50, to be levied of your respective goods and chattels, lands and tenements, to the use of the said people, upon condition that you A. B. shall be and appear at the next general sessions of the peace to be holden for this county, to try the traverse upon the indictment to which you have now pleaded not guilty, and shall not depart the court without leave. Are you content?"

The sessions are adjourned by the clerk in the same manner as the common pleas, only varying in the style of the court.

HIS DUTIES AS CLERK OF THE CIRCUIT, OYER AND TERMINER AND GENERAL GAOL DELIVERY.

It is enacted by statute that the clerks of the several counties in this state, New-York excepted, shall be ex officio clerks of the circuit courts and courts of oyer and terminer and gaol delivery, within their respective counties; and that in all cases where persons shall be bound over and enter into recognizances for their appearance at either of the said courts of oyer and terminer and general gaol delivery or general sessions of the peace, and shall make default in appearing agreeably thereto,

and the same shall be estreated, the account of the said clerk for his fees in such case, shall be audited by the court of exchequer, and paid out of the monies arising from the forfeitures of recognizances.

It is his duty to return a *postea*,* or certificate to the supreme court, in every cause in which a verdict or nonsuit has been taken at the circuit.

He is entitled to receive from the plaintiff two dollars and fifty cents for every cause entered on his calender, to be tried at the circuit of his county.

It will be sufficient under this head merely further to observe, that the duties of the clerk of the oyer and terminer, are similar to those of the clerk of the sessions, and those of the clerk of the circuit court, like those of the clerk of the common pleas.

HIS OTHER DUTIES BY PARTICULAR STATUTES.

Estreats. It is his duty by statute, annually on the first day of October term, to make and deliver into the court of exchequer a just and true account and estreat of all fines and forfeitures, issues and amercements imposed or adjudged, and of all recognizances forfeited before the first day of September, preceding the said first day of the said October term, together with the said recognizances, noting in every such account and estreat, where any such fines, forfeitures, issues or amercements have been paid, or the person committed for the same, to whom such payment or commitment was made, and what process has been issued and to what officer; upon pain in case of neglect of duty therein, to forfeit his office and to become answerable for all such fines, forfeitures, issues and amercements, and the amount of all such recognizances as he shall neglect to give an account of and estreat and deliver as aforesaid.

Convicts. When a person shall be convicted and sentenced to imprisonment in the state prison, it is the duty of the clerk of the court in which such sentence shall be passed, to make and certify a copy thereof and deliver the same to the sheriff, who shall when he conveys such convict to the prison, deliver the said convict with the said copy to the keeper of the said prison.

Oaths. He is a commissioner by statute for administering oaths to every person appointed to an office, civil or military in his county: and it is his duty for that purpose after he has administered any such oath, to cause the same to be subscribed with

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* *Postea* is a latin term, meaning *afterwards*: that is, what was done after issue was joined in a cause.

the proper name and hand writing of the person taking the same on rolls to be provided for that purpose containing proper captions, with the said oaths written thereon at length; which rolls shall be deposited and kept in his office. These oaths generally consist of three descriptions: 1st. The oath of allegiance: 2d. The oath to support the constitution of the United States: 3d. The oath of office. And it is incumbent on him by the said statute, on or before the fifteenth day of January in every year, at the expence of this state, to give information to the governor for the time being, of such persons as have taken the oaths required by law to be taken, and of such as have neglected to take the same, and also of all vacancies in such county, occasioned by death or removal or otherwise in any civil office.

He is by the said statute authorised to bring a suit for the penalty of 25 dollars against any other such commissioner of his county who shall not within six months after taking such oaths, return the rolls thereof as aforesaid into his office.

On Receipt of Commissions. It is his duty to notify all persons in his county of their appointments to civil or military offices, and also of supercedeases to their commissions.

Whenever any new general commission of the pleas, or of the peace, shall be received at the clerk's office, he must forthwith give notice thereof to all persons then in commission and not named in such new commission, and from the time of receiving such notice, or in case of failure of being so notified, from and after the expiration of 30 days from the time of the receipt of such commission at the clerk's office as aforesaid, every judge, other than the first judge, every assistant justice and justice of the peace, shall cease to act in his said office, unless specially authorised by statute to proceed in business already commenced. Law N. Y. April, 1815.

Elections, It is his duty when the inspectors of election return to him the certificates of election for governor, lieutenant governor and senators, to enter such certificates of record in a book to be by him provided for that purpose and within twenty days thereafter to deliver a transcript, certified by him of all such certificates so by him received, or cause the same to be delivered to the secretary of this state by a special messenger to be by him appointed for that purpose; to which messenger such clerk shall administer the following oath: "I A. B. do solemnly and sincerely swear and declare in the presence of Almighty God (or do solemnly and sincerely declare and affirm) that I will faithfully to the best of my ability and without delay, deliver in at the secretary's office, all such certificates of the election of the county of as shall be delivered to me by the clerk of the said county for that purpose." For which service

the clerk shall be paid at the rate of twenty-five cents for each mile, out of the treasury of this state, on the warrant of the comptroller. And such clerk shall likewise on the return to his office of the certificates of election for members of assembly of his county, enter such certificates of record in a book to be provided for that purpose, and shall without delay after the day appointed for delivering to him such certificates shall have elapsed, calculate and ascertain the aggregate amount or whole number of votes given for the respective candidates voted for as members of assembly at any such election, and shall thereupon determine conformable to such statements or certificates delivered to him as aforesaid upon the person or persons duly elected by the greatest number of votes as members of assembly for such county; and shall after entering such determination of record, cause to be delivered to each of the persons so found to be elected as members of assembly, a brief certificate of such election.

The county clerk is, by statute, constituted a commissioner to take affidavits to be read in the supreme court.

His Duty under the Common School Act. The Common School act of 1814, enjoins it upon him whenever he receives notice from the superintendent of common schools, of the apportionment of monies in the said act specified to be distributed among the several towns of his county, forthwith to deliver or transmit the same to the clerk of the board of supervisors of such county, retaining a copy thereof and filing the same in his office. It is the duty of the several county clerks, on or before the first day of November annually, to make a county report of all the matters contained in the several town reports to them made, and to transmit the same to the superintendent of common schools.

To Appoint a Deputy. It is made his duty by statute to appoint a deputy clerk under him, to do and execute all the duties of his said office in case of his death, or inability to perform the same. Law N. Y. amendment of the law, April 5, 1813.

In case of the sickness, inability or absence of the clerk, it is lawful for his sworn deputy when authorised by warrant under the hand and seal of the clerk, to certify all rules, proceedings, pleadings and records in the office, to administer the lawful oaths to civil and military officers, and to assess damages according to law. Law N. Y. March, 1815.

POINTS ADJUDGED IN THE SUPREME COURT.

COUNTY CLERK.

Registry of Deeds. A subsequent registered deed, will have preference to a prior unregistered deed, where the grantee in the subsequent deed has not notice of the prior one. 8 Johns. Reports, 137.

If a subsequent purchaser has notice at the time of his purchase of a prior unregistered deed, it is the same to him as if such deed had been registered. 10 Johns. Rep. 457.

It seems that implied notice of a prior unregistered deed, will not be sufficient to set aside a subsequent registered deed.—8 Johns. Rep. 137.

An unregistered deed is good against the grantor and his heirs. 10 Johns. Rep. 457.

Registry of Mortgages. The registry of a mortgage is notice to all the world; and subsequent mortgagees and purchasers, must look to the register at their peril. 2 Johns. Rep. 510.

Registered mortgages are to be paid according to the time of their registry, and the doctrine of tacking does not apply to them. 1 Caines' Cas. Er. 112.

A mortgage, not registered, has a preference over a subsequent judgment, docketed; but if the land should be sold by the sheriff, under the judgment, prior to the registry of the mortgage, a *bona fide* purchaser at the sheriff's sale, would be protected against the mortgage. 4 Johns. Rep. 216.

PRECEDENTS,

WITH EXPLANATORY REMARKS.

Record of Deeds. It has been observed, that a deed is to be recorded, word for word, together with the certificate of the proof of the execution thereof. When the record is completed, the clerk enters a certificate under his hand, at the foot of such record, thus: "A true record, entered this day of in the year, &c. at 10 o'clock A. M. (the specific time when the same was received.) F. A. Cl'k."

And then endorses the original, thus: " county, ss. Recorded in book A. A. of Deeds, in pages 120, 121 & 122, this day of 1815, at 10 o'clock A. M.

F. A. Cl'k."

Registry of Mortgages. A mortgage is to be registered, that is, to be minuted in substance of record; and not to be recorded verbatim, as a deed: with the exception however of the power of sale usually contained in a mortgage, which as we have remarked, must be recorded at length. The registry is thus made:

"Registered for A. B. this day of in the year, &c."

"A Register of a mortgage made the day of in the year of (the date thereof,) Between A. B. of , of the first part, and C. D. of , of the second part: For all that (copy the description of the mortgaged premises): With a Proviso or Condition (copy the sum to be paid with, or without interest, as described, with the dates of payment). But in case default shall be made in the payment": (From the word *But*, record the whole power of sale.)

"Acknowledged by A. B. the mortgager, (or proved by the oath of , as the case may be) the day of before F. G. one of the judges, &c. and by him allowed to be registered or recorded.

A true Registry. F. A. Cl'k."

And then underneath the same he enters thus: "A true Registry and Record, entered this day of in the year of , at 10 o'clock A. M. F. A. Cl'k."

When a mortgage is paid or redeemed, and the clerk is duly authorised, he enters the discharge thereof in the margin of the book of registry, thus: " county, ss. I do certify that a discharge signed by J. H. (the mortgagee) on the day of in the year of , in full satisfaction of the mortgage registered in this and in the preceding page, hath this day of in the year of , been filed in this office, duly acknowledged by F. G. one of the judges of the court of common pleas of this county, and by him allowed to be entered.

F. A. Cl'k."

CAPTION OF THE MINUTES OF THE CLERK OF THE COURT OF COMMON PLEAS.

At a court of common pleas, held at the court-house in in and for the county of before the judges and assistant justices of same court, on the day of in the year

Present
A. B. } First Judge.
C. D. } Judges.
E. F. }
G. F. } Assistant Justices.
K. K. }

RETURN TO HABEAS CORPUS.

We the judges and assistant justices of the court of common pleas held in and for the county of Ulster, mentioned in the writ to which this schedule is annexed: To the people of the state of New-York, in the said writ named, do humbly certify, that before the coming to us of this writ, to wit, on the day of in the year, &c. A. B. in the said writ mentioned, was taken at Kingston, in the county of Ulster aforesaid, and within the jurisdiction of this court, and there in the prison of the people of the state of New-York, under our custody was detained by virtue of a certain plaint against him in the said court levied, at the suit of C. D.: And this is the cause of the caption and detention of the said A. B.: The body of which A. B. before the people of the state of New-York, named in the writ aforesaid, to which this schedule is annexed, we have ready as by the aforesaid writ it is to us commanded.

Note. The clerk endorses on the back of the Habeas Corpus, thus: "The execution of this writ appears by the schedule hereunto annexed. L. M. Cl'k."

CAPTION OF THE MINUTES OF THE CLERK OF THE GENERAL SESSIONS.

At a court of general sessions of the peace, held at the court-house in , in and for the county of , before the justices of the people of the state of New-York, the peace in and for the said county to keep, and divers felonies, trespasses and other misdemeanors in the said county done and perpetrated, to hear and determine, assigned on the day of in the year of

Present
A. B. }
C. D. } Justices, &c.
E. F. }
H. G. }

FEES OF THE COUNTY CLERK.

Searching the records in any one year, twelve and a half cents; and for every other year in which search is made, three cents.

Searching for a judgment in any one year, if done by the clerk, twenty cents; and for every other year in which such search is made, ten cents.

Swearing each witness to a will, or codicil, six cents.

Drawing the proof of wills or codicils, twelve and a half cents for each sheet of seventy-two words.

Recording deeds, wills and codicils, and the proof thereof required by law, or the power to sell in mortgages, ninnteen cents for each sheet containing one hundred and twenty-eight words; and for copies thereof when required, twelve and a half cents for every sheet of one hundred and twenty-eight words.

Entering or registering each mortgage, one dollar.

Entering satisfaction on every mortgage, twenty-five cents.

Fee Bill, Law N. Y. 1813.

CHAP. VII.

THE SURROGATE.

THE OFFICE.

The surrogate is a county officer whose duty it is to take and certify the proof of last wills and testaments so far as they respect the disposition of personal estate, and also to grant and certify licenses, commonly called "*letters of administration*," for the due and legal disposal of personal property in cases where persons die intestate, or without will.

The propriety of vesting such power and authority in definite hands, for legal purposes, must be obvious, when we consider that such interposition of the mandate of law in the settlement of personal estates, tends to the protection of the rights and interests of creditors and legatees; for if the executors of a testator, or the next of kin of an intestate, were permitted in their own discretion to dispose of the chattels and credits of such deceased, it may well be presumed that private interest would in many cases counteract or defeat the purposes of law and equity.

The duty of the surrogate therefore, is to supervise the administration of all such estates and to regulate the adjustment and disposition thereof, according to the common law, and the statutes of this state.

It is declared by statute, that a surrogate shall be appointed (in manner as we have before mentioned) in each of the counties of this state, with sole and exclusive power to take the proof of last wills, testaments, and codicils, of all deceased persons, who at, or immediately previous to their death, were inhabitants of the county of such surrogate, in whatever place such persons might have died; and to make and issue probates of the same, or grant letters testamentary thereon; and also to grant letters of administration of the goods, chattels and credits of all such persons dying intestate, or with the wills annexed, where the same shall be requisite; and that such letters testamentary, and letters of administration, shall be made in the name of the peo-

ple of this state, and tested in the name of the surrogate who shall grant the same, and be sealed with the seal of his office.

Hence we infer, that the general or ordinary duties and powers of the surrogates in this state, consist of two parts, viz.: To grant and certify probates of last wills and testaments of personal estates, and to grant and certify letters of administration of such intestate estates, within their respective counties.

It must however be observed, that the surrogate is authorised in certain cases to grant letters of administration where a will does appear; as where there are no executors appointed in a will to execute it, or where those appointed refuse, renounce, or are incapable to act: in which cases such letters are usually granted with the will annexed.

HIS DUTY AS TO THE PROBATE OF WILLS.

An executor receives his power in fact from his testator, although he must prove the will and be qualified for his office by the surrogate, before he can safely undertake the execution of it. Not so with an administrator, he obtains his authority directly from the surrogate, and is of course more immediately responsible before him touching his administration; and while an executor may perform several acts before he proves, an administrator can do nothing till the letters are issued.

Executor's Oath. On taking the probate of a will from an executor, the surrogate swears him, that the writing contains the true last will and testament of the deceased, as far as the deponent knows or believes, and that he will truly perform the same, by first paying the testator's debts, and then the legacies therein contained, as far as the goods, chattels and credits will thereunto extend and the law charge him; and that he will make a true and perfect inventory of all the goods, chattels and credits, and exhibit the same into the said surrogate's office at the time assigned him, and render a just account thereof when lawfully required.

The Probate. When the will is proved and recorded, it must on demand be delivered to the person who brought the same, or to his legal representative, together with a copy thereof under the seal of the surrogate, and a certificate of its having been proved; which copy and certificate, is generally styled the *Probate.*

Probate of a Nuncupative Will. A will by word of mouth only, commonly called a *nuncupative will*, whereby property is bequeathed exceeding 75 dollars, is not good, unless the same be proved before the surrogate by the oath of three witnesses at least, who were present at the making thereof, nor unless it be

proved that the testator at the time of pronouncing the same, did bid the persons present or some of them, bear witness that such was his will, or words to that effect, nor unless such nuncupative will be made in the time of the last sickness of the deceased and at his dwelling house, or where he had been resident for ten days or more next before the making of such will, except where such person was surprised or taken sick being from home and died before his return to the same.

Although a person can, by word of mouth bequeath personal estate, he cannot thereby devise real estate, that can only be done by writing under seal, in the presence of three witnesses; and the record thereof must be made in the clerk's office of the county.

No will in writing concerning any personal estate, shall be repealed, or any part thereof revoked or altered by any words or will by word of mouth only, unless the same be in the life time of the testator committed to writing, and after the writing thereof read unto the testator and allowed and approved of by him, and proved to be done by three witness at least.

Common Law Points. Where several executors are appointed and with separate and distinct powers, yet as there is but one will, one probate shall be sufficient. The interest vested by the will of the deceased in the executor, may, if he takes out probate, be continued and kept alive by the will of the same executor, so that the executor of A.'s executor is to all intents and purposes the executor and representative of A. himself, and may be directly so named in legal proceedings. For the power of an executor is founded on the special confidence and actual appointment of the deceased. Such executor therefore, may transmit that power to another in whom he has equal confidence. And so long as the chain of representation is unbroken by any intestacy, the ultimate executor is the representative of every preceding testator, in however numerous a succession.—Nor is a new probate of the original will in any of the subsequent stages requisite. 1 Salk. 309.

If there be several co-executors, and they all prove, the interest goes only to the executor of the last survivor, and altho' such survivor refused to prove in the life time of the other executors, he may make out probate after their death, and in that case the interest will be equally transmitted to his executor.—But if such surviving executor renounces after their death, administration shall be granted, and then his executor shall have no title to the original executorship. Ibid. 307.

If A. appoint B. and C. his executors and die, and B. makes J. S. his executor, and die, and afterwards C. dies intestate, the executor of B. shall not be the executor of A. because the exe-

tenorship vested solely in C. as survivor, and as he died intestate, administration must be taken out to A.

Although the surrogate can only take cognizance of wills which concern personal estates, yet when they are of a mixed nature, that is, relate both to real and personal property, the probate of them must be entire in the surrogate's court. This is done that their meaning may be truly understood, but such wills must nevertheless be proved in the court of common pleas of the county, and recorded in the clerk's office, in order to make them evidence of title to real estate.

A will may be proved with a reservation to a particular legacy. And in such case, if there be a decree against such legacy, as a forgery or interpolation, in the court of probates,* the will shall be engrossed without it and so annexed to the probate.

The will of a party who has been long absent from his country, may be proved, if he is generally understood to be dead, and the executor will take upon himself to swear that he believes him to be so.

If the executor named in the will be unknown or concealed, administration may, after due process, be granted till he appear and claim the probate.

If the will be lost, two witnesses superior to all exceptions, who read the same, prove its existence after the testator's death, remember its contents, and depose to its tenor, are sufficient to establish it. Burn. Ecc. L. 209.

So when the testator had delivered his will to A. to keep for him, and four years afterwards died, when the will was found gnawn to pieces by rats, and in part illegible, on proof of the substance of the will by the joining of the pieces, and the memory of the witnesses, the probate was granted.

HIS DUTY AS TO GRANTING LETTERS OF ADMINISTRATION.

In case a party makes no testamentary disposition of his personal property, he is said to die intestate.

How and to whom Administration may be granted. It is enacted by statute, that administration of the goods, chattels and credits of any person dying intestate, shall be granted to the widow or next of kin of the intestate, or some one of them, if they or any of them will accept of the same, and if not, then to any

* The judge of the court of probates of this state, has the same power in testamentary matters as the governor of the late colony of New York had, save only, as to the appointment of surrogates. Law N. Y. 8th April, 1813.

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other person or persons. And no administration shall in any wise be granted, until satisfactory proof be made before the surrogate, that the person of whose estate administration is claimed, is dead and died intestate; nor until a citation has issued to the next of kin when application is made for administration by a person not entitled to the same; which citation must be served on such next of kin, and if not to be found in this state, then a copy of such citation shall be affixed at some public place in the town where the intestate did reside at the time of his death, at least four weeks before the return thereof. And in case such intestate did not reside in this state at the time of his death, then a copy of such citation must be published for four weeks by the printer to this state and by a printer in the city of New-York and a copy thereof served on the attorney general, at least twenty days before the return thereof.

If the next of kin, after such citation, refuse, renounce, or neglect the administration, any creditor of such intestate may take the same, and the surrogate in such case is authorised to grant the same.

Letters of administration do not issue till after the expiration of fourteen days from the death of the intestate, unless for special cause, as that the goods would otherwise perish the surrogate shall think fit to decree them sooner.

Administrator's Oath. On taking out letters of administration, the party swears that the deceased made no will as far as the deponent knows or believes, and that he will truly administer the goods, chattels and credits, by paying the deceased's debts as far as the same will extend and the law charge him, and that he will make a true and perfect inventory of all the goods, chattels and credits, and exhibit the same into the surrogate's office at the time assigned him by the court, and render a just account of his administration when lawfully required.

Administrator's Bond with Sureties. Although an executor may administer upon his testator's estate without giving security for the faithful discharge of his trust, he being a person to whom the deceased himself in his life time had consigned the settlement of his estate after his death, and in whom he is supposed to have reposed confidence or he would not have appointed him; yet it is not so with an administrator. He not only receives his power altogether from the surrogate, but might have been a stranger to the deceased in his life time. The law, therefore, requires that an administrator enters into a bond to the people of this state, with two or more sureties, conditioned for the making or causing to be made a true and perfect inventory of all and singular the goods, chattels and credits of the deceased, which have or shall come to his hands, possession or know-

ledge, or into the hands or possession of any other person or persons for him; and for exhibiting the same into the surrogate's office, at or before six calendar months; and for well and truly administering according to law such goods, chattels and credits, and further, for making a just and true account of the administration when thereunto required, and if it shall thereafter appear that any will was made by the deceased, and the executor therein named exhibit the same for allowance, that he then render the letters of administration in court.

Duty of Surrogate on forfeiture of the Bond. When any such bond becomes forfeited, it is lawful for the surrogate to cause the same to be prosecuted in any court of record, at the request of a party grieved by such forfeiture, and the monies recovered by such bond shall be applied towards making good the damages sustained by the not performing the said condition, in such manner as the surrogate shall by his decree or sentence direct.

To call Administrator to account. It is also lawful for the surrogate to call an administrator to account, and on due consideration thereof to order and make just and equal distribution of what remaineth clear, after debts, funeral charges and expences are deducted, and to compel such administrator to observe and pay the same by due course of law; and also to hear and determine all causes touching any legacy or bequest in any last will, payable out of personal estate, and to decree and compel payment thereof, saving to every one the right of appeal.—And if any person shall nelgect or refuse to perform such decree or sentence, it is lawful for the surrogate to cause such person, by process directed to the sheriff of the county, to be imprisoned until he shall perform the same.

To issue Process of Subpœna. The surrogate is also authorised, on the request of any party interested, to cause any person from any part of the state to be summoned to appear before him and bring with him deeds or writings respecting any matter cognizable before such surrogate, and to issue process for such purpose, and a witness so subpœnaed is liable to attend under the penalty of $100, to the party grieved, and if he refuses to testify when in court, to be imprisoned by the surrogate.

When administration has been once committed to the next of kin, others even in the same degree of kindred, have, during the life of the administrator, no title to a similar grant; unlike an executor, who has a right to probate although it has already been taken out by his co-executor.

Disqualification. A party, although otherwise entitled, may be incapable of the office of administrator, on account of some disqualification in point of law; such as attainder of treason or felony, outlawry, imprisonment, absence beyond sea, bankrupt-

cy, infancy, and in short, almost every species of legal disability; for the surrogate is bound to grant administration to the next of kin and most lawful friends of the intestate.

Caveat. When the will or granting of administration is opposed it is the practice to enter a *caveat* in the surrogate's office, to prevent the probate. And it is said, that by the rules of that court, the *caveat* shall stand in force for three months, and that while it is pending, a probate cannot be granted. By a statute of this state on this subject, where a *caveat* shall be entered in the office of any surrogate, or any objection be made against the proving of any will, or granting of administration, such surrogate shall cause the parties and witnesses to be cited to appear before him, and hear and determine the matter in controversy, and grant such probates, letters testamentary, or administrations, as shall be agreeable to law.

SURROGATE'S ORDER FOR SALE OF REAL ESTATE.

It is provided by statute, that when any executor or administrator whose testator or intestate shall have died seized of any real estate, shall discover or suspect that the personal estate of such testator or intestate is insufficient to pay his or her debts, such executor or administrator shall, as soon as conveniently may be, make a just and true account of the said personal estate and debts, as far as he or she can discover the same, and deliver the said account to the surrogate of the county in which probate of the will or administration on the estate of any such testator or intestate shall have been had, and request his aid in the premises; and thereupon such surrogate shall make an *order*, directing all persons interested in such estate to appear before him in not less than six, nor more than ten weeks, to shew cause why so much of the real estate whereof such testator or intestate died seized, should not be sold as will be sufficient to pay his or her debts, which order shall immediately thereafter be published for four weeks successively in two or more of the public newspapers printed in this state, one of which shall be the paper, if any, published in such county; and if such surrogate shall on the day specified in such notice, be convinced upon examination, that the personal estate of such testator or intestate is insufficient for the payment of the debts, he shall order the real estate, or so much thereof of such deceased, to be sold for the purpose aforesaid. But where any houses or lots are so circumstanced that a part thereof cannot be sold without manifest prejudice to the heirs or devisees, such surrogate may, at discretion, order the whole or a greater part thereof to be sold than is necessary for the payment of such

debts, and to distribute the overplus money arising from such sale among the heirs and devisees, as the case may be.

Sale under Surrogate's Order. It is further provided by statute, that on such sales, the executors or administrators applying for such order, shall make and execute deeds of conveyance thereupon, reciting therein such order at large; and that every such sale shall be at public vendue, between the hours of nine in the morning and the setting of the sun, after giving six weeks public notice of the same, by putting up a printed or written notice thereof in three of the most public places in such town, and inserting the same in the newspaper printed in such county, or in the newspaper of the state printer, with a precise description of the lands intended to be sold. Law N. Y. April, 1813.

Order for sale of part or whole. Where only part of the real estate is so sold, the monies arising therefrom shall be received by such executors or administrators for the payment of debts; but where the whole of the real estate is ordered to be sold, the monies arising therefrom shall be paid over to the surrogate, to be by him distributed according to law among the creditors of such estate, after deducting all charges and expenses in proportion to their respective debts, without giving any preference to bonds or other specialties. Ibid.

Distribution of Monies by Surrogate. And it is made the special duty of such surrogate, that before he shall make any such distribution, he shall cause at least three months notice of the time and place of making the same to be given, by advertising the same in two or more of the public newspapers printed in this state, for six weeks successively, one of which papers shall be the paper, if any, printed in the county where such surrogate shall reside. Ibid.

When order of Sale will alone be granted. No such order of sale shall be granted, unless the executors or administrators shall have duly made and filed an inventory of the goods, chattels and credits of the deceased, before the application for such sale; nor until the personal estate, or so much thereof as shall have come to their hands, has been applied towards the payment of debts. Ibid.

When to appoint a Guardian on Order of Sale. On any application for such order of sale, if the deviseers or heirs be infants, the surrogate shall appoint some discreet and substantial freeholder, a guardian of such infants, for the sole purpose of taking care of their interest, in the proceedings therein.

HIS ALLOWING GUARDIANS IN GENERAL.

The surrogate is authorised by a statute, to allow of guardians,

who shall be chosen by infants of the age of fourteen years, and to appoint guardians for such as be within that age, in as full and amole a manner as the chancellor of this state may or can appoint or allow of the same: *Provided*, however, that a party agrieved thereby, may lawfully appeal to the chancellor.

RECORD BOOKS.

It is incumbent on the surrogate to record in books, to be provided by him for that purpose at his own expence, all wills proved before him, together with the proof thereof, and all letters testamentary and of administration by him granted, with all things concerning the same, which records shall be of the same force, as the like records in the office of the judge of probates of this state.

SEAL OF OFFICE.

It is the duty of the surrogate to provide the seal for his office at his own expence, in case no seal shall have already been provided, with such device as he shall deem proper; upon which shall be inscribed the name of the county, and the words "*Surrogate's Seal*," and he shall deliver a description in writing of such seal, to the secretary of this state, to be deposited and recorded in his office.

DEATH OR REMOVAL.

Upon the death or removal from office of any surrogate, the seal of his office and all original wills, with all records, books and papers belonging to the said office, shall be delivered over to the successor in office, upon the oath of the preceding surrogate, or of his executors or administrators, in case of his death.

APPEAL.

We shall only add to this subject, that any person claiming to be agrieved by any sentence, decree, or order of any surrogate, made in pursuance of any statute of this state, may appeal from the same to the judge of the court of probates: *Provided*, such appeal be entered within fifteen days after the sentence, decree, or order appealed from, be made.

DUTY IN CASES OF DOWER.

By a supplementary act relative to dower, passed 7th April,

1806, it is enacted, that if after the 40 days prescribed by law, a widow or her attorney has received 30 days notice in writing in the presence of two freeholders, that she make demand of her dower within 90 days thereafter, of the estate of her deceased husband, or of such part thereof as she shall be notified by an heir or heirs, guardians of minor children, or other proprietors or owners, and she shall neglect or refuse to make such demand within the said 90 days, it shall and may be lawful for the surrogate of the county where the land lies, upon petition of any such heir or heirs, guardians of minor children, or other proprietors or owners, to issue an order to three disinterested freeholders of the said county to be by him appointed for that purpose, to admeasure and lay off as speedily as may be, one third part of the land thus petitioned for admeasurement, as the widow's dower; allowing to the admeasurers two dollars per day for their services; which admeasurers shall be sworn before the surrogate faithfully and honestly to execute the trust therein reposed in them respectfully: *Provided*, however, that any party agrieved thereby, may at any time within 30 days after filing the report of the freeholders, give notice in writing of the causes of complaint, and of his or her intention to apply to the next supreme court for relief.

POINTS ADJUDGED IN THE SUPREME COURT.

SURROGATE.

Dower. When a surrogate proceded, on the application of a widow, to appoint admeasurers of dower, and had the same admeasured under the act, (sess. 29. c. 168) without giving notice of the proceedings to the adverse party; the supreme court, on motion, ordered the proceedings to be set aside. 6 Johns. Rep. 281.

Administration. The surrogate may, in his discretion, grant administration to any one of the next of kin of the testator, to the exclusion of the rest. 2 Caines' Cas. Er. 143.

Whether the exercise of that discretion may be reviewed upon appeal? Quere. Ibid.

The supreme court, if they see that the right of suing on the administration bond is abused, will interfere, and set the proceedings aside. 1 Johns. Rep. 311.

A surety in an administration bond, cannot maintain an ac-

tion against his co-surety for a default of the principal, if such surety has not been damnified, even if he be a creditor. Ibid.

If an executor in *his own wrong*, take out letters of administration, it makes legal all acts which were before wrong. 8 Johns. Rep. 126.

Guardian. The guardian appointed by the surrogate, is not a general guardian: such can only be appointed by the court. 4 Johns. Rep. 509.

PRECEDENTS.

NO. I.

PROOF OF A LAST WILL AND TESTAMENT.

Ulster County, ss. Be it remembered, That on the tenth day of May, in the year of our Lord one thousand eight hundred and sixteen, personally came and appeared before me D. B. surrogate of the county of Ulster, A. L. who being duly sworn, declared that he saw F. G. sign and seal the within written instrument, purporting to be the WILL of the said F. G. bearing date the first day of October, in the year of our Lord one thousand eight hundred and fifteen, and heard him publish and declare the same as and for his Last Will and Testament; that at the time thereof he the said F. G. was of sound disposing mind and memory, to the best of the knowledge and belief of him the deponent; and that A. M. and A. G. together with the deponent, subscribed the said Will as witnesses thereto, in the testator's presence; and that G. O. and G. M. executors named in the within written Will, likewise appeared before me, and were duly qualified to the true execution and performance of the said within Will, by taking the usual oath of an executor.

The preceding is a true copy of the original Will of F. G. deceased, and also of the certificate of proof thereof.

D. B. Surrogate.

NO. II.

PROBATE OF A LAST WILL AND TESTAMENT.

The people of the state of New-York, by the grace of God, free and independent:

{L. S.}

To all to whom these presents shall come, or may concern, send greeting: Know Ye, That at Ulster county, before D. B. Esq. surrogate of our said county, the Last Will and Testament of F. G. deceased, (a copy whereof is hereunto annexed) was proved, and is now approved and allowed of by us, and the said deceased having whilst he lived, and at his death, goods, chattels or credits within this state, by means whereof the proving and registering the said Will, and the granting administration of all and singular the said goods, chattels and credits, and also the auditing, allowing and finally discharging the account thereof, doth belong unto us; the administration of all and singular the goods, chattels and credits of the said deceased, and any way concerning his Will, is granted unto G. O. and G. M. executors in the said Will named, they being first duly sworn well and faithfully to administer the same, and to make and exhibit a true and perfect inventory of all and singular the said goods, chattels and credits, and also to render a just and true account thereof when thereunto required. In testimony whereof, we have caused the seal of office of our said surrogate to be hereunto affixed. Witness D. B. Esq. surrogate of our said county, at Kingston, the tenth day of May, in the year of our Lord one thousand eight hundred and sixteen.

D. B. Surrogate.

NO. III.

INVENTORY.

A true and perfect inventory of all and singular the goods, chattels and credits which were of A. B. deceased, at the time of his death, (if taken by executors, say) taken by the subscribers, executors of the last will and testament of A. B. deceased, (if taken by administrators, say) taken by the subscribers, administrators of all and singular the goods, chattels and credits which were of A. B. deceased: this twelfth day of May, in the year of our Lord one thousand eight hundred and sixteen, as follows, to wit:

1 Bay horse gelding, - - - $ 100

1 Black do. do. - - - - 80
1 Brindle milch cow, - - - - 22
1 Brown do. - - - - - 18
(Residue of stock, except it be a flock of sheep, or a yoke of oxen, or span of horses, with the value annexed to each; farming utensils, with the prices, &c. do.; furniture, do. do.)
A bond or writing obligatory executed by C. F. dated 5th August, 1815, conditioned for the payment of 500 dollars, with interest, payable 1st January, 1816, on which there is 50 dollars endorsed, 10th November, 1815.
A promissory note, executed by A. G. 1st July, 1815, payable on demand, for 100 dollars.
A ballance certified on book* by F. O. 10th Dec. 1815, for 50 dollars.

Total, $ 2000

A. M. } Executors of, &c. of
G. F. } A. B. deceased.

Ulster County, ss. We the subscribers do hereby certify that we have appraised the several head of cattle and articles in the above inventory contained, at the valuations and prices as therein set opposite to each of the same respectively. Given under our hands this twelfth day of May, in the year 1816.

G. O. }
L. N. } Appraisers.

NO. IV.

BOND FOR ADMINISTRATION.

Know all men by these presents, that we, A. B., C. D. and E. F. all of Kingston, in the county of Ulster, are held and firmly bound unto the people of the state of New-York, in the sum of one thousand dollars, current money of the said state, to be paid to the said people; to the which payment well and truly to be made, we do bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly

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* Unliquidated book or other accounts, are not to be inventoried.

by these presents. Sealed with our seals. Dated this tenth day of May, in the year of our Lord one thousand eight hundred and sixteen.

The condition of this obligation is such, That if the above bounden A. B. and C. D. administrators of all and singular the goods, chattels and credits of L. O. late of Kingston aforesaid, deceased, do make, or cause to be made, a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased, which have or shall come to the hands, possession or knowledge of the said A. B. and C. D. or into the hands or possession of any other person or persons for the said A. B. and C. D. and the same so made, do exhibit or cause to be exhibited, into the office of the surrogate of the county of Ulster, at or before the expiration of six calendar months from the date of the above written obligation, and the same goods, chattels and credits, and all other goods, chattels and credits of the said deceased, at the time of his death, which at any time afterwards shall come to the hands or possession of the said A. B. and C. D. or into the hands or possession of any other person or persons for the said A. B. and C. D. do well and truly administer according to law: And further, when thereunto lawfully required, do make, or cause to be made, a just and true account of administration; and if it shall hereafter appear, that any last will and testament was made by the said deceased, and the executor or executors therein named, or any other person or persons, do exhibit the same, and request to have it allowed and approved, then if the said A. B. and C. D. being thereunto required, do render and deliver the letters of administration, granted on the estate of the said deceased, to the office from which the same were issued, then this obligation to be void and of none effect, or else to remain in full force and virtue.

Sealed and delivered in the presence of

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

LETTERS OF ADMINISTRATION.

NO. V.

(L. S.)

The people of the state of New-York, by the grace of God, free and independent:

To A. B. and C. D. of Kingston, in the county of Ulster, send greeting: Whereas L. O. of Kingston aforesaid, lately died intestate, as is alledged, having whilst liv-

ing, and at the time of his death, goods, chattels or credits within this state, by means whereof the ordering and granting administration of all and singular the said goods, chattels and credits, and also the auditing, allowing and finally discharging the account thereof doth appertain unto us; and we being desirous that the goods, chattels and credits of the said deceased may be well and faithfully administered, applied and disposed of, Do grant unto you the said A. B. and C. D. full power, by these presents, to administer and faithfully dispose, of all and singular the said goods, chattels and credits; to ask, demand, recover and receive, the debts which unto the said deceased, whilst living and at the time of his death, did belong, and to pay the debts which the said deceased did owe, so far as such goods, chattels and credits will thereunto extend and the law require: Hereby requiring you to make, or cause to be made, a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased, which shall or have come to your hands, possession or knowledge; and the same to exhibit, or cause to be exhibited, in the office of the surrogate of the said county of Ulster, at or before the expiration of six calendar months from the date hereof; and also to render a just and true account of administration, when thereunto required: And we do, by these presents depute, constitute and appoint you the said A. B. and C. D. administrators of all and singular the goods, chattels and credits which were of the said L. O. In testimony whereof, we have caused the seal of office of our said surrogate to be hereunto affixed. Witness D. B. surrogate of said county, at Kingston the tenth day of May, in the year of our Lord one thousand eight hundred and sixteen.

NO. VI.

FEES OF THE SURROGATE.

For administering an oath, twelve and a half cents.

Drawing the proof of a will, or codicil, or the appointment of a guardian, nineteen cents for each sheet containing one hundred and twenty-eight words.

The probate of a will, and letters testamentary thereon, or letters of administration, or making a copy of the appointment of guardian, nineteen cents for each sheet containing one hundred and twenty-eight words.

The seal to the same, seventy-five cents.

The bond upon granting the letters of administration, or the appointment of a guardian, fifty cents.

Recording wills, codicils, and the proof thereof, and letters testamentary, and letters of administration or appointment of guardians, nineteen cents for each sheet containing one hundred and twenty-eight words.

And whenever any will shall be made in any other than the English language, and proved and recorded, the surrogate or judge of the court of probates, as the cause may require, shall be entitled to receive, in addition, twelve and a half cents for every hundred and twenty-eight words of a translation of such will.

For every allowance or appointment of a guardian, one dollar and fifty cents.

Entering and filing a *caveat*, nineteen cents.

Filing every petition for the sale of any real estate, twelve and a half cents.

Making and entering every order thereon, seventy-five cents.

Every decree or order for the sale of any real estate, three dollars and seventy-five cents.

A citation for witnesses, or any other purpose, including the seal, seventy-five cents.

Taking, entering and filing a renunciation, thirty-seven and a half cents.

Filing an inventory, twelve and a half cents.

Searching the records in his office for any one year, twelve and a half cents, and for every other year in which such search is made, six cents.

Taking depositions, nineteen cents for each sheet containing one hundred and twenty-eight words.

Copies of records or depositions, when required, twelve and a half cents for each sheet containing one hundred and twenty-eight words.

For hearing and determining where a will or administration is contested, two dollars and fifty cents.

The seal to exemplifications, seventy-five cents; but no fee shall be demanded or taken by any surrogate, in any case where it shall appear to him, by the oath of the person applying for letters testamentary or of administration, that the goods chattels and credits of the testator or intestate, do not exceed the value of thirty-seven dollars and fifty cents.

CHAP. VIII.

JUSTICES OF THE PEACE.

Justices of the peace derive their origin in this state, as in England, from statute law: yet in that country there were certain common law conservators of the peace, who in respect of their offices had power to keep the peace. The first institution of this office in England, as analagous to it here and as we propose to investigate it in this chapter, was by statute of queen Elizabeth, which authorized: "That for the better keeping and maintaining of the peace, the king willeth, that in every county good and lawful men, which were no maintainers of evil, or barrators in the county, shiduld be assigned to keep the peace." The act of our legislature, passed the 13th April, 1813, entitled, "an act declaring the powers and duties of justices of the peace," provides, "That in every county of this state fit and discreet men shall from time to time be appointed and commissioned justices to keep the peace in the same counties respectively, who shall have power jointly and severally to cause to be kept all laws made for the preservation and good of the peace."

THE COMMISSION.

The commission of the justices of the peace begins with a salutation from the people of the state of New-York to the first judge of the common pleas, the judges of the common pleas, the assistant justices, and the mere justices, naming each of them by their proper names. It then assigns them jointly and severally to keep the peace in such county and to cause to be kept all laws and ordinances, made or to be made for the good of the peace and quiet rule of the inhabitants of the said state, and to chastise or bind over with security for good behaviour all offenders against the laws, or disturbers of the peace, and if they refuse to find such security, then to commit them to prison until they find such security. And it further assigns power to the said justices, or any three or more of them to hold a *Court of*

Sessions, and by the oath of good and lawful men of such county to inquire of all manner of *larcenies, thefts, trespasses, forestallings, regratings, engrossings, and extortions whatsoever*, and of all crimes and offences which are there committed: of victuallers, innholders, weighers, measurers and all county and town officers who have offended against the laws: to inspect all indictments taken before such court, or by other late justices of the peace in such county, and to inquire into the premises according to law. And concludes by authorising the said justices, or any three or more of them, to make known to the sheriff of such county the certain days and places when and where he shall cause to come before them so many good and lawful men of his bailiwick the better to inquire of the truth of the premises.

From this view of the commission it may properly be divided into two classes of assignment of powers. By the first, each person therein named is made a justice or conservator of the peace; by the second, power is given to them or any three or more of them, to inquire by the oath of good and lawful men, of felonies and other matters; for the bare making them justices of the peace doth not give them power to hear, try and determine indictments.

We shall first consider the offices and duties which are involved in the second clause of the commission.

GENERAL SESSIONS OF THE PEACE.

The times and places of holding the courts of general sessions of the peace in the several counties in this state, are located by statute at the same times and places when and where the courts of common pleas for such counties are to be held. The seals of the courts of common pleas already made and provided are authorised to be the seals of this court, and the opening and adjourning of the two courts and the test and return of the writs and process issuing out of the same respectively, are regulated by similar provisions. It is also by statute provided, that three or more of the justices of the peace of each of the counties in this state, of whom a judge of the common pleas shall always be one (New-York excepted) shall have power to hold courts of general sessions of the peace in the said counties respectively, and to inquire by the oaths of good and lawful men, of any treason, misprison of treason, murder, or felony, and of all other crimes or misdemeanors whatsoever done or committed in such county, for which such court shall be held, and all crimes or misdemeanors not punishable with death, or imprisonment in the state prison for life, to hear, determine and punish according

to law: and all indictments of or for any treason, misprison of treason, murder or other felony or crime which is or shall be punishable with death, or imprisonment in the state prison for life, they shall cause to be delivered to the next supreme court, or court of oyer and terminer or gaol delivery, to be held in such county. Other indictments against prisoners in gaol which shall not have been heard or determined in the general sessions they must transmit to the next oyer and terminer and gaol delivery in such county, and if the same shall not be tried by such court and remitted back to the sessions, then they may proceed thereon, provided the case or cases be within their jurisdiction. Law N. Y. Feb. 25, 1813.

It is also enjoined on this court by the act of 1801 for preventing abuses in suing out writs of *Habeas Corpus and Certiorari*, to make return to all certiorari writs, directed to such court, for the removal of the proceedings had before them upon any indictment, inquisition, presentment, order, or matter or thing; and to conduct therein according to the said act.

The court of general sessions may let to bail, prisoners arrested and in gaol in their respective counties for suspicion of felony, to appear at the next court having cognizance of the offence, and where the same ought to be tried.

We come now to inquire into the offices and duties which are incumbent on

SINGLE JUSTICES OF THE PEACE.

The office and duty of every single justice of the peace may regularly be divided into two heads, namely, as he has civil and criminal jurisdiction.

CIVIL JURISDICTION.

The act, entitled, an act for the recovery of debts to the value of twenty-five dollars, passed April 5, 1813, authorises a justice of the peace to hear and determine and to hold a court for the trial of all actions, according to law and equity, of *debt, detinue, covenant, trespass on the case* and *trespass on lands* or other real estate, wherein the balance due or damages or thing demanded, shall not exceed twenty-five dollars; and also all other penalties not exceeding the said sum, imposed by the act, entitled, "an act to lay a duty on strong liquors and for regulating inns and taverns," and also all sums of money not exceeding 25 dollars, to be sued for and recovered in any court of record by virtue of any statute of this state, as well by and in favor of executors and administrators as others, and as well against attor-

neys and other officers of any court of justice (except during the sitting of such court) as others: *Provided always*, That no justice of the peace shall have cognizance of any action wherein the people of this state are concerned, or where the title to land shall in any wise come in question, (except as aforesaid): nor of any action of assault, battery, or imprisonment, or of slander, or malicious prosecution, nor of matters of account where the sum total of the accounts of both parties, proved to the satisfaction of the justice, shall in the whole amount to $200, nor of any action to be brought against an executor or administrator, for any debt or demand due from the estate of any testator or intestate.

Let us take a brief view in detail of the nature of those actions before named, whereof a justice has cognizance.

1. *The Action of Debt*—Is founded on a contract where the certainty of the sum or duty appears and where the plaintiff does not claim to be repaired in damages; and therefore is generally brought on contracts under seal. If a plaintiff recovers damages before a justice, he may afterwards bring an action of debt on that judgment, because the sum is then specific. If one makes a bill to another in these words, "memorandum, I owe A. B. 25 dollars, to be paid in boards," an action of debt must be brought for the money; for the quantity of the boards is not ascertained. But it is not necessary that the plaintiff should recover the exact sum. So this action must be brought for the penalties incurred by any statute, and if a statute prohibits the doing a thing under a certain penalty and prescribes no method for the recovery thereof, the party entitled to the penalty may recover the same by an action of debt. If a penalty is given by statute to whomsoever will sue therefor and to the overseers of the poor, or others, it is a *qui tam* action—that is, as well for the people of, &c. as for the prosecutor; and the process must be thus: "to answer A. B. who sues as well for himself as for the overseers of the poor of the town of D. (or as the case may be) in a plea of debt for 25 dollars. In other cases under this head, the process is merely in a plea of debt for 25 dollars.

2. *Detinue*—Is an action that lies for the recovery of goods and chattels, though the party came to the possession of them by lawful means, as by bailment, borrowing, or pledging. In this action the plaintiff sues to recover the identical thing. If he does not want to recover the identical thing, then he must bring an action of trover, which is in substance an action of trespass on the case. But if he insists upon having the identical thing and the defendant thereupon restore it, the jury may by consent of parties find nominal damages, as for instance, six cents. And should a defendant who can restore the thing itself, refuse such offer, the jury will give the full value in damages. In the pre-

bess, say, " to answer A. B. for detaining his goods and chattels to the value of 25 dollars or under."

3. *Covenant*—Is brought for the breach of any promise, stipulation, article of agreement or contract under seal, thus: " in a plea of breach of covenant, to his damage 25 dollars or under."

4. *Trespass on the Case*—Is a universal remedy for all personal wrongs and injuries without force. It lies on all verbal and written agreements not under seal: on book accounts, promissory notes and bills of exchange: on trover and conversion, that is, where one by delivery, finding or otherwise, becomes possessed of the goods or chattels of another, and refuses to restore them to the owner on demand: for all culpable omissions of trust or agency: for deceit on the sale or transfer of property: in short for all injuries proceeding from originally lawful acts as those above mentioned, and others: as where a person constructs a mill dam on his own land, so as to overflow his neighbor's meadow, or fixes a water spout in his yard, whereby he damnifies his neighbor's house, or in any wise enjoys his property, so as to cause an injury to another. In the process, say, " to answer A. B. in a plea of trespass on the case, to his damage 25 dollars or under."

5. *Trespass*—Is the proper remedy where the act done is an immediate injury to the real or personal property of another: as to damnify another's goods or chattels, or without authority to cut down his trees, or prostrate his grass or grain. In the process, say, " to answer, &c. of a plea of trespass, to his damage 25 dollars or under."

PROVISIONS OF THE 25 DOLLAR ACT.

Sec. 11. The first process under this act against freeholders and inhabitants having families, must be by *Summons*, directed to any constable in the county where the defendant dwells, commanding him to summon the defendant to appear before such justice, at a time and place to be expressed in such summons, not less than 6, nor more than 12 days from the time of issuing such summons, to answer the plaintiff of the plea, &c. except the defendant cannot be found and a copy of such summons has been lawfully left at his or her house or place of abode, when such justice may issue another summons or *Warrant* against such defendant, at his option. [Of the manner of serving such summons, see title Constable.]

If the defendant appears on the return of the summons, the justice shall then or within six days thereafter, proceed to hear the proofs and allegations of the parties, and within four days

thereafter give judgment thereon, agreeable to law and equity, with costs of suit.

But no person shall be proceeded against by summons out of the county in which he or she shall reside.

Whenever any parties agree to *join issue* without process, the justice shall proceed to try the same as if process had issued.

Sec. III. In all cases where a *Warrant* shall issue, the constable shall be commanded to take the defendant and bring him forthwith before such justice to answer the plaintiff of the plea, &c. and upon the defendant being brought before such justice, he shall proceed to hear and determine the cause in manner aforesaid, and shall then or within six days thereafter hear the proofs, &c. and within four days thereafter give judgment.

This section we consider as a provision in the case of a defendant apprehended on a warrant in default of not appearing on summons by copy as aforesaid.

The words *in all cases*, in the preceding section, allude to the constable's duty and not to the proceeding of the justice.

Sec. IV. Application for a *Warrant* must always be made by affidavit, or orally, on oath with a state of the facts shewing the grounds therefor, whereby the justice may the better judge the necessity thereof: such as that the defendant is about to depart from the county, that the plaintiff will be in danger of losing his debt, unless the process be by warrant, or that he is non-resident, and offers security for any sum which may be adjudged against him. When the defendant appears thereupon, the justice shall within three days thereafter, unless the parties agree to allow a longer time, proceed to hear, try and determine the same as aforesaid. But in all other cases on the return of a warrant, if either of the parties shall require a longer time to try the cause, and will if required give sufficient security to appear and stand trial on such other day as shall be appointed, then such justice shall *adjourn* the trial of such cause to some future day, not less than 3, nor more than 12 days, unless the parties and justice shall otherwise agree. And if an adjournment is required by the defendant, he shall give security to appear on the day to which such cause is adjourned.

Sec. V. In cases not provided for in the last aforesaid section, if the defendant shall make oath that he cannot for want of some material witness or testimony, safely proceed to trial, the justice shall *postpone* the trial for such reasonable time as will enable the defendant to procure such witness or testimony: *Provided*, That such time shall not exceed *three months*, and that the defendant give security for his appearance.

An adjournment, if requested by either plaintiff or defendant, in any action to be brought by virtue of this act, by warrant of

otherwise, shall be allowed to such applicant, on condition, that after he has seen the account or demand of the adverse party, he shall also exhibit his own, or state the nature thereof to the satisfaction of the justice.

Sec. VI. If the defendant in any action in this court hath any account or demand against the plaintiff, he must *set-off* the same against the debt or demand of the plaintiff, or such defendant will forever be precluded from a recovery thereof: *Provided*, That where the balance found to be due the defendant shall exceed 25 dollars, the justice shall enter judgment against the plaintiff for costs, and the defendant may recover such demand in any court having cognizance thereof: *And provided*, That damages arising in trespass, shall *not be set off*, nor any other demand, except such only, as may arise on contract, express or implied.

Sec. VII. When in any action of trespass on land, the defendant shall justify *on a Plea of Title*, he shall commit the same to writing and having signed the same in the presence of the justice, he must countersign and deliver it to the plaintiff. But before such justice shall receive such plea, he must exact from the defendant a recognizance in the sum of 80 dollars with one sufficient surety, conditioned that if such plaintiff shall commence a suit before the next court of common pleas of such county, for the recovery of the damages for such trespass, such defendant shall appear and put in special bail in such court, within 20 days after the first day of the then next term of the said court. And if the defendant does not enter in such recognizance, the justice shall proceed as if such plea had not been tendered.

Sec. VIII. All convictions for offences against the *Excise Act*, must be drawn up in the following form: "Be it remembered, that on the day of in the year, &c. A. B. of, &c. (merchant or innholder as the case may be) is this day convicted before C. D. one of the justices of the peace of the county of of having on the day of in the town of in the county of sold one quart of rum (or as the case may be) without having such permit, or to be drank in his or her house, or out house, yard or garden, without having entered into such recognizance as is mentioned in the act, entitled, "an act to lay a duty on strong liquors and for regulating inns and taverns," or of not having in his or her house, two spare beds for guests with good and sufficient sheeting and covering for such beds respectively, for the accommodation of travellers: or of not having good and sufficient stabling and provender of hay and grain, if in winter, and if in summer, of hay or pasturage for four horses or other cattle more than his or their own stock, for the accommodation of travellers, according to the form of the act, entitled,

&c. (as last aforesaid), or of having on the day of at, &c. sold one gill of rum (or as it may be) to an apprentice, or servant, or slave of , knowing or believing him or her to be such, without the consent of his or her master or mistress, against the form of the act entitled, &c. (as aforesaid), or of having for the space of one month (or two or more months) neglected to put up and keep such sign up as is required by the act entitled, &c. (as aforesaid). Given under my hand, the day and year first above written."

Sec. IX. After *Issue joined*, the justice shall at the request of either party, award a *Venire* for *twelve* good and lawful men to try the same, and they being lawfully returned, he shall from that whole number draw the names of *six*, who shall be the jury for the trial: to each of whom he shall administer the following oath: "You do swear in the presence of Almighty God, that you will well and truly try the matter in difference between A. B. plaintiff, and C. D. defendant, and a true verdict will give according to evidence." To each of the *Witnesses* on such trial, he shall administer the following oath: "You do swear in the presence of Almighty God, that the evidence you shall give in this matter in difference, between A. B. plaintiff, and C. D. defendant, shall be the truth, the whole truth, and nothing but the truth." And after hearing the proofs and allegations, the jury shall be kept together in some convenient place, until they agree upon their verdict: for which purpose, the justice shall *swear a constable* as follows: "You do swear in the presence of Almighty God, that you will to the utmost of your ability, keep every person sworn on this inquest together in some private and convenient place, without meat or drink, except water: you will not suffer any person to speak to them, nor speak to them yourself, unless by order of the justice, unless it be to ask them whether they have agreed on their verdict, until they have agreed on their verdict." And when the jurors have agreed on their verdict, they shall deliver the same to the justice in the same court, who is required to give judgment thereupon, and to award execution according to this act.

Sec. X. The justice is authorised to impose a fine, not exceeding $10, nor less than sixty-two cents, on every witness subpœnaed and every juror summoned, who does not accordingly appear: *Provided*, That such defaulter be present when such fine is imposed.

Sec. XI. Whenever judgment shall be given against either plaintiff or defendant, the justice shall grant *Execution* thereupon against the goods, chattels and body of such party: *Provided however*, That if a defendant shall satisfy the justice at the time of issuing such execution, that he is not a freeholder and has a

family in this state, then the justice shall endorse such proof on such execution (except in the case of a trespass proved on the trial to have been wilful or malicious) and such defendant shall not be imprisoned* on any execution so endorsed if within one month he pay $1 50, to the constable, and the like sum in every month, until the whole with the constable's fees be paid. And further, that no execution shall be awarded against any freeholder or inhabitant having a family, and not being so exempted, in less than 30 days after such judgment, unless the plaintiff makes oath that he will be in danger of losing his demand, if such delay be allowed; in which case the justice shall issue execution immediately, except the defendant gives security to pay the same in 30 days.

Sec. XII. After the constable has collected the money on an execution, he must pay it over to the justice, and if for want of goods or chattels the body of a freeholder has been thereon taken, he shall be confined in gaol until it is satisfied. But if a person not being a freeholder and having a family, has been thereon taken, he may be discharged after 30 days imprisonment, and so any single person after 60 days imprisonment: *Provided*, affidavit be thereof made before any justice of the peace, &c. in the presence of the sheriff, any of his deputies, or the gaoler.

Sec. XIII. & XIV. [See constable's duty, title constable.]

Sec. XV. The justice may depute a person, other than a constable, to serve process under this act at the request of the plaintiff, but not to summon a jury.

Sec. XVI. A justice may issue process against joint debtors, and although one only be taken or served, he may give judgment thereon against all, but the execution cannot be against the body or sole property of any debtor, not served with such process.

Sec. XVII. No execution shall be *stayed* by any certiorari, or other writ, if the party who claims it gives security to the justice to restore the amount thereof with interest and costs, in case the judgment in such action shall be reversed.

Sec. XVIII. On the reversal of a justice's judgment in the supreme court, the costs to be taxed shall not exceed $25.

Sec. XIX. No justice of the peace being a member of the sen-

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* By an act for the payment of certain officers of government and for other purposes, passed April 17, 1816, the defendant's body is declared not to be exempted from imprisonment, unless he gives security to the justice when he pleads such exemption, to be within the justice's jurisdiction, so that in default of paying the instalments, his body may be rendered, or his security made liable.

ate or assembly or a judge of the county court, is obliged to take cognizance of any action by virtue of this act, but is at all times at liberty to act, or not to act therein at discretion. And no justice of the peace, being an inn or tavern keeper, or living in a house in which a tavern is kept, and no alderman of the city of Albany, shall try any cause by virtue of this act.

Sec. xx. When a certiorari is served on a justice, it must be accompanied with a copy of the affidavit on which it was procured, and the justice must make a special return as to all the facts stated in such affidavit, with a copy thereof, and annex the same to the certiorari.

Sec. xxi. The justice's certificate of his proceedings and judgment, together with a certificate thereon, sealed by the county clerk, that such person was at the date of the said judgment a justice of the peace, is legal evidence to prove the exemplification of such proceedings and nothing more.

Sec. xxii. A justice is allowed 30 days after his removal from office, to issue execution on any judgment he may have given.

Sec. xxiii. When a creditor by at least one disinterested witness proves to the satisfaction of a justice, that a person against whom he has a demand not above 25 dollars, hath departed, or is about to depart from the county, or is concealed in the same, with intent to defraud any of his creditors, or to avoid the service of process under this act, such justice shall issue an *Attachment*, returnable as a summons, to any constable, requiring him to attach such person's goods and chattels, except such as are exempt from execution, and to keep the same to satisfy any judgment such justice may render against such person: *Provided however*, That before any such attachment shall issue, the justice shall take from such applicant, a bond to the defendant, with one sufficient surety in the sum of 25 dollars, conditioned to pay the defendant all damages and costs he may sustain by reason thereof, if no judgment shall be recovered against such defendant.

Sec. xxiv. Constable's duty on attachment. [See title constable.]

Sec. xxv. On the return of the attachment, the justice shall try and determine the cause between the parties, in the same manner, as in case of summons: *Provided*, That no judgment thereon, if the defendant does not appear or has not been served with a copy of the attachment, shall bar him to recover any claim or demand he may have against the plaintiff.

Sec. xxvi. The justice's Fees are as follows:

A Summons	$0 09
Warrant	12 1-2
Attachment . . .	19

Judgment	12 1-2
Every oath	6
Subpœna for each witness	6
Adjournment	9
Venire for jury	19
Swearing jury	12 1-2
Execution	19
A sworn witness, from a foreign county per day	25
Every other witness attending	12 1-2

Provided, That the whole costs to be recovered, shall not exceed 5 dollars, except in the case of the attendance of a witness from a foreign county, or in the proceeding by attachment, in which cases the addition of such witnesses fees and fifty cents for serving the attachment are allowed, and twelve and a half cents to the justice for taking a recognizance in the case of an attachment.

Sec. XXVI. No justice of the peace shall in any cause appear and advocate for either party.

Sec. XXVII. A justice may issue subpœnas to compel the attendance of witnesses before Arbitrators: *Provided*, It is proven to the satisfaction of the justice, that such submission to arbitration has been made. And in case of the default of a witness so subpœnaed, the justice shall levy from him the penalty in manner as before by this act directed.

Sec. XXIX. Any justice of the peace may issue subpœnas to compel witnesses to appear and give evidence before any other justice.

Sec. XXX. A justice may by subpœna compel the attendance of any witness from a foreign county.

Having seen the civil duties of a justice of the peace, let us now take a view of his offices as a magistrate having cognizance in criminal cases.

CRIMINAL JURISDICTION.

The jurisdiction of a justice of the peace in criminal as well as in civil cases, extends throughout his whole county, but not beyond it. He may issue a subpœna as we have seen, to procure the attendance of a foreign witness, but if such witness does not thereupon appear, he cannot punish him, and for such default can only be proceeded against in the county where he resides.

ON BREACH OF THE PEACE.

By the act declaring the powers and duties of justices of the

peace, passed April 13, 1813, every justice is authorised to cause to come before him, all persons who shall *break the peace*, and to commit such to gaol, or to bail them as the case may require; and also to cause to come before him all persons who *shall threaten to break the peace*, or who be not of good fame, to find sufficient security for the peace or for their good behaviour or both, as the case may require, and if they refuse, to commit them to prison until they shall find the same. And every recognizance so taken for keeping the peace or for good behaviour, shall be certified and sent or brought by such justice to the next court of general sessions of the peace for the county, to the end that the party may be called.

HOW TO RECOGNIZE FELONS.

By the *second section* of the act last aforesaid, it is enacted, That every justice of the peace before whom any person shall be brought for any treason or felony or for suspicion thereof, before he commit such person to gaol, shall take the examination of such prisoner and the information of those who bring him, relative to the fact, and the same or so much thereof as shall be material to prove the offence, shall be put in writing by the said justice, within two days after the said examination, and he shall bind by recognizance all the material witnesses against such prisoner, to appear and testify at the next court having cognizance of the offence and where the prisoner ought to be tried, and shall certify the recognizances together with the said examinations so reduced to writing, under his hand, into the said court where such witnesses are bound to appear, on the first day of the sitting thereof. And if any justice is neglectful in the premises, he is liable to be fined by the said court in such amount as the same shall deem meet.

We recollect an instance in which a justice for such a neglect, was fined by the court of oyer and terminer, in the sum of one hundred dollars.

WHEN AND HOW TO LET FELONS TO BAIL.

Sec. III. Any two justices of the peace jointly out of sessions, may let to bail prisoners arrested and in gaol *on suspicion of felony*, to appear at the next court having cognizance of the offence. And both or one of such justices shall then certify to the said court their examination of such prisoners, the information of those who bring them, and the recognizances of the material witnesses.

WHEN AND HOW TO CONVENE SPECIAL SESSIONS.

Sec. 4. If any person shall be charged on oath before any justice of the peace with having committed any *petit larceny, misdemeanor, breach of the peace or other criminal offence under the degree of grand larceny,* and shall not forthwith give good and sufficient bail to appear and answer at the next court of general sessions of the peace, such person shall be committed to gaol or to the custody of the constable. And in case such offender does not give such bail as aforesaid, within 48 hours after being so committed, such justice shall certify the cause thereof to any other two justices of the said county, and require them to associate with him to try such offender, which they are by this act required to do. And the said justices, being so met, are authorised to hear, and a majority of them to determine the offence, and on conviction of the offender, to impose a fine not exceeding 25 dollars, or imprisonment in the common gaol not exceeding six months, or both, as the case may require. *Provided,* That such justices, when so met, may try such offender in less than 48 hours, if he requires it.

Sec v. See title Sheriff, Statute Duties.

HIS DUTIES ON ASSAULT AND BATTERY.

A justice of the peace, as we have before seen, has no cognizance of cases of assault and battery by civil process. These are only within his jurisdiction as criminal offences. He can, therefore, act no further therein, than merely to issue his warrant and to recognise such offenders.

Sec. VII. No justice of the peace shall be obliged to issue any warrant on any complaint for a trespass or assault and battery, or either of them, unless the person making such complaint and requiring such warrant, and every person recognized as principal before any such justice for such offence, shall pay the fees to the justice for taking the recognizance.

HIS DUTIES IN CASES OF FORCIBLE ENTRIES AND DETAINERS.

The act to prevent forcible entries and detainers, passed February 6th, 1788, makes it the duty of the justices of the peace of the county, or any one of them, on complaint of a forcible entry into the lands, tenements or other possessions, to view and record the force, to punish the offenders, and also to remove the force, and cause restitution to be made; for which purpose such justices, or any of them, shall, if necessary, issue a precept to the sheriff of the county, to summon 24 good and lawful men as-

jurors to inquire into the premises. And if any person who shall be indicted by this act before such justices or justice, shall immediately traverse such indictment, then such justices or justice shall issue a precept to the sheriff of the county, to summon 12 jurors as aforesaid, to come before such justices or justice at a certain day, not less then four, nor more than eight days from the time of issuing such process, to inquire into the premises, &c.

HIS DUTY IN CASES OF FUGITIVES FROM JUSTICE.

In case any person against whom any warrant shall be issued by any justice of the peace for any offence, *shall escape*, or be in any other county out of the jurisdiction of the justice who granted the warrant, it shall be the duty of any justice of the peace of the county where such person shall be, upon proof of the hand writing of the justice granting the warrant, to endorse his name on the same, which shall be a sufficient authority to the person bringing the warrant, and to all other persons to whom it was directed, to arrest the offender in the county where the warrant was endorsed, and to bring him before any justice of such county, and such justice may take bail, if the offence is bailable, for such offender's appearance in the next court in the county where the offence was committed having cognizance thereof, and shall deliver the recognizance, examination of the prisoner and proceedings before him, to the officer having charge of the prisoner, to be by him delivered to the clerk of the court in which the offender is bound to appear. Law N. Y. Felons, &c. 20th March, 1801.

HIS DUTIES IN CASES OF DISORDERLY PERSONS.

When by the personal view of a justice of the peace, or confession of offenders, or by the oath of one or more witnesses, such justice shall be satisfied, that such offenders are idle persons, not having visible means of livelihood, or threaten to leave their wives and children to the town, or go about begging, or pretend fortune-telling, or wander in taverns or barns, not giving a good account of themselves, or are returned to a town from whence they have been lawfully removed, without bringing a legal certificate, he shall commit such disorderly persons to the house of correction of such town, there to be kept at hard labor until the next general sessions of the county, or until discharged by due course of law. And it shall be lawful for such justice, together with one associate justice, to discharge such defendant, before the said general sessions, if they shall see cause.

Two justices may order lunatics or mad persons to be confined.

Disorderly persons must pay the expence of conveying them to the place where they belong; and the justice is authorised to *search* them for their money, and if none can be found, to sell such of their effects as they may find, for the purpose aforesaid. Law N. Y. Feb. 9, 1788.

HIS DUTIES UNDER THE BASTARD ACT.

If the overseers of the poor of any town, or any one of them, make application to a justice, that a woman is delivered of a bastard child, which shall be or is likely to be chargeable to such town, and such woman shall declare herself to be with child, and that such child is likely to be born a bastard and to be chargeable as aforesaid, and shall in either case, in an examination to be taken in writing, upon oath, before such justice, charge any person with having gotten her with child, such justice shall issue his warrant to bring such person before him, or any other justice of the county. And if such person, on appearing, shall not give security to indemnify such town, or enter into a recognizance with sufficient surety, to appear at the next general sessions, and abide such order as shall be made under this act, such justice shall commit such person to the common gaol.

Any two justices, of whom one lives in or near the town where a child is born out of lawful matrimony, may make *an order* in the premises against the mother or reputed father of the child for its support, and if default be made to perform the same after notice, such mother, or father, or both, may be committed to the house of correction, except such security be given as aforesaid.

A justice may endorse his name on a warrant under this act, from a foreign county, which is a sufficient authority to execute it where it is endorsed; and if the reputed father be brought before any justice of the county where the said warrant was so endorsed, such justice must proceed thereon as if it was a case in his own county, and send all the proceedings thereupon to the justice who issued the said warrant.

In case no order has been made in *eight weeks* after such woman has been delivered, any justice after having summoned the overseers of the poor to show cause, may discharge such reputed father from imprisonment.

It is not lawful for any justice to send for a woman in order to examine her concerning her pregnancy, until one month after she is delivered, or until that time to compel her to answer any question relating to her pregnancy.

If the mother or reputed father of any child run away, two justices of the peace, on application to the overseers of the poor, may seize their real and personal estate for its support.

No justice who shall have been present or assisted in giving any judgment, or making out any such order, shall sit in the court of sessions upon any appeal against such order. Law N. Y. Feb. 25, 1813.

HIS DUTIES IN RELATION TO APPRENTICES AND THEIR MASTERS.

The act concerning apprentices and servants, passed 20th February, 1801, provides, that if any person, bound as an apprentice, shall refuse to serve according to the terms of his indenture, and complaint be made thereof to a justice, by the master or mistress of such apprentice, such justice shall by warrant, under his hand and seal, send such apprentice to the house of correction, there to remain until he or she shall be contented and will serve as an apprentice, according to the meaning of this act.

If any master or mistress shall be guilty of any misusage, refusal of necessary provisions or cloathing, cruelty or ill-treatment, so that his or her clerk, apprentice or servant shall have just cause to complain, or the said clerk, apprentice or servant be guilty of any misdemeanor or ill-behaviour, then either of the said parties having just cause of complaint, shall repair to any justice of the peace, who, if he cannot compound the matter, shall take a recognizance from such master or mistress, for his or her appearance at the next sessions, and if such clerk, apprentice or servant, be in default, he shall be punished by fine or imprisonment, or both, in the discretion of such justice.

Any three justices may, upon satisfactory proof and application of any apprentice, discharge him from his indenture, if no money has been paid on his binding out.

Any two or more justices, on satisfactory proof under oath, on complaint of a master or mistress, may commit an apprentice to the house of correction, or discharge him from his indenture.

The jurisdiction given to justices of the peace by particular statutes, is so various and extends to such a multiplicity of cases, that it were endless to enumerate them, we shall, therefore, merely subjoin, that they have also cognizance under the following acts, namely; the act for suppressing vice and immorality, passed March 5, 1813; the act to prevent injury by dogs, passed 24th March, 1801; the act to prevent firing the woods, passed 12th March, 1788, and that all actions for penalties under 25 dollars, imposed by our statutes, are usually cognizable before them. They are also authorised to preside at town meetings in

their respective towns, to administer oaths to town officers, and to conduct proceedings concerning common lands. And we shall only add, that by statute, no justice of the peace shall, by virtue of his office, be liable to any penalty for not attending in any court of over and terminer or gaol delivery, unless the duties of his office require him to attend such court.

POINTS ADJUDGED IN THE SUPREME COURT.

GENERAL SESSIONS.

Jurisdiction. The court of sessions are judges of the law and the fact, and a bill of exceptions does not lie to that court. 3 Johns. Rep. 23.

This court may by certiorari order the sessions to return all the facts and proceedings before them. Ibid.

Bastardy. An order of bastardy made by two justices, is evidence of the facts stated therein, and on appeal it is incumbent on the party to impeach the truth of them. Ibid.

On appeals in cases of bastardy, the general sessions have no power to award costs, unless authorised by statute. 9 Johnson's Rep. 119.

The general sessions have no power to make an original order of maintenance in case of bastardy (that being the business of justices out of the sessions.) 10 Johns. Rep. 56.

JUSTICES OF THE PEACE.

Jurisdiction. Justices of the peace are confined strictly to the authority given them, and can take nothing by implication, but must shew the power expressly given them in every instance.—1 Caines' Reports 190.

Courts of justices of the peace are not courts of record: they do not proceed according to the course of the common law. 3 Johns. Rep. 429.

Where a justice has imposed a fine on a witness for a contempt in a suit before him, an action will not lie before another justice to recover the amount. 3 Caines' Rep. 170.

An action on the case lies in a justice's court, against a person regularly subpœnaed as a witness in such court, and who neglects or refuses to attend. 10 Johns. Rep. 248.

A justice of the peace cannot grant a warrant to apprehend a criminal for an offence committed in another state. 2 Caines' Rep. 213.

The record of conviction before the justices ought to state sufficient to show that they had jurisdiction. 4 John. Rep. 292.

The value of the thing stolen ought to be stated, and that the party convicted had not given bail within 48 hours after being committed, or had consented to a trial before that time. Ibid.

Attornies may be sued in a justice's court, except during the sittings of their court. 6 Johns. Rep. 332.

A corporation cannot be sued,* but may sue in a justice's court. 7 Johns. Rep. 356.

A justice cannot take cognizance of an action against an executor or administrator. But he has jurisdiction of an action against an executor or administrator. So in cases of mutual dealings, to the amount of two hundred dollars, if the balance due does not exceed 25 dollars.

Process. A defective erroneous process, is cured if no objection is made at the time and the defendant appears and goes to trial. 2 Caines' Rep. 134.

Although process issued by a justice, may be altered by his direction, yet a general authority by him to a constable, to alter the dates of executions, instead of renewing them, or to fill up or alter process, is void. 10 Johns. Rep. 405.

Adjournment. In the case of a non-resident plaintiff suing by warrant, the justice cannot adjourn† the cause for more than three days without his consent. 3 Caines' Rep. 245.

On affidavit of the absence of a material witness, a justice ought to adjourn the cause, unless special cause to the contrary be shewn. 1 Johns. Rep. 514.

A justice cannot on his own motion adjourn a cause more than once, and that not for more than 5 days, after the return of process. 2 Johns. Rep. 192.

Where on warrant a cause, by request of defendant and consent of plaintiff, was adjourned to another day, when the parties appeared, and the defendant requested a second adjournment on account of the absence of a material witness, it was held that the justice was bound on defendant's offering to give security, to grant a further adjournment. 2 Johns. Rep. 383.

Where a justice has once adjourned a cause for 3 months, at

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* A bill has recently been before the legislature, to simplify proceedings against corporations, authorising prosecutions and proceedings against corporations in the same manner as against individuals. We have not learnt what prevented it from becoming a law.

† In all cases of adjournment, the accounts of the parties must be previously exhibited in court.

the request of a party, he cannot grant a second adjournment at the request of the same party. 3 Johns. Rep. 435.

A defendant is bound to wait only a reasonable time for the justice, at the time and place appointed by him for the hearing of a cause, and if the justice thereafter gives judgment against him in his absence, it will be erroneous. 4 Johns. Rep. 117, & 5 Johns. Rep. 353.

It is too late to ask for an adjournment after a jury are impannelled. 7 Johns Rep. 437.

A justice may on the return of a summons, at the request of the plaintiff, adjourn the cause for six days, without requiring an oath of the absence of material witnesses. 9 Johns. Rep. 354.

The security to be taken by the justice for the defendant's appearance, in case of granting him an adjournment on warrant, must either be a recognizance, or at least a written engagement of bail; if merely verbal, it is void by the statute of frauds. 7 Johns. Rep. 18.

If the plaintiff, or some person in his behalf, do not appear on the return of process, it is a discontinuance, and if the justice proceeds in the cause, it is error. 9 Johns. Rep. 140.

Declaration. The declaration should state the cause of action with certainty, that the court may know whether the justice has jurisdiction or not. 1 Caines' Rep. 496.

Want of averment in a declaration, will after judgment be intended to have been supplied by proof. 1 Johns. Rep. 276.

After pleading, the defendant cannot take advantage of a variance between the process and declaration. 2 Cain. Rep. 134.

If, on appearance of the parties, no objection is taken to the declaration, every formality is cured; and after verdict the court will intend that the substance of it was proved. 3 Cain. R. 218.

It seems that a variance between the summons and declaration is not fatal. 10 Johns. Rep. 240.

Set-off. Every demand on contract,* may be set-off under the 25 dollar act. 1 Johns. Rep. 56.

In suits before justices of the peace, the defendant must set-off his demand against the plaintiff the first opportunity, or he will be precluded, So that in two suits between the same parties, the set-off cannot be delayed until the trial of the last suit. 3 Johns. Rep. 428.

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* By the term *contract* is here to be understood, every promise or undertaking, whether express or implied, written or unwritten, as by bond, note, agreement, book account, or on goods sold, or labor or services done, whether for specific or implied remuneration.

In an action for a *tort* (an injury for which an action of trespass lies) the defendant cannot set-off. 3 Caines' Rep. 84.

The defendant must plead, or give notice of his set-off, at the time of joining issue; and if he neglects so to do, he cannot afterwards make the set-off at the trial. 10 Johns. Rep. 108.

Plea in Bar of action. Where an action was brought on a note and account for work, and the jury took no notice in their verdict of the account, it was held in a second action for the account, that the defendant had properly pleaded the first action in bar. 2 Johns. Rep. 210.

It is a good plea, that defendant had previously brought an action before another justice. 1 Johns. Rep. 283.

Trial. The justice may, if necessary, continue his court from one day to the next; and if the defendant neglects or refuses to attend, the justice may proceed in the trial without him. 2 Caines' Rep. 134.

The justice who tries the cause must swear the witnesses. 1 Johns. Rep. 520.

When the justice has submitted the cause to the jury, he cannot take it from them and nonsuit the plaintiff. 3 Johns. R. 430.

The jury decide both the law and the fact. Ibid. 436.

If a justice only inspect a note, it does not deprive the party of a trial by jury. 1 Johns Rep. 142.

Venire, or Jury Process. A defective venire is cured, if the party makes no objection at the time, but proceeds to trial. 3 Caines' Rep. 275.

Where the former venire has not been carried into effect, the justice may issue another venire, without the former having been returned. 2 Caines' Rep. 134.

The justice may order the constable to return a *talis de circumstantibus*, (of the bystanders,) as jurors, in default of such as are summoned on the venire. 2 Johns. Rep. 286.

Aliens, although freeholders, are not qualified to serve as jurors. 6 Johns. Rep. 332.

Evidence. In an action of debt on the judgment of another justice, the certificate thereof should be proved or sworn to by the justice himself. 3 Johns. Rep. 429.

A justice cannot decide on his own previous knowledge, but only on the evidence produced before him in court. 10 Johns. Rep. 459.

A justice cannot be sworn as a witness* in a cause tried before

* He may be a witness in a cause before him by consent of parties.

him, though the oath be administered by another justice. 1 Johns. Rep. 520.

Verdict. Before the jury give in their verdict, a plaintiff may withdraw and be nonsuited. 5 Johns. Rep. 346.

A verdict of no cause of action, is a verdict for the defendant, and the justice is bound to give judgment accordingly. 2 Johns. Rep. 31.

A verdict for defendant, for six cents damages and six cents costs, will be considered as a general verdict for the defendant, and the damages and costs will be rejected. 3 Johns. Rep. 427.

A verdict for more damages than the party has claimed in his declaration or set-off, is merely a defect of form, for which a judgment will not be set aside. 3 Johns. Rep. 433.

Judgment. A justice is bound to give judgment on a verdict; for he can neither arrest the judgment, nor award a new trial. 2 Johns. Rep. 181.

A judgment rendered after issue joined, on the non-appearance of the defendant, must specify it to have been on hearing the proofs and allegations of the parties. 2 Caines' Rep. 96.

A justice cannot enter judgment against a defendant, unless he appears in person, or by attorney, and confesses judgment, or on his being duly summoned. 6 Johns. Rep. 126.

If the defendant makes default on the return of the summons personally served, the justice cannot give judgment for the plaintiff, without proof of his demand; but it must be proved in the same manner, as if the defendant had appeared and denied it. 10 Johns. Rep. 106.

A judgment against an executor or administrator plaintiff, on a plea of set-off by the defendant, is personally against such plaintiff, and charged on his own proper goods. 10 Johns. Rep. 366.

Costs—Are given of course under the 25 dollar act, where there is a recovery. 1 Johns. Rep. 316.

Where the plaintiff was nonsuited, but the justice awarded no costs, the judgment was held to be incomplete. 2 Johns. Rep. 8.

A justice is not liable to be sued by witnesses for their fees.—They must look to the party by whom they are subpœnaed. 5 Johns. Rep. 351.

Execution. A justice has no authority to discharge a defendant on execution, without authority from the plaintiff. 9 Johns. Rep. 146.

Certiorari. The justice must on certiorari return all the proceedings in the suit. 2 Caines' Rep. 373.

A justice is not bound to return any thing but what can legally be required of him, notwithstanding a command in the writ. Coleman's Cases 118.

Under special circumstances, a justice's return may be amended after errors assigned. 2 Caines' Rep. 110.

If it appear from the return of a certiorari that the jury retired, and nothing is said about a constable's being sworn to attend them, it is a fatal omission, and not to be supplied by intendment. Ibid. 373.

The court will take notice only of such facts as the justice certifies on certiorari from his own knowledge. 2 Johns. R. 193.

A certiorari allowed after execution begun to be executed by the constable, does not prevent the execution. 9 Johns. Rep. 66.

Infancy. A justice may appoint a guardian for an infant having a suit in his court; and if an infant appear by attorney it is error. 8 Johns. Rep. 418.

Action Qui. Tam, &c. It is no objection to a justice of the peace who tries an action on a penal statute, that he is an inhabitant of the town, to the overseers of the poor of which a moiety of the penalty when received is directed to be paid. 11 Johns. Rep. 76.

Forcible Entry and Detainer. Where the justice acts on his own view, without any inquisition by a jury, he can only punish the party guilty of the force, but cannot meddle with the possession. 10 Johns. Rep. 304.

COMMON LAW.

EVIDENCE.

Every issue pending in a court of justice, whether of a civil or criminal nature, must be tried according to the established rules of evidence, and as the common law furnishes the general criterion on this subject, we shall offer the reader a sketch on the rules of evidence.

The First General Rule is, That you must give the best evidence that the nature of the thing is capable of. The true meaning of this rule is, that no such evidence shall be brought, that from the nature of the thing supposes still greater evidence behind in the parties' power or possession.

The Second General Rule is, That no person interested in the question can be a witness. There is no Rule in more general use, and none that is so little understood. We therefore add, 1st. That it must be a present interest, for a future contingent interest will not be sufficient to exclude a person from being a witness. 2d. An interest is when there is a certain benefit or advantage to the witness attending the determination of the

cause one way.—Therefore a naked trust does not exclude one from being a witness. 3d. Husband and wife cannot be admitted to witness for each other in civil cases, because their interests are the same, but they may in criminal cases. 4th. A party interested will be admitted for the sake of trade and the common usage of business. Therefore a common carrier may be a witness to prove a delivery of the goods.—So a banker's apprentice to prove the receipt of money. 5th. A party interested will be admitted where no other evidence is reasonably to be expected.—As upon the statute of Hue and Cry, in England, a party robbed will be admitted, even though he himself is plaintiff.—So where a son having a general authority to receive money for a father, received a sum and gave it to the defendant, the son was admitted as a good witness for his father in an action of trover for the money.

The Third General Rule is, That hearsay is no evidence, for no evidence is to be admitted but what is upon oath, yet it may be admitted in corroboration of a witness's testimony, to shew that he affirmed the same thing before on other occasions, and that he is still constant to himself.

A Fourth General Rule is, That in every issue the affirmative is to be proved. For a negative cannot be proved, and therefore it is sufficient to deny what is affirmed until it be proved. An issue is where there is an affirmation of a fact on one side and a negation or denial of it on the other side, and when the affirmation is proved it may be contested with opposite proofs. As if a defendant be charged with a trespass, he need only make a general denial of the fact, and if it be proved, then he may prove a proposition inconsistent with the charge, as that he was at another place at the time, or the like.

A Fifth General Rule is, That no evidence need be given of what is agreed by the pleadings.

A Sixth General Rule is, That if the substance of the issue be proved it is sufficient.

Persons convicted of crimes cannot be witnesses; and to exclude them the record of conviction must be produced in court.

Infidels cannot be witnesses, that is such who profess no religion that can bind their consciences to speak truth. But when any person professes a religion that will be a tie upon him, he shall be admitted as a witness, and sworn according the ceremonies of his own religion; for it would be ridiculous to swear a witness upon the Holy Evangelists, who did not believe those writings to be sacred. The Jews are always sworn upon the Old Testament; Mahometans on the Koran; those of the Gentoo Religion according to the ceremonies of that religion.

In regard to children, there seems to be no precise time fixed

wherein they are excluded from giving evidence; but it will depend in a great measure on the sense and understanding of the child, as it shall appear on examination to the court. However it seems to be settled, that a child under the age of ten, shall in no case be admitted. See Buller's *Nisi Prius*.

PRECEDENTS

FOR JUSTICES OF THE PEACE.

IN CIVIL CASES.

NO. I.

SUMMONS.

County, ss. To any constable in said county, greeting: In the name of the people of the state of New-York, you are hereby commanded to Summon A. B. to be and appear before me, on the day of at in the town of at o'clock in the noon of said day, then and there to answer unto C. D. in a plea of to his damage 25 dollars or under, as is said. And have you then and there this precept. Hereof fail not. Given under my hand, this day of 1816.

J. K. Justice of the peace.

NO. II.

WARRANT.

County, ss. J. K. one of the justices of the peace of said county: To any constable in said county, greeting: These are in the name of the people of the state of New-York, to command you forthwith to apprehend A. B. personally to bring him before me, to answer unto C. D. in a plea of , to his damage 25 dollars or under (and do you notify the plaintiff of trial,) and have you then there this precept. Hereof fail not at your peril. Given under my hand and seal, this day of 1816.

J. K. Justice of the peace.

NO. III.

FORM OF SECURITY ON APPLICATION FOR A WARRANT, BY A NON-RESIDENT.

A. B. a non-resident of the county of Ulster, having demanded a warrant from C. D. one of the justices of the peace for the said county, against A. F. in a plea of : I, K. L. of the county aforesaid, do therefore hereby become security for the said A. F. according to the act in such case provided. And I do hereby acknowledge to be bound to pay to the said A. B. such sum with costs, as shall be recovered or adjudged against the said A. F. in the plea aforesaid.

K. L.

Taken and acknowledged, the day of 1816, before me, C. D. Justice, &c.

NO. IV.

SECURITY BY EITHER PARTY ON ADJOURNMENT, UPON RETURN OF WARRANT.

Upon the return of a warrant this day before C. D. one of the justices of the peace for the county of Ulster, at the suit of J. K. against L. M. in a plea of : the said L. M. (if demanded by him say) requested an adjournment of the plea aforesaid until the day of and having exhibited his demand now here against the said J. K. according to law, the said J. K. requested that the said L. M. should give security for his appearance accordingly. I, A. B. do therefore hereby become security for the said L. M. in the plea aforesaid, according to the act in this case provided, that the said L. M. shall appear before the said C. D. on the said day of at, &c. and that in default of the appearance of the said L. M. accordingly, I acknowledge to be bound to pay the debt, damages and costs, (or damages and costs as the case may be) if judgment shall be given against the said L. M. in the plea aforesaid, for want of this security.

A. B.

Taken and acknowledged, the day of 1816, before me, C. D. Justice, &c.

NO. V.

SUBPŒNA.

Ulster County, ss. To R. D. In the name of the people of the state of New-York, you are hereby commanded personally to be and appear before me, on the day of at of the clock in the noon of the same day, at the house of K. L. in the town of in said said county, to testify all and singular what you know in a certain cause now depending between L. R. plaintiff and M. N. defendant, in a plea of on the part and on behalf of the defendant, and on that day to be tried. Hereof fail not under the penalty of ten dollars. Given under my hand and seal, &c. (as before.) A. B. Justice, &c.

NO. VI.

VENIRE FOR JURY.

Ulster County, ss. To any constable of the town of in said county, greeting. You are hereby commanded to summon twelve good and lawful men, being freeholders of the town aforesaid, to be and appear before A. B. Esq. one of the justices of the peace of said county, at on the day of at o'clock in the noon, to make a Jury for the trial of an action of between J. K. plaintiff and L. M. defendant, and who are in no wise of kin to either party, nor interested in the present suit depending between them: and have you then and there a panel of the juror's names, together with this precept. Hereof fail not. Given under my hand and seal this day of 1816.

A. B. Justice, &c.

NO. VII.

ATTACHMENT.

Ulster County, ss. By A. B. Esquire, one of the justices of the peace in and for the county of Ulster. Any constable of the said county is hereby commanded, in the name of the people of the state of New-York, to attach the goods and chattels of C. D. (except such goods and chattels as are exempt from execution,) and the same safely keep, to satisfy such judgment as may

be rendered by me, against the said C. D. in favor of E. F. on an application made by him before me, under the twenty-third section of the act, "for the recovery of debts to the value of 25 dollars:" and the said constable is commanded to return to me this precept, at in the town of in the county aforesaid, on the day of at o'clock in the noon of that day, and also to leave a copy of this attachment at the dwelling-house, or other place of abode of the said C. D. six days at least before the return hereof. Given under my hand, at, &c.

NO. VIII.

BOND TO BE TAKEN BY A JUSTICE FROM THE APPLICANT FOR AN ATTACHMENT.

Know all men by these presents, That we A. B. and C. D. (such applicant and his surety) of the town of in the county of are held and firmly bound (to the defendant in the penal sum of 25 dollars,) &c. &c.

The Condition of the above obligation is such, That if the said A. B. his heirs, executors or administrators, shall well and truly pay to (defendant) his executors, administrators or assigns, all such damages and costs as he may sustain from a certain attachment issued by L. O. Esq. one of the justices of the peace of said county, against the goods and chattels of him the said (defendant) at the instance of the said A. B. in virtue of the act in such case made and provided, if no judgment shall thereupon be recovered against the said (defendant) then the above obligation to be void, otherwise to remain in full force and virtue.

Sealed and delivered in the presence of } A. B. [L. s.] C. D. [L. s.]

NO. IX.

RECOGNIZANCE ON A PLEA OF TITLE.

Ulster County, ss. Be it remembered, That on the day of in the year, &c. before me A. B. one of the justices of the peace for the county of Ulster, came J. K. of Marbletown, tanner, and L. M. of Rochester, shoemaker, and acknowledged themselves jointly and severally to be indebted to P. O. in the sum of fifty dollars, of lawful money of New-York, to be levied

upon their joint and several goods and chattels, lands and tenements, to the use of the said P. O. in case default shall be made in the following condition.

Whereas the above named P. O. hath commenced an action of trespass, before me the said A. B. against the above named J. K. for damages alledged by the said P. O. to be sustained, on the day of on a certain lot called the "wood pasture" of the said P. O. in Marbletown aforesaid, (state the nature of the damage committed.) And whereas the said J. K. by his plea in writing doth justify the said trespass; for that he says, that the said premises on which the same are supposed to have been committed, was and is his own proper estate and freehold; and he having signed the said plea and delivered the same to me the said justice, and I the said justice having countersigned the same and delivered it to the said plaintiff, now here.

The Condition of this Recognizance is such, That if the said P. O. shall commence a suit against the said J. K. before the next court of common pleas, to be holden at the court-house Kingston, in and for the county of Ulster, for the recovery of damages for the trespass aforesaid, that then the said J. K. shall appear and put in special bail in the said court, within twenty days after the first day of the term of the said court wherein such process is returnable, according to the act in such case provided, then this recognizance to be void, otherwise to be and remain in full force and virtue.

Taken and acknowledged,
the day and year above mentioned, before me. A. B. Justice, &c.

NO. X.

JUSTICES' RETURN TO A CERTIORARI.

Ulster County, ss. I do herewith send to the honorable the justices of the people of the state of New-York of the supreme court of judicature of the same people, the plaint, judgment and proceedings, as within I am commanded, and as by the transcript of the same under my hand and seal, certified and hereunto annexed, will more fully appear.

J. L. Justice of the peace. (L. S.)

N. B. This transcript should contain a minute detail of all the proceedings before the justice, according to the entries in his docket.

NO. XI.

EXECUTION.

Ulster County, ss. To any Constable in said county, greeting: Whereas judgment has been obtained before me, A. B. one of the justices of the peace of said county, on the day of at the suit of C. D. against E. F. for the sum of dollars cents damages, and dollars cents costs, lawful money of the state of New-York: These are therefore in the name of the people of the said state, to command you forthwith to levy of the goods and chattels of the said E. F. (excepting what is by law excepted) and make sale thereof to the amount of the said judgment, together with nineteen cents for this execution; and have the money before me within thirty days from the date of this precept. And for want of such goods and chattels, take the body of the said E. F. and him convey and deliver unto the keeper of the common gaol of said county, who is hereby commanded to receive and keep him in his custody in the said gaol, until he be thence delivered by due course of law. Hereof fail not at your peril, but make due return according to law. Given under my hand and seal, this day of, &c.

Damages, $
Costs, $

A. B. Justice, &c. (L. S.)

NO. XII.

ENDORSEMENT FOR EXEMPTION, &c. ON EXECUTION.

Ulster County, ss. I A. B. the justice in the within execution named, do hereby certify, that E. F. also in the same named, hath on the hearing before me of the said within cause, proved to my satisfaction that he is not a freeholder and has a family within this state.

A. B. Justice, &c.

PRECEDENTS FOR JUSTICES IN CRIMINAL CASES.

NO. I.

STYLE OF THE SESSIONS.

County, ss. "The general sessions of the peace, holden at the court-house in in and for the county of on the day of in the year, &c. before J. P. and K. P. Esquires, and others, justices of the people of the state of New-York, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses and other misdemeanors in the said county done and perpetrated," &c.

NO. II.

PRECEPT FOR THE GRAND JURY.

{L. S.} County, ss. The people of the state of New-York, by the grace of God free and independent. To our sheriff of our county of greeting: we command you, that you do not omit for or by reason of any liberty within your bailiwick, but that you cause to come before our justices assigned to keep the peace in the county of aforesaid, and also to hear and determine divers felonies, trespasses and other misdemeanors in the said county done and perpetrated, at our next court of general sessions of the peace, which is to be holden at the court-house in in and for the county of on the day of next, at ten of the clock in the forenoon of the same day, *twenty-four good and lawful men of your bailiwick*, then and there to enquire, present, do and perform all and singular such things which on our part shall be enjoined on them and also to make known to all justices of the peace, coroners, bailiffs and constables in the county aforesaid, that they be then and there with their rolls, records and other memorandums, to do and fulfil those things which by reason of their offices shall be to be done. And have you then there the names of those jurors and this precept. Given at in the county aforesaid on the (the last day of the preceding sessions) in the year, &c. By the Court. C. T. Cl'k.

NO. III.

VENIRE FOR PETIT JURY AT SESSIONS.

{L. S.} County, ss. The people of the state of New-York, by the grace of God, free and independent. To our sheriff of our county of greeting. We command you, that you do not omit by reason of any liberty within your county, but that you enter therein and cause to come before our justices assigned to keep the peace in the county of aforesaid, and also to hear and determine divers felonies, trespasses and other misdemeanors done and perpetrated in the said county, on the day of next, *twelve* good and lawful men of your county, each of whom shall have such lands, tenements or messuages or of rents as will qualify them to serve as jurors and who are not of affinity to E. L. to hear and determine those things which on our behalf shall be then and there enjoined them. And have you then there the names of those jurors and this writ. Witness D. W. N. S. and G. D. Esquires, justices of the peace, at in the county aforesaid, the day of (day of rising of the preceding sessions) in the year, &c. By the Court. C. T.
Cl'k of the peace.

NO. IV.

SUBPŒNA TO TESTIFY AT SESSIONS.

{L. S.} Ulster County, ss. The people of the state of New-York, by the grace of God, free and independent. To A. B. L. M. C. D. and K. F. of the county of , greeting. We command you, and every of you, that all business being laid aside, and all excuses ceasing, you do in your proper persons appear before our justices assigned to keep our peace in the county of Ulster, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, at the next general sessions of the peace, to be holden at the court-house in in and for the said county, on the day of next, at the hour of ten of the clock in the forenoon of the same day, to testify all and singular those things, which you, or any of you, shall know, in a certain appeal now depending between the overseers of the poor of the town of New-Paltz, appellants, and the overseers of the poor of the town of Shawangunk, removants, touching and concern-

ing the removal of A. F. from the said town of Shawangunk (or where the people are a party) to testify the truth and give evidence in our behalf, against C. D. in a case of trespass and assault. And this you and every of you are in no wise to omit, under the penalty upon you and each of you of fifty dollars.—Witness, &c. (Dated and signed as last before.)

N. B. There may be four witnesses put in one subpœna.

NO. V.

WARRANT FOR THE PEACE OR GOOD BEHAVIOUR.

L. S. Ulster County, ss. To any constable of the county of Ulster, greeting. Whereas A. I. of the town of Hurley in the said county, yeoman, hath personally come before me C. G. one of the justices assigned to keep the peace within the said county, and hath taken a corporal oath, that he is afraid that J. B. of Kingston in the said county, blacksmith, will beat him (or wound, kill, maim or do him some bodily hurt; or if for good behaviour, hath threatened to do some bodily hurt to him the said A. I. or to burn the house of him the said A. I.) and hath therefore prayed surety of the peace (or for the good behaviour) against him the said J. B. These are therefore in the name of the people of the state of New-York, that immediately upon the receipt hereof, you bring the said J. B. before me or some other justice of the peace of the said county, to find surety as well for his personal appearance at the next general sessions of the peace, to be holden in and for the said county, as also for his keeping the peace (or for his being of good behaviour) in the mean time, towards the people of the state of New-York, and chiefly towards the said A. I. Given under my seal at Kingston, in the said county, on the day of in the year, &c.

NO. VI.

RECOGNIZANCE FOR THE PEACE OR GOOD BEHAVIOUR.

Ulster County, } ss. W. L. of Hurley, farmer, in $200
A. H. of do. miller, his bail, in $50

Be it remembered, that on the day of in the year, &c.

before me A. B. one of the justices of the peace for the said county, came W. L. of Hurley, in the county of Ulster, farmer, and A. H. of the same place, miller, and acknowledged themselves severally indebted to the people of the state of New-York, that is to say, the said W. L. in the sum of two hundred dollars of lawful money of the said state, and the said A. H. in fifty dollars of like money, to be levied upon their respective goods and chattels, lands and tenements, to the use of the people of the said state, in case default shall be made in the following condition.

The Condition of this recognizance is such, that if the above bounden W. L. shall personally appear at the next general sessions of the peace, to be holden in and for the county aforesaid, to do and receive what shall then and there be enjoined on him by the court, and in the mean time shall keep the peace (or keep the peace and be of good behaviour) towards the people of the state of New-York and especially towards A. I. of Hurley in the said county, yeoman, then the said recognizance to be void, or else to remain in full force and virtue.

Taken and acknowledged, the day and year above mentioned, before me, A. B. justice, &c.

W. L.
A. H.

NO. VII.

MITTIMUS FOR WANT OF SURETIES.

County, ss. To any constable of the county of and to the keeper of the common gaol in said county. Whereas A. O. of in the said county, yeoman, is now brought before me J. D. one of the justices assigned to keep the peace in the said county, requiring him to find sufficient sureties to be bound with him in a recognizance for his personal appearance at the next general sessions of the peace to be holden in and for the said county, and in the mean time to keep the peace (or be of good behaviour) towards the people of the state of New-York, and especially towards A. I. of the town of in the said county, yeoman; and whereas the said A. O. hath refused and doth now refuse before me to find such sureties. These are therefore in the name of the people of the state of New-York, to command you the said constable, forthwith to convey the said A. O. to the common gaol (or house of correction) of the said county, and to deliver him to the keeper thereof together with this precept: And I do in the name of the said people, hereby command you the said keeper to receive the said A. O. into your

custody in the said gaol (or house of correction) and him there safely to keep, until he shall find such sureties as aforesaid. Given under my hand and seal at in the said county, the day of in the year, &c. J. D. [L. S.]

NO. VIII.

WARRANT FOR FELONY.

County, ss. To any constable of . Whereas A. I. of in the county of yeoman, hath this day made information and complaint upon oath, before me, one of the justices of the peace for the said county, that this present day divers goods of him the said A. I. to wit, (articles) of the value of, &c. have been feloniously stolen, taken, and carried away from the house of him the said A. I. at in the county aforesaid, and that he hath just cause to suspect and doth suspect that A. O. late of yeoman, feloniously did steal, take and carry away the same. These are therefore to command you forthwith to apprehend him the said A. O. and to bring him before me to answer unto the said information and complaint, and to be further dealt with according to law. Hereof fail not. Given under my hand and seal the day of in the year, &c.

J. D. justice of the peace. [L. S.]

NO. IX.

SEARCH WARRANT.

County, ss. To any constable, &c. Whereas it appears to me J. P. Esquire, one of the justices assigned to keep the peace in the county of , by the information and oath of A. I. of in the county aforesaid, yeoman, that the following goods, to wit, [articles] of the value of, &c. have within two days last past, by some person or persons unknown, been feloniously taken, stolen and carried away, out of the house of the said A. I. at aforesaid; and that the said A. I. hath probable cause to suspect, and doth suspect that the said goods or part thereof, are concealed in the dwelling house of A. O. of the said county, yeoman. These are therefore in the name of the people of the state of New-York, to authorise and require you, with necessary and proper assistants, to enter in the day time in the said

dwelling house of the said A. O. at aforesaid, in the county aforesaid, and there diligently to search for the said goods, and if the same or any part thereof shall be found upon such search, that you bring the goods so found, and also the body of the said A. O. before me, or some other of the justices of the peace of the said county, to be disposed of and dealt with according to law. Given under my hand and seal, &c. J. P. [L. S.]

NO. X.

THE EXAMINATION OF A PRISONER, &c.

Ulster County, ss. The examination of A. I. of , in the county of charged with feloniously, &c. who having taken an oath before me, J. P. Esquire, one of the justices of the peace for the said county, on the day of , in the year, &c. saith, that on Monday the day of this present month, between the hours of two and four of the clock in the afternoon of the same day, at or near a place called, &c. (as the case may be,) &c. (his information.) A. I.

Taken, made and signed the day and year above written, before me,
J. P. Justice, &c.

NO. XI.

RECOGNIZANCE TO GIVE EVIDENCE AT THE SESSIONS.

Be it remembered, that on the day of in the year of personally came before me, A. B. one of the justices of the peace of the people of the state of New-York in and for the county of A. W. and acknowledged himself to be indebted to the people of the said state, in the sum of one hundred dollars, of lawful money of the said state, to be made and levied of his goods and chattels, lands and tenements, to the use of the said people, if the said A. W. should make default in the condition under written.

The condition of this recognizance is such, that if the above bound A. W. shall personally appear at the next general sessions of the peace, to be holden at the court-house in , in and for

the county of and then and there give such evidence as he knoweth, against E. F. concerning his felonious taking and carrying away the property of and do not depart thence without leave of the said court, then this recognizance to be void. A. W.

Taken, &c.

NO. XII.

FORM OF RECOGNIZANCE OF BAIL.

County, ss. Be it remembered that on the day in the year, &c. before us J. M and R. B. Esquires, two of the justices of the peace in and for the county of , came A. O of , yeoman, A. B. of , blacksmith, and B. B. of , taylor, and severally acknowledged themselves to owe to the people of the state of New-York, that is to say, the said A. O. 200 dollars, and the said A. B. and B. B. each 50 dollars, to be respectively levied of their lands and tenements, goods and chattels, if the said A. O. shall make default in the performance of the condition underwritten.

The condition of this recognizance is such, that if the above bound A. O. shall personally appear before the justices of the people of the state of New-York assigned to keep the peace within the said county, and likewise to hear and determine divers felonies, trespasses and other misdemeanors, in the said county committed, at the next general sessions of the peace, (or before the said peoples' justices, some or one of them of gaol delivery, at the next general gaol delivery) to be holden in and for the said county, then and there to answer to the said people, for and concerning the felonious taking and stealing of the property of A. M. of yeoman, with the suspicion whereof the said A. O. stands charged before us the said justices, and to do and receive what shall be then and there enjoined on him by the court, and shall not depart the court without license, then the above written recognizance to be void.

A. O.
A. B.
B. B.

Taken, &c.

NO. XIII.

WARRANT FOR ASSAULT AND BATTERY.

County, ss. To any constable, &c.

Whereas complaint hath been made before me, J. P. one of the justices of the peace for the county of , upon the oath of A. I. of in the said county, taylor, that A. O. of aforesaid, butcher, did on the day of violently assault and beat him the said A. I. at aforesaid, in the county aforesaid. These are therefore in the name of the people of the state of New-York to command you forthwith to apprehend the said A. O. of and to bring him before me, to answer unto the said complaint, and further to be dealt with according to law. Given under my hand and seal, &c.

J. P. (L. S.)

NO. XIV.

RECORD OF A FORCIBLE DETAINER UPON VIEW.

County, ss. Be it remembered, that on the fifteenth day of September, in the year, &c. at in the county of E. E. complained to me, J. P. one of the justices assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses and other misdemeanors in the said county committed, that C. D. of, &c. yeoman, E. F. of &c. taylor, and K. L. of &c. shoemaker, into the messuage of him the said E. E. being the mansion-house of him the said E. E. situate at, &c. did enter, and him the said E. E. of the messuage aforesaid, whereof the said E. E. at the time of the entry aforesaid, was seized, as of the freehold of him the said E. E. for the term of his life, unlawfully ejected, expelled and amoved, and the said messuage from him the said E. E. unlawfully with strong hand and armed power, do yet hold and from him detain against the form of the statute in such case made and provided, whereupon the said E. E. then, to wit, on the said fifteenth day of September, at the town of aforesaid, prayeth of me so as aforesaid, being one of the justices that to him in this behalf a due remedy be provided, according to the form of the statute aforesaid, which complaint and prayer, by me the aforesaid justice, being heard, I the aforesaid justice to the messuage aforesaid have personally come, and do then and there find and see the aforesaid C. D. E. F. and K. L. the messuage aforesaid, with

force and arms unlawfully with strong hand and armed power, detaining against the form of the statute in such case made and provided, according as he the said E. E. hath so as aforesaid before me complained. Therefore it is considered by me the aforesaid justice, that the said C. D. E. F. and K. L. of the detaining aforesaid with strong hand, by my own proper view then and there as aforesaid had, are convicted, and every of them is convicted, according to the form of the statute aforesaid. Whereupon, I the said justice, upon every of the aforesaid C. D. E. F. and K. L. do set and impose severally a fine of 25 dollars of good and lawful money of the state of New-York, to be paid by them and every of them severally to the people of the said state, for the said offences; and do cause them, and every of them, to be then and there arrested: and the said C. D. E. F. and K. L. being convicted, and every of them being convicted upon my own proper view of the detaining aforesaid, with strong hand as aforesaid, by me the aforesaid justice are committed and every of them is committed to the common gaol of the said people at K. in the county of U. aforesaid, being the next gaol to the messuage aforesaid, there to abide respectively until they shall have paid their said several fines respectively to the said people for the respective offences aforesaid. Concerning which the premises aforesaid, I do make this my Record. In witness whereof I the aforesaid J. P. the justice aforesaid, to this record my hand and seal doth set at aforesaid, in the county aforesaid, on the 15th day of September, in the year, &c.

J. P. (L. S.)

NO. XV.

MITTIMUS FOR FORCIBLE DETAINER.

County, ss. E. H. Esquire, one of the justices, the peace in and for the county of to keep, and divers felonies, trespasses and other misdemeanors in the said county done and committed, to hear and determine.

To the keeper of the gaol at in the said county, and to his deputy and deputies there, and to every of them greeting. Whereas upon complaint made to me this present day by A. I. of in said county, yeoman, I went immediately to the dwelling-house of the said A. I. at aforesaid in the said county, and there found A. O. late of laborer, B. O. late of the same place, weaver, and C. O. late of butcher, forcibly with strong hand and armed power, holding the said house, against the

peace of the people of the state of New-York and against the form of the statute in such case made and provided. Therefore I send you by the bringers hereof, the bodies of the said B. O. A. O. and C. O. convicted of the said forcible holding, by mine own view, testimony and record. Commanding you in the name of the said people to receive them into your said gaol and there safely to keep them and every of them respectively until they shall have respectively paid the said several sums of 25 dollars of lawful money of the said state, to the people aforesaid, which I have set and imposed upon every of them separately, for a fine and ransom for their said trespasses respectively.—Herein you are not to fail, at the peril that may follow thereon. Given at aforesaid, under my hand and seal, &c.

E. H. (L. S.)

NO. XVI.

PRECEPT FOR JURY ON FORCIBLE DETAINER.

County, ss. H. A. Esq. one of the justices of the peace in and for the county of to keep, and divers felonies, trespasses and other misdemeanors in the said county committed, to hear and determine. To the sheriff of the said county, Greeting: On behalf of the people of the state of New-York I command you that you cause to come before me at in the county aforesaid, on the day of next ensuing, twenty-four sufficient and indifferent men of the neighborhood of aforesaid, in the county aforesaid, every of whom shall have lands, tenements or rents to qualify them to serve as jurors, to inquire upon their oath for the said people, of a certain entry made with strong hand, as is said, into the messuage of one A. I. at aforesaid, in the county aforesaid, against the form of the statute in such case made and provided. And you are to return upon every of the jurors by you in this behalf to be empanelled, 2 dollars 50 cents of issues at the aforesaid day. And have you then and there this precept. And this you shall in no wise omit, upon the peril that shall thereof ensue. Witness the said H. A. at in the county aforesaid, the day of

H. A. (L. S.)

NO. XVII.

JURORS OATH ON THE ABOVE.

"You shall true inquiry and presentment make of all such things as shall come before you, concerning a forcible entry, (or detainer) said to have been lately committed in the dwelling house of yeoman, at in this county; you shall spare no one for favor or affection, nor grieve any one for hatred or ill-will, but proceed herein according to the best of your knowledge, and according to the evidence that shall be given to you: So help you God."

"The oath that A. F. your foreman hath taken on his part, you and every of you shall truly observe and keep on your parts. So help you God."

NO. XVIII.

INQUISITION, INDICTMENT, OR FINDING OF THE JURY.

County, ss. An inquisition of the people of the state of New-York, indented and taken at in the said county the day of in the year, &c. by the oaths of (names of jurors) good and lawful men of the said county, before J P. Esq. one of the justices assigned to keep the peace in said county, and divers felonies, trespasses and other misdemeanors in the said county committed to hear and determine, who say upon their oaths aforesaid, that A. I. of aforesaid, yeoman, long since lawfully and peaceably was seized in his demesne as of fee (if it was not freehold, say possesssed) of and in one messuage with the appurtenances in aforesaid, in the county aforesaid, and his said possession and seisin, so continued, until A. O. late of yeoman, and C. O. late of the same place, yeoman, and other malefactors unknown, on the day of now last past, with strong hand and armed power, into the messuage aforesaid, with the appurtenances aforesaid, did enter, and him the said A. I. thereof disseised, and with strong hand expelled; and him the said A. I. so disseised and expelled from the said messuage with the appurtenances aforesaid, from the said day of until the day of the taking of this inquisition, with strong hand and armed power did keep out, and doth yet keep out, to the great disturbance of the peace

of the people of the state of New-York, and against the form of the statute in such case made and provided

We whose names are hereunto set, being the jurors above said, do upon the evidence now produced before us, find the inquisition aforesaid true.

A. B.
C. D. &c.
Jurors.

NO. XIX.

WARRANT TO THE SHERIFF FOR RESTITUTION.

County, ss. H. F. Esq. one of the justices, the peace in and for the county of to keep, and divers felonies, trespasses and other misdemeanors in the said county done and committed to hear and determine. To the sheriff of the said county, Greeting: Whereas by an inquisition taken before me the justice aforesaid, at in the county aforesaid, on this present day of in the year, &c. upon the oaths of and by virtue of the statutes made and provided in cases of forcible entry and detainer, it is found that A. O. late of yeoman, and B. O. late of yeoman, on the day of last past, into a certain messuage with the appurtenances of A. I. of aforesaid, in the county aforesaid, gentleman, situate, lying and being at aforesaid, in the county aforesaid, with force and arms did enter, and him the said A. I. thereof with strong hand did disseise and drive out, and him the said A. I. thus driven out from the aforesaid messuage with the appurtenances, from the day of aforesaid, to this present day of the taking of the said inquisition, with strong hand and armed force did keep out, and do yet keep out as by the inquisition aforesaid more fully appeareth of record. Therefore on the behalf of the people of the state of New-York, I charge and command you, that taking with you the power of the county (if needful) you go to to the said messuage and other the premises, and the same with the appurtenances you cause to be reseised, and that you cause the said A. I. to be restored and put into his full possession thereof, according as he, before the entry aforesaid was seised, in pursuance of the form of the said statutes. And this you shall in no wise omit, on the penalty thereon incumbent. Given under my hand and seal at in the said county the day of in the year, &c.

NO. XX.

EXAMINATION OF A DISORDERLY PERSON.

County, ss. The examination of A. O. a disorderly person, taken before me, J. P. one of the justices of the peace in and for the county of the day of in the year, &c. who on his oath saith, that he was born at (and so trace out the history of his life so far forth as to ascertain his legal place of settlement).

his
A. ⋈ O.
mark.

Taken and signed, the day and year above written, before me, A. B. justice, &c.

NO. XXI.

COMMITMENT OF A DISORDERLY PERSON.

County, ss. To the constable of K. in the county of U. and to the keeper of the common gaol in the said county, Where, as A. O. a disorderly person, was this day found wandering and begging in the town of K. in the said county not having obtained a legal settlement there, against the statute in such case made and provided, and was thereupon apprehended, and is now brought before R. B. one of the justices of the peace for the said county, that he may be punished and dealt with according to law. These are therefore to command you the said constable to carry the said A. O. to the common gaol of the said county, and deliver him to the said keeper thereof, together with this warrant. And I do hereby command you the said keeper to receive the said A. O. into your custody in the said gaol, and him there safely to keep until the next general sessions of the peace to be holden for the said county. And have you him then there, together with this precept. Given under my hand and seal at K. in the county of U. the day of in the year, &c.

NO. XXII.

PASS FOR A DISORDERLY PERSON IN THE SAME COUNTY.

County, ss. To the constable of in the county of to receive and convey, and to the overseers of the poor of the town of in the said county, or either of them, to receive and obey.

Whereas A. O. was apprehended, in the town of in the county aforesaid, as a disorderly person, according to the form of the act in such case made and provided, to wit, &c. and upon examination of the said A. O. taken before me J. P. Esq. one of the justices of the peace in and for the said county (which examination is hereunto annexed) it doth appear, that, &c.—These are therefore to require you the said constable, to convey the said A. O. in the next direct way to the said town of within the said county, and there to deliver him to the overseers of the poor or either of them of the said town of to be there provided for according to law. And you the said overseers of the poor are hereby required to receive the said person and provide for him as aforesaid. Given under my hand and seal the day of, &c.

NO. XXIII.

PASS FROM COUNTY TO COUNTY.

County, ss. To the constable of in the county of W. and also to all constables and other officers whom it may concern, to receive and convey, and to the overseers of the poor of the town of in the county of or either of them, to receive and obey.

Whereas A. O. was apprehended, in the town of aforesaid in the county of W. aforesaid, as a disorderly person, according to the form of the act in such case made and provided, to wit, &c. and upon examination of the said A. O. taken before me J. P. Esq. one of the justices of the peace in and for the said county of W. upon oath (which examination is hereunto annexed) it doth appear, that, &c. These are therefore to require you the said constable to convey the said A. O. to the town of in the county of , that being the first town in the next county through which he ought to pass in the direct way to the said town of in the county of to which he is to be sent, and to deliver him to the constable or other officer of such first town.

in such next county, together with this pass and the duplicate of the examination of the said A. O. taking his receipt for the same. And the said A. O. is to be thence conveyed on in like manner to the said town of in the county of there to be delivered to the overseers of the poor or either of them of the said town, to be there provided for according to law. And you the said overseers of the poor are hereby required to receive the said person and provide for him as aforesaid. Given under my hand and seal the day of, &c.

NO. XXIV.

VOLUNTARY EXAMINATION OF A WOMAN WITH CHILD OF A BASTARD.

County, ss. The voluntary examination of A. M. of in the said county, single woman, taken on oath, before me J. P. one of the justices of the peace in and for the said county, this day of in the year, &c. who saith, that she is now with child, and that the said child is likely to be born a bastard, and to be chargeable to the town of in the said county, and that A. F. of in the said county, weaver, is the father of the said child.

her
A. ⋈ M.
mark.

Taken and signed the day and year above written, before me, J. P.

NO. XXV.

EXAMINATION AFTER THE BIRTH.

County, ss. The examination of A. M. of in the said county, single woman, taken upon oath before me J. P. one of the justices of the peace in and for the said county, this day of who saith that on the day of last past, at in the town of in the county aforesaid, she the said A. M. was delivered of, a male, bastard child, and that the said bastard child is likely to become chargeable to the said town of and that A. F. of in the said county, weaver, did get her with child of the said bastard child.

her
A. ⋈ M.
mark.

Taken and signed, &c.

NO. XXVI.

WARRANT TO APPREHEND THE REPUTED FATHER, BEFORE THE BIRTH.

County, ss. To the constable of, &c.

Whereas A. M. of in the said county, single woman, hath by her voluntary examination taken in writing upon oath, before me J. P. one of the justices of the peace in and for the said county, this present day declared herself to be with child, and that the said child is likely to be born a bastard, and to be chargeable to the town of in the said county, and that A. F. of in the said county, weaver, is the father of the said child. And whereas O. P. one of the overseers of the poor of the town of aforesaid, in order to indemnify the said town in the premises, hath applied to me to issue out my warrant for apprehending of the said A. F. I do therefore hereby command you immediately to apprehend the said A. F. and to bring him before me or some other justice of the peace of the said county, to find security to indemnify the said town of or else to find sufficient surety for his appearance at the next general sessions of the peace, to be holden for the said county, and to abide such order or orders as shall be made, in pursuance of the act of the legislature of this state in such case made and provided. Given under my hand and seal, &c.

NO. XXVII.

THE LIKE AFTER THE BIRTH.

County, ss. To the Constable of

Whereas A. M. of in the said county, single woman, hath by her examination taken in writing upon oath, before me J. P. one of the justices of the peace in and for the said county, declared that on the day of now last past, at in the town of in the county aforesaid, she the said A. M. was delivered of (a male) bastard child, and that the said bastard child is likely to become chargeable to the town of aforesaid, and has charged A. F. of in the said county, weaver, with having gotten her with child of the said bastard child. And whereas O. P. one of the overseers of the poor [and so on as the foregoing precedent to the end.]

NO. XXVIII.

COMMITMENT THEREUPON.

County, ss. To the constable of in the said county, and to the keeper of the common gaol at in the said county.

Whereas A. M. of single woman, in her voluntary examination taken in writing and upon oath the day of now last past, before me J. P. one of the justices of the peace in and for the said county, hath declared herself with child, and that the said child is likely to be born a bastard, and to be chargeable to the said town of and hath charged A. F. gentleman with having gotten her with child of the said child (or if it is after the birth, then say: Whereas A. M. of single woman, in her examination taken in writing upon oath, before me J. P. one of the justices of the peace for the said county, hath declared, that on the day of now last past, at in the county aforesaid, she the said A. M. was delivered of, a male, bastard child, and that the said bastard child is likely to become chargeable to the said town of and hath charged A. F. of weaver, with having gotten her with child of the said bastard child.) And whereas the said A. F. being now personally present before me, being brought by my warrant, upon application for that purpose to me made by O P. one of the overseers of the poor of the said town, hath refused to give security to indemnify the said town, and hath also refused to enter into a recognizance with sufficient surety, upon condition to appear at the next general sessions of the peace, to be holden for the said county, and to abide and perform such order or orders as shall be made in pursuance of the act of the legislature of this state in such case made and provided. These are therefore to command you the said constable to take and convey the said A. F. to the common gaol at in the said county, and to deliver him to the keeper thereof, together with this warrant. And I do hereby command you the keeper of the said gaol, to receive the said A. F. into your custody in the said gaol, and him there safely to keep, until he shall give such security, or enter in such recognizance as aforesaid, or be otherwise lawfully discharged from thence. Given under my hand and seal, &c.

NO. XXIX.

CONDITION OF A RECOGNIZANCE FOR THE REPUTED FATHER TO APPEAR AT THE SESSIONS, AND TO ABIDE SUCH ORDER AS SHALL BE MADE.

Whereas A. M. of single woman, hath in and by her voluntary examination, taken in writing and upon oath, before me J. P. one of the justices of the peace in and for the said county of , declared that she is with child, and that the said child is likely to be born a bastard and to be chargeable to the said town of and that the above bound A. F. is the father of the said child: (if it is after the birth, then say: Whereas A. M. of single woman in and by her examination taken in writing upon oath before one of the justices of the peace in and for the said county, hath declared that on the day of now last past, at in the county aforesaid, she the said A. M. was delivered of a male, bastard child and that the said bastard child is likely to become chargeable to the said town of and hath charged the above bound A. F. with having gotten her with child of the said bastard child.)

The Condition of this recognizance is such, that if the above bound A. F. shall and do appear at the next general sessions of the peace, to be holden in and for the said county, and shall abide and perform such order or orders as shall be made in pursuance of the act of the legislature in this case made and provided, then this recognizance to be void, otherwise of force.

NO. XXX.

CONDITION OF A RECOGNIZANCE TO APPEAR AT THE SESSIONS, AFTER THE ORDER NOT PERFORMED.

Whereas by an order under the hands and seals of us J. P. and C. D. two of the justices of the peace of the county aforesaid, A. F. of the town of in the said county, taylor, is adjudged to be the reputed father of a bastard child, born lately of the body of A. M. of singlewoman at (and then set forth what was ordered therein further.) And whereas the said A. F. hath not observed or performed the said order.

The Condition therefore of this recognizance is such, that if the above bound A. F. shall observe and perform the said order

or shall personally appear at the next general sessions of the peace to be holden in and for the said county, and shall then and there abide such order as shall be then and there made by the court concerning the said bastard child, if any such order shall be then and there made, and if no such order shall be then and there made or taken by the court, if the said A. F. shall and do perform the order already made by us as aforesaid, then this recognizance to be void, &c.

NO. XXXI.

FORM OF AN ORDER OF BASTARDY.

County, ss. The order of J. P. and K. P. Esquires, two of the justices of the peace in and for the said county, one whereof resides (in or near) the town of in the said county, within which the bastard child hereinafter mentioned was begotten, made the day of in the year, &c. concerning a male bastard child, lately born in the town of aforesaid, of the body of U. M. single woman. Whereas it hath appeared unto us the said justices, as well upon the complaint of the overseers of the poor of the town of aforesaid, as upon the oath of the said U. M. that she the said U. M. on the day of now last past, was delivered of a male bastard child, at aforesaid, in the county aforesaid, and that the said bastard child is now chargeable to the town of aforesaid, and likely so to continue. And further that O. F. of in the said county, yeoman, did beget the said bastard child on the body of her the said U. M. And whereas the said O. F. hath appeared before us, in pursuance of our summons for that purpose, but hath not shewed any sufficient cause why he the said O. F. shall not be the reputed father of the said bastard child, (or whereas it hath been duly proven to us upon oath, that the said O. F. hath been duly summoned to appear before us the said justices, to the end we might examine into the cause and circumstances of the premises: and whereas he the said O. F. hath neglected to appear before us according to such summons). We therefore upon examination of the cause and circumstances of the premises, as well upon the oath of the said U. M. as otherwise, do hereby adjudge him the said O. F. to be the reputed father of the said bastard child. And thereupon we do order, as well for the better relief of the said town of as for the sustentation and relief of the said bastard child, that the said O. F. shall and do forthwith, upon notice of this our order pay or cause to be paid

to the overseers of the poor of the town of aforesaid or to some or one of them, the sum of for and towards the lying in of the said U. M. and the maintenance of the said bastard child, to the time of making this order. And we do also further hereby order, that the said O. F. shall likewise pay or cause to be paid to the overseers of the poor of the said town of for the time being or some or one of them the sum of weekly and every week from this present time, for and towards the keeping, sustentation, and maintenance of the said bastard child, for and during so long time, as the said bastard child shall be chargeable to the said town of . And we do further order that the said U. M. shall also pay or cause to be paid to the said overseers of the poor of the said town of for the time being, or to some or one of them, the sum of weekly and every week, so long as the said bastard child shall be chargeable to the said town of in case she shall not nurse and take care of the said child herself. Given under our hands and seals the day and year first above written.

NO. XXXII.

WARRANT AGAINST THE MASTER FOR MISUSING HIS APPRENTICE.

County, ss. To the constables of

Whereas complaint hath been duly made to me, J. P. one of the justices of the peace in and for the said county, by O. P. apprentice to U. M. of in the said county, shoemaker, that the said U. M. hath misused and evil intreated him the said O. P. by cruel punishment, and beating him the said O. P. without just cause, and by not allowing unto him sufficient meat, drink and apparel, (or as the case shall be). These are therefore, in the name of the people of the state of New-York, to command you to cause the said U. M. personally to appear before me at the house of in the said county, on the day of at the hour of in the afternoon of the same day, to answer unto the said complaint; and also to cause the said apprentice to appear before me at the same time and place to make good his said complaint. Hereof fail not. Given under my hand and seal, &c.

NO. XXXIII.

WARRANT AGAINST THE APPRENTICE, ON COMPLAINT OF THE MASTER.

County, ss. To the constables of

Whereas complaint hath been duly made unto me, J. P. one of the justices of the peace in and for the said county, by U. M. of in the said county, farmer, that O. P. now being an apprentice to him the said U. M. is negligent, stubborn, disorderly, and doth not his duty to him the said U. M. his master. These are therefore to command you to bring the said apprentice before me, and to give notice to the said master that he appear before me at the same time, that such order may be taken in the premises, as equity shall require. Herein fail not. Given under my hand and seal the day of, &c.

NO. XXXIV.

COMPLAINT OF AN APPRENTICE TO THREE JUSTICES AGAINST HIS MASTER.

County, ss. The information and complaint of U. P. apprentice to O. M. of the town of in the said county, farmer, taken and made (on oath, if he is above 14 years of age) before us, three of the justices of the peace in and for the said county, the day of in the year, &c. who saith that he the said U. P. about a year and a half ago last past, became bound an apprentice by indenture to O. M. of aforesaid, farmer; that at several times since he entered upon the said apprenticeship, the said O. M. hath misused and ill-treated him the said apprentice, and particularly, (as the case may be).

his
U. ⋈ P.
mark.

Taken and signed,
the day and year above
written, before us, J. P.
K. P.
L. D.

NO. XXXV.

SUMMONS OF THE MASTER BY THREE JUSTICES ON COMPLAINT OF THE APPRENTICE.

County, ss. Whereas complaint hath been made unto us, three of the justices of the peace in and for the said county, by U. P. apprentice to U. M. of in the said county, farmer, that he the said U. M. hath misused and ill-treated him the said U. P. and particularly, (as the case may be). These are therefore to require you to summon the said U. M. to appear before us at in the said county, on the day of to answer unto the said complaint, and also that you give notice unto him, to bring with him the indenture of apprenticeship between him and his said apprentice, and also that you bring before us at the same time and place the said U. P. to make good the said complaint; and also that you bring with you this precept, and certify to us then and there what you shall have done in the execution thereof. Given under our hands and seals, the day of, &c.

NO. XXXVI.

DISCHARGE OF AN APPRENTICE BY THREE JUSTICES ON THE MASTER'S MISUSING HIM.

County, ss. Whereas complaint hath been made before us two of the justices of the peace in and for the said county, by U. P. apprentice to U. M. of in the said county, taylor, that he the said U. M. hath misused and ill-treated him the said apprentice, and particularly (as the case may be). And whereas the said U. M. hath appeared before us in pursuance of our summons to that purpose, but hath not cleared himself of and from the said accusation and complaint, but on the contrary the said U. P. hath made full proof of the truth thereof before us upon oath, We therefore by these presents do discharge him the said U. P. of and from his apprenticeship to the said U. M, any thing in the indenture of apprenticeship made betwixt them or otherwise howsoever, to the contrary notwithstanding. Given under our hands and seals the day of &c. (Or, And whereas it hath been duly proved before us, as well upon the oath of B. C. constable, of aforesaid, as otherwise, that he the said B. C. did duly summon the said U. M. to appear before us at a reasonable time in the said summons mentioned and spe-

cified; but notwithstanding the same, he the said U. M. hath not appeared before us according to such summons. We, therefore, having duly examined into the matter of the said complaint, and the truth thereof having been fully proved before us upon oath, do discharge, &c.

NO. XXXVII.

COMPLAINT TO TWO JUSTICES OF THE MASTER AGAINST HIS APPRENTICE.

County, ss. The complaint and information of A. M. of in the said county, farmer, taken on oath before us, A. B. and C. D. two of the justices of the peace in and for the said county, the day of who saith that A. P. having been bound to him an apprentice by indenture, bearing date the day of &c. and having entered upon his apprenticeship accordingly, hath been refractory and disobedient to him the said A. M. and particularly (as the case may be) A. M.

Taken the day above mentioned, before us, A. B.
C. D.

NO. XXXVIII.

A WARRANT FOR A DISORDERLY APPRENTICE BY TWO JUSTICES.

County, ss. Whereas oath hath been made before us, A. B. and C. D. two of the justices of the peace in and for the said county, by A. M. of in the said county, farmer, that A. P. apprentice to the said A. M. hath committed divers misdemeanors against the said A. M. his master, and hath likewise run away from his said master. These are therefore to require you forthwith to apprehend the said A. P. and bring him before us to answer the said complaint, and to be dealt with according to law. And you are to give notice to the said A. M. that he appear before us at the same time to make good his complaint. Given under our hands and seals, &c.

NO. XXXIX.

COMMITMENT OF AN APPRENTICE TO THE COMMON GAOL, ON COMPLAINT OF HIS MASTER, BY TWO JUSTICES.

County, ss. To the constable of in the county of and to the keeper of the common gaol at in the said county. Whereas complaint hath been made before us, A. B. and C. D. two of the justices of the peace in and for the said county, upon the oath of A. M. of in the said county, farmer, that A. P. apprentice of the said A. M. hath committed divers misdemeanors against him the said A. M. his master, and particularly (as the case may be.) And whereas upon examination thereof, and upon hearing the allegations of both parties, having come before us for that purpose, and upon due consideration had thereof, he the said A. P. is and stands convicted before us of the said offence. We do therefore hereby command you the said constable to take and convey the said A. P. to the said common gaol, and to deliver him to the said keeper thereof, together with this warrant. And we do hereby command you the said keeper of the said common gaol, to receive the said A. P. into your custody in the said common gaol, there to remain and be corrected for the space of . Given under our hands and seals, &c.

NO. XL.

DISCHARGE OF AN APPRENTICE BY TWO JUSTICES ON THE COMPLAINT OF THE MASTER.

County, ss. Whereas complaint, &c. (as in the last precedent). We do therefore by these presents discharge the said A. P. from his apprenticeship to the said A. M. any thing in any indenture or indentures of apprenticeship betwixt them, or otherwise to the contrary notwithstanding. Given, &c.

NO. XLI.

FEES OF THE JUSTICES OF THE PEACE.

IN CRIMINAL CASES.

For a precept to summon a jury, to inquire of a forcible entry or detainer, thirty-seven and a half cents.

Administering an oath, twelve and a half cents.

For swearing a jury to inquire of a forcible entry or detainer, twenty-five cents.

A precept to summon a jury to try a traverse of the force, thirty-seven and a half cents.

Swearing a jury to try the traverse, twenty-five cents.

Drawing a conviction of a forcible entry or detainer, one dollar.

A warrant of restitution, thirty-seven and a half cents.

A mittimus for a fine or forfeiture, nineteen cents.

A warrant against a person for a breach of the peace, or a misdemeanor, nineteen cents.

A bond or recognizance, twenty-five cents.

A summons upon a penal law, twelve and a half cents.

Drawing a conviction, thirty-seven and a half cents.

A warrant to levy a penalty, nineteen cents.

CHAP. IX.

LOAN OFFICER.

The loan officer or commissioner of loan is a mere casual county officer. When his trust is completely executed, his office of course ceases to exist.

When at former periods, this state had more money in the treasury than it required for the purposes of government, the legislature have from time to time, as such occasions occurred, by special acts authorised the loaning certain specific sums of the public monies, to the citizens resident within this state, upon mortgage security on lands situated within the limits thereof; and that such monies should be invested in and distributed among the several counties, according to their relative wealth and population.

There yet remain at present three different loan-offices thus created at distinct periods of time in the counties which existed when those loans were directed to be made.

The officers, being generally two in each county, to whom these offices are entrusted, are variously distinguished. The most ancient are called "*The Loan Officers*," and in common parlance, the "*Old Loan Officers.*" The next in order of appointment, are styled "*The New Loan Officers*," and those last created, are denominated "*The Commissioners of Loan.*"

The acts creating the two former offices provide, that the loan officers therein contemplated, should be appointed by the judges of the common pleas and the supervisors of the counties to which such monies were loaned. The commissioners of loan, however, were originally appointed by the council of appointment. But all vacancies which happen in either of the said offices by death or removal, continue to be filled by such judges and supervisors, in their discretion.

The statutes authorising loans uniformly provide that the supervisors shall take from the loan officer appointed, a bond with such sureties as may be designated for the due execution of his office, which must be deposited in the clerk's office of the county. And in some cases it is enjoined on the loan officer to take an oath of office.

For the performance of an office of such high responsibility, it may well be supposed that the selections of the officers are usually made from the most substantial, best informed, and disfreeholders of the county.

By the constitution of this state, loan officers, county treasurers, and clerks of the supervisors, shall continue to be appointed in the manner directed by the present and future acts of the legislature.

A loan officer is disqualified by statute for the office of supervisor; for the obvious reason, that he ought not to be placed in a situation to be a judge of his own official acts.

DUTIES.

The principal duties of a loan officer, are as follows, viz.

1. It is his business to receive the interest monies and such instalments of principal, as annually become due and payable on such mortgages to the people of this state, as have been entrusted to his care and management.

2. In case of defalcation of payment of interest and principal, both or either, according to the tenor of any such mortgage and the statute or statutes in such case made and provided, it is incumbent on him to foreclose such mortgage, by selling the mortgaged premises at public auction, giving due notice of the intended sale, and thereupon to execute a deed to the purchaser; and after retaining out of the sale monies the principal and interest due the state, together with the expences accrued, to return the overplus, if any, to such mortgagor or his legal representatives.

3. It is his duty annually, at the time fixed by law, to pay into the state treasury the full amount of interest and principal monies by him received for the current year on such mortgages, except he has not been able to re-loan such principal received, only retaining in his hands the amount of his lawful fees. And the receipts in writing from the treasurer of the state for the time being, are the requisite vouchers he must exhibit to the supervisors of his county, in proof of the due execution of his office.

4. It is enjoined on him annually to account to the supervisors of his county touching the exercise of all his official duties, and for that purpose it is made his special duty.

5. To provide proper blank books, and therein to enter the minutes of the proceedings in his office.

Where money is loaned on mortgage, by the loan officers, pursuant to the act of the 14th March, 1792, (sess. 15. c.25.) after a default of payment of interest by the mortgagee, for 22 days after the same is payable, all equity of redemption is forever foreclosed, by such default, and the loan officers become vested with an absolute and indefeasible estate in the land, so that this court cannot regard any estate as existing in the mortgagor. 9 Johns. Rep. 129.

PRECEDENTS.

LOAN OFFICER'S BOND.

Know all men by these presents, That we A. B. and C. D. of K. in the county of U. are held and firmly bound unto the people of the state of New-York, in the sum of ten thousand dollars, to be paid to the said people, for which payment well and truly to be made and done, we bind ourselves, our heirs, executors and administrators, and every of us and them jointly and severally, firmly by these presents. Sealed with our seals, and dated the day of in the year, &c.

Whereas the above bounden A. B. hath in virtue of an act entitled "an act to loan 50,000 dollars to the people of this state," passed the day of &c. (or as the case may be) been duly appointed a loan officer for the said county of U.

The condition of the above obligation is such, that if the above bounden A. B. shall do well and truly perform the office and duty of of the loan officers of the county of U. and shall demean himself therein without favor, malice or partiality, then the above obligation to be void, otherwise to remain in full force and virtue. A. B. (L. S.)

Sealed and delivered in the presence of C. D. (L. S.)

Ulster County, ss. I A. B. will, according to the best of my skill and knowledge, faithfully, impartially and truly demean myself in discharge of the trust committed to me as one of the loan officers for the county of Ulster, in pursuance of the act entitled "an act," &c. and according to the purport, true intent and meaning of the said act, so as the public may not be prejudiced by my consent, privity or procurement. A. B.

Sworn this day of before me K. L. one of the judges of common pleas, &c.

The foregoing bond and surety are approved by the undersigned common pleas judges and supervisors of the county of Ulster.

A. L.
G. T. } Judges, &c.
K O.

M. D. &
others, } Supervisors.

NOTICE OF INTENDED SALE OF MORTGAGED PREMISES, BY COMMISSIONERS OF LOANS.

County, ss. Notice is hereby given, that on the third Tuesday in September next, at two o'clock in the afternoon, will be sold at public vendue at the court-house, in the village of K. in the said county, to the highest bidder, the following lots of land, mortgaged by the respective persons herein after mentioned, to the commissioners for loaning money in the county of for the non-payment of the interest due on their respective mortgages, agreeable to the act, entitled "an act authorising a loan of monies to the citizens of this state," passed the eleventh day of April, 1808, to wit:

All those two certain lots of land in the town of containing fifty acres.

All that certain lot of land in the town of containing one hundred acres.

All that, &c. &c.

DEED OF CONVEYANCE OF MORTGAGED PREMISES, ON A SALE BY THE NEW LOAN OFFICERS.

This indenture made the day of in the year of our Lord one thousand eight hundred and one, Between the new loan officers of the county of of the first part, and P. Q. of the town of in the county of aforesaid and state of New-York, of the second part, Witnesseth that the said loan officers of the county of for and in consideration of the sum of two hundred and fifty dollars, lawful money of the said state, to them in hand paid by the said P. Q. the receipt whereof they the said loan officers do hereby acknowledge and thereof discharge the said P. Q. his heirs, executors, and administrators forever, have, pursuant to a law of the state of New-York, entitled "an act for loaning monies belonging to this state," passed the day of in the year of granted, bargained, sold, released, enfeoffed and confirmed, and by these presents do grant, bargain, sell, release, enfeoff and confirm unto the said P. Q. his heirs and assigns for ever, All (describe the land) together with all and all manner of improvements, hereditaments and appurtenances whatsoever to the same belonging, or in any wise appertaining, and all the estate, right, title, interest, claim and demand whatsoever of the new loan officers of the county of and their successors to the above bargained premises, and every part there-

of. To have and to hold the above bargained premises, and every part and parcel thereof with the appurtenances to the said P. Q. his heirs and assigns forever. In witness whereof the said loan officers of the county of have hereunto set the seal of their corporation, together with their hands, the day and year above written.

P. O. } New Loan
U. Y. } Officers.

Sealed and delivered in the presence of

G. H.
K. L.

CHAP. X.

THE SUPERVISOR.

NATURE OF THE OFFICE.

The term *Supervisor*, is compounded of two latin words, *super* and *video*; meaning, to see over, to overlook, or superintend.

A supervisor in each town in the several counties in this state, is annually on the first Tuesday in April chosen by ballot, for one year, and until another is appointed in his place, by the freeholders and inhabitants of every such town qualified by law to vote at town meetings. In case of death, removal, incapacity or refusal to serve, then his place is to be supplied by an election of another person for such office, at a special town meeting according to statute. And if such other election is not made within 15 days thereafter, then three justices of the peace residing in or near such town, may by warrant under their hands and seals, appoint another person to fill such vacancy. Law N. Y. Towns. March 19, 1813.

Although a supervisor is thus chosen by the freeholders and inhabitants of a single town, yet he becomes by the nature of his office a supervisor, overseer and guardian of the civil concerns of the whole county, whereof the town which elected him is a component part.

The sheriff, as chief executive and peace officer, has paramount powers in his county to those of the supervisors, but in all matters relating to the finances of the county, the latter have hitherto had by law principal cognizance in the same.

QUALIFICATION.

Before the supervisor enters upon the execution of his office, and within fifteen days after his election or appointment, he must take and subscribe before some justice of the peace the following

OATH.

"I, A. B. do solemnly and sincerely promise and swear (or affirm, as the case may be) that I will in all things to the best of my knowledge and ability, faithfully and impartially execute and perform the trust reposed in me as supervisor of the (here insert the name of the town,) in the county of (here insert the name of the county) and that I will not pass any account or article thereof, wherewith I shall think the said county is not justly chargeable, nor will I disallow any account, or any article thereof wherewith I shall think the said county is justly chargeable, and that I am a citizen of the United States, and a freeholder and actual resident in the said town of in the said county of"

This oath being without fee or reward taken, subscribed and certified before a justice of the peace, and by him delivered to such supervisor, must by him, within eight days thereafter, be transmitted or delivered to the clerk of the town for which he was elected or appointed; and in case of neglect thereof, it shall be deemed a refusal to serve in such office, and the town or ward may thereupon proceed to a new choice according to law. Law N. Y. Duties, &c. Towns. 1813.

Penalty for serving without qualification. In case any person who is chosen or appointed supervisor, shall refuse to take upon him or to serve such office, or shall proceed in the execution thereof before he has taken and subscribed such oath as aforesaid, he will forfeit to the people of this state the sum of sixty two dollars and fifty cents, to be recovered by an action of debt or information to be prosecuted by the attorney general in any court of record.

GENERAL DUTIES.

It is by statute made the duty of the supervisor, to prosecute, in his name, for the use of his town, before any justice of the peace residing in any other town, all offenders of such rules and regulations as have been adopted at the town meeting of such town, by actions of debt for the penalties imposed for such offences; *Provided*, no such penalty for any such offence does not exceed two dollars and fifty cents, exclusive of costs of suit. And in case of the death or expiration of office of such supervisor, his successor in office is authorised to continue and prosecute any such action to effect.

Notice to the collector of the tax list and his bond thereupon. It is the duty of the supervisor of every town and ward of any city in this state, to give notice to the collector chosen and appoint-

ed in the same, of the amount of the tax list, and within eight days thereafter, to obtain from such collector a bond, to be executed by him with one or more sureties approved of by such supervisor, in double the amount of taxes to be collected by such collector, and conditioned for the due and faithful execution of his office; and in case such bond becomes forfeited, it then is the duty of the supervisor with whom such bond is lodged, on notice from the county treasurer of the amount thereon due, to cause the said bond to be put in suit, and he is entitled to recover from such collector the amount thereon due with costs of suit; which sum when recovered must by such supervisor be applied in the same manner and to the same purposes to which such collector ought to have applied the same.

Town Survey. It is the duty of the supervisor, on application of the surveyor general, to cause the bounds of his town to be surveyed, at the expence of such town, and to transmit the survey and map thereof to him; to the intent that the same may be properly delineated on the map of this state. And further, where it shall be deemed necessary by the assessors of any town to have an actual survey made to ascertain the quantity of any tract or lot situate in their town, which the town line divides, and shall give notice to the supervisor of such town, such supervisor shall at the expence of the town, cause the necessary surveys to be made.

Annual Meeting. By the first section of the act, entitled "an act for defraying the public and necessary charges in the respective counties in this state," passed April 2, 1813, it is made the duty of supervisors of the several cities and towns in each of the counties of this state, other than the city and county of New-York, annually on the *first Tuesday of October*, to meet together at the court-house in such county, if there be but one, and if there be two, at each of them alternately, and if there be no court-house, then at the place where the last court of common pleas shall or ought to have been held, and at such other times and places as they shall find convenient; and examine, settle and allow all accounts chargeable against such county, and ascertain what sum ought to be raised for the payment thereof, and for defraying the public and contingent charges of such county.

They are authorised in certain cases to cause monies to be raised to defray the expences of any necessary bridges in their county, not however to exceed 1000 dollars in any one year. Law N. Y. Highways. March 1813.

And it is also made their duty by the common school act of 1814 to apportion the monies in the said act specified, among the several towns in their county, and to cause the same to be

raised or levied on each of the towns in such county: *Provided*, That such sum so to be raised and levied, shall be equal to the last apportionment of monies received by such towns severally, from this state.

To audit and apportion Town Expences. The second section of the act first aforesaid, makes it lawful for the supervisors of the several counties in this state to audit as town expences the accounts for services of the assessors, inspectors of election, and commissioners of highways, and to ascertain the amount of each town's proportion of the county costs according to the value of real and personal estates therein, as valued by the assessors in each town in the same year, and to such sum to add such other sum as shall be found by the said supervisors necessary to defray the expences of such town, and such further sum as any such town shall have voted to be raised for the destruction of noxious animals, birds and weeds in the same year, with the sum to be raised in each town for the maintenance of the poor thereof, and shall cause all such sums to be raised and levied together with taxes to be raised and levied for the use of the state, by adding to the tax of each person liable to pay the same, as the other contingent charges of the towns and counties are levied and collected.

Town Expences, to whom paid. The supervisors shall in their warrants to the collectors of each respective town, direct such collector to pay the sum so raised and collected for town expences, in the hands of the supervisor of the town, for the payment of the said town expences, who shall for such money account with the justices of the peace and the town clerk, on or before the *last Monday in September* thereafter in each year.

To appoint a Clerk and Treasurer. By the fourth section of the said act first aforesaid, it is made the duty of the supervisors in each county, as often as may be necessary, to appoint some proper person to be their *clerk*, and also some reputable freeholder of such county to be the *treasurer* of such county; which clerk and treasurer shall respectively hold their offices during the pleasure of the said supervisors; but it shall not be lawful for any member of any board of supervisors, or for any clerk of such board to be appointed, to hold the office of county treasurer.

To take a Bond from the Treasurer for the due execution of his Office. The fifth section of the said act enjoins it on the supervisors of every county, that before the county treasurer enters upon his office, they shall obtain from him a bond with sufficient sureties to such supervisors, and in such sum as they shall direct, conditioned for the faithful execution of his office, which shall be deposited in the clerk's office of such county. And in case the condition of such bond shall not be complied with, or

when required by the comptroller of this state, it shall be the duty of such supervisors to prosecute one or more actions of debt on such bond, in any court of record, against the obligors of such bond, or either of them, or the heirs, executors, or administrators of all or any of the obligors; and so much of the monies recovered on such bond as belong to the state, the supervisors shall pay to the state treasurer.

May sue Treasurer for all but state monies. It is by the said statute made lawful for the supervisors to commence an action of account, or for money had and received, in their own name generally, against such treasurer, his executors or administrators, for all monies received by him as treasurer, other than for the use of the state; and no such action shall abate or be discontinued by the death or expiration of office of any such board of supervisors: and the monies in such or any other action by them recovered, excepting such as belong to the state, shall be applied to the payment of the contingent charges of the county.

The Board. A general board is constituted, by a meeting or convention of all the members elected or chosen by the respective towns in a county, at such time and place as the law designates. When so convened, each member is authorised to act in a double capacity: that is, as the special representative of his town, and as one of the representatives of the county.

Although their annual meeting is on the first Tuesday in October in each year, yet there is no doubt but they have power to convene, on special occasions, when the concerns of the county require it, and to charge such county with the lawful expences of such meeting.

The seventh section of the said act declares, that a majority of the supervisors of any county shall constitute a legal and competent board to transact all business at any meeting of the said supervisors, and their doors shall be opened to all citizens who may wish to attend such meeting; and all questions which may arise in any such meeting shall be determined by the opinion of the majority of such supervisors attending the same. The evident meaning of this section is, that the votes of the majority of all the supervisors of the county at any such meeting are requisite to decide any question which is agitated before the board.

Deeds of lands to them declared lawful. The eighth section of the said act declares, that all conveyances of lands to the supervisors of any county and their successors in office, shall be legal and valid, for the use of such county.

A grant to the supervisors, for the use of the inhabitants of a particular town is void. They can take and hold lands only for the use of the county which they represent. 8 Johns. Rep. 122.

The act (sess. 24. c. 180.) enabling supervisors of counties to take conveyances of lands, applies only to conveyances made to the supervisors by that name. 8 Johns. Rep. 385.

Compensation of the Board and Clerk. By the ninth section of the said act, the sum of two dollars per day, and no more, is allowed each supervisor for his services and expences in attending the meetings of the board; and such board shall allow their clerk such sum for his services as the same shall from time to time direct; which sums shall be raised and levied as part of the contingent charges of such county.

Penalty for neglect of Duty. The tenth section of the said act provides, that if any supervisor shall neglect or refuse to perform any of the duties required of him by the said act, or which he shall thereafter be directed or required to perform, he shall for every such offence forfeit to the people of this state the sum of two hundred and fifty dollars, to be recovered with costs by the attorney general, at the request of the comptroller, in any court of record, by action of debt or information.

To Repair Court-House and Gaols. The eleventh section of the said act constitutes the supervisors overseers of the court-house and gaols of their county, and authorises them to raise from the freeholders and inhabitants of the same, sufficient sums of money to repair the same, not to exceed the sum of five hundred dollars in any one year; and also to cause so many solitary cells to be erected for the punishment of convicts, as the court of common pleas for such county may direct; and to cause all necessary sums for any of the above purposes, to be raised, levied and collected as the contingent charges of such county.

Rewards for Killing Wolves and Panthers. The twelfth section of the said act, makes it lawful for the supervisors at their annual meeting, to declare whether any, and what rewards shall be given for killing wolves and panthers, and to raise the same as contingent charges of their county; *Provided*, That no reward so to be allowed by any of the said board of supervisors for the killing of any wolf or panther, shall exceed the sum of twenty-five dollars.

By the act of April 7, 1815, a state bounty of 20 dollars for killing a grown wolf, and 7 dollars and 50 cents for each wolf's whelp, is provided, to be paid in the first instance by the county treasurer, and a like bounty is provided to be paid by the county: making the whole bounty for killing a wolf forty dollars, and a whelp fifteen dollars.

To obtain such bounty, the person killing such wolf or whelp, must take the head thereof, the skin and ears entire thereon, to some justice of the peace of such county, and make oath of the time and place when and where such wolf or whelp was taken

and killed, and by whom it was taken and killed, and shall submit to such further examination upon oath, as the said justice may require; and the said justice shall thereupon, cut off and burn the ears of the said wolf or whelp, and give the person so applying a certificate thereof, and setting forth the substance of such oath and examination.

No bounty is to be paid for killing such whelp unless it appear that the mother was not taken before she brought it forth.

To raise Monies for Criminal Suits. By the 17th section of the act, entitled "an act for regulating proceedings in criminal cases," passed Feb. 25, 1813, the supervisors of the several counties are required to cause a sufficient sum to be yearly raised for the expences of the prosecutor, of witnesses from a foreign county, and of poor persons being witnesses, in criminal suits.

DUTIES TO FACILITATE THE COLLECTION OF TAXES, ACCORDING TO STATUTE.

On Assessment of Real Estates. When the assessors of any town (whose duties will be found in the second part of this book) shall according to the act for the assessment and collection of taxes, passed April 5, 1813, have ascertained and set down in their first or original assessment roll the value of the real estate owned by each resident of such town or assessment district and completed such roll, such valuations must be revised and approved by the board of supervisors of the county where the same is made, and the same shall thereafter be considered the true valuations of such real estates, and shall not thereafter be varied, except where the value of any shall be increased or diminished by the erection or destruction of houses, or other improvements.

On ordinary Assessment of Real and Personal Estates. When the assessors of any town or the major part of them, shall have completed and signed their assessment roll of real and personal estates within such town or assessment district, and shall on or before the *first day of August* in any year, have delivered the same to the supervisor of such town, it then becomes the duty of such supervisor to deliver the same to the board of supervisors of that county at their next meeting, and the supervisor or clerk to whom such assessment roll shall be delivered by the assessors, shall after the same has been examined and corrected by the board of supervisors, cause a fair copy thereof to be made, and deliver such copy, or the corrected original, to the clerk of such city or town, who shall deposit the same in his office, for the use of the assessors of such city or town the succeeding year.

In and by the sixth section of the said act, it was made the duty of the supervisors of the several counties in this state at their then next meeting in October or before the first day of November thereafter, to estimate and set down in the column left for that purpose, opposite to the several sums set down as the value of real and personal estates in the assessment rolls, the respective sums in dollars and cents (rejecting the fractions of a cent) as a tax to be paid thereon; to add up and set down the aggregate value of the real and personal estates in the several towns and wards; to direct their clerk to make out and transmit to the comptroller of this state, a certificate of the said aggregate valuations; and to cause the assessment roll of each town or ward, or a fair copy thereof, to be delivered on or before the *first day of November* in every year, to the collectors respectively of such town or ward, with warrants annexed to the same, under their hands and seals, or the hands and seals of a majority of a board of supervisors.

By an act of 17 April, 1816, the valuations of real estate made by the supervisors of the several counties on the first Tuesday of October, 1816, shall thereafter be the rule of valuation and assessment of real estate within this state.

The Nature and Exigency of their Warrants to Collectors.—By the warrant from the board of supervisors directed to the town-collector, they must require him to collect from the several persons named in the assessment roll, the several sums mentioned in the last column thereof, opposite their respective names. And there must be an authorization in such warrant, that in case any of them shall refuse or neglect to pay such sum or sums, to levy the same by distress and sale of his or her goods and chattels together with the costs and charges of such sale, and a direction to the collector to pay such part of the money so collected as shall have been directed to be raised for the support of the Poor, to the overseers of the poor of his town or ward, and such part of the money as shall have been directed to be raised to defray any other expences of the town, to the supervisor of such town, and the residue of the money by him collected, to the treasurer of the county, on or before the *first day of February* then next, retaining in his hands out of the same for his services, five cents upon every dollar that he shall collect or levy.

Where there are more than one Collector. In case there shall be more than one collector in any town or ward, then the said supervisors shall direct and cause such warrant and assessment roll to be delivered to such one of them as they shall judge most suitable and proper.

An Account of the Rolls to be given to the County Treasurer. As soon as the supervisors shall have sent or delivered the rolls with such warrant as aforesaid to the collectors, they shall transmit an account thereof to the treasurer of the county, containing the names of the several collectors, the amount of the money they are severally to collect, and distinguish the sums that are to be collected for the support of the poor, for the other town expences, and for the contingent charges of the county, and the time when such collectors are directed to account for and pay the same to the county treasurer.

Duties on Receipt from the Comptroller of Rejected Taxes. When the Comptroller shall on or before the *third Tuesday in July* in any year, according to law, transmit to the treasurer of any county, a Transcript of the Taxes of the preceding year in the towns of such county, which for any cause whatever shall have been rejected by the comptroller, and such county treasurer shall deliver the same to the board of supervisors of such county at their next meeting after he shall have received the same, and in cases where the tax has been rejected by the comptroller on account of any inaccuracy in the description of the real estate on which such tax was laid, or the comptroller shall be of opinion that the real estate is so imperfectly described that it cannot be located with certainty, then and in all such cases, the supervisor of the town in which such real estate is situate, shall if in his power add to the assessment roll of such town, an accurate description of such real estate; and the board of supervisors shall charge such real estate with the taxes and interest thereon in arrear, stating however, each year's tax separately, and shall direct the collection thereof as a tax of the year in which such descriptions are perfected.

When a Town has been Divided. In case any town in which such taxes shall have been assessed, shall have been divided since such assessment, then the said taxes and interest shall be apportioned by the board of supervisors among the towns included within the limits of such original town, in such equitable manner as they may deem proper.

State Tax. If a tax is to be raised for the use of the state, the supervisors must then send a copy of the assessment rolls, when completed, to the comptroller, stating thereon the sums directed to be levied for the support of the poor of each town, for the contingent charges of the county, and for the state tax, and the date of their warrants to the collectors. When there is no state tax to be raised, the supervisors, instead of transmitting copies of the assessment rolls to the comptroller, shall in lieu thereof transmit to him a certificate of the aggregate amount of the valuation of real and personal estates in the several towns or

wards in the same county, on or before the *first day of February* in every year.

Liquidation of Individual Accounts. The twenty-fourth section of the act here considered, provides, that an account audited by the board of supervisors in any county of this state, in favor of any person, shall be on interest at the rate of seven per centum per annum, from the time the payment of the said account shall be demanded from the treasurer of the county: *Provided*, Such demand shall be made on, or subsequent to the first day of March, after the account shall have been audited.

[For the supervisor's duty as an Inspector of Elections, see title "Inspector of Elections," and for his duty as a commissioner of excise, see title "Commissioner of Excise."]

PRECEDENTS.

COUNTY TREASURER'S BOND TO THE SUPERVISORS.

Know all men by these presents, That we, A. B. of the town of in the county of and state of New-York, gentleman, and C. D. of the same place, farmer, are held and firmly bound to the supervisors of the said county of in the sum of of lawful money of the said state, to be paid to the said supervisors or their successors: For which payment well and truly to be made, we the said A. B. and C. D. bind ourselves, our heirs, executors and administrators, each and every of us and them, jointly and severally, firmly by these presents. Sealed with our seals, and dated this day of in the year one thousand eight hundred and

Whereas the said A. B. hath on the day of last past been duly appointed treasurer of the said county of

The Condition of the above obligation is such, that if the above bounden A. B. shall well and truly execute the office of Treasurer of the said county of , and shall pay all monies which shall come to his hands as such treasurer, according to law, and render a just and true account thereof to the said supervisors, or to their successors, or to the comptroller of this state aforesaid, when thereunto required, then the above obligation to be void, otherwise the same is to remain in full force and virtue.

A. B. (L. s.)

Sealed and delivered in the presence of C. D. (L. s.)

COLLECTOR'S WARRANT.

State of New-York. } To A. B. Collector of the
County of } town of

You are hereby required, to collect from the several persons named in the assessment roll annexed hereto, the several sums mentioned in the last column in each page thereof, opposite to their respective names: And you are hereby authorised, in case any of them shall refuse or neglect to pay such sum or sums, to levy the same by distress and sale of his or her goods and chattels, together with the costs and charges of such distress and sale: And you are hereby required to pay the sum of dollars cents to the overseers of the poor of the said (town or ward) and the sum of dollars cents to the supervisor of the said (town or ward) for the payment of town expences, dollars cents, being the residue of the tax, to the treasurer of the county, on or before the first day of February next, retaining in your hands out of the monies to be collected for your services, five cents upon every dollar you shall collect or levy and pay over as before directed, for which this shall be your warrant; and hereof fail not. Given under our hands and seals, at the day of in the year one thousand eight hundred and

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COLLECTOR'S BOND.

Whereas A. B. of Kingston, in the county of Ulster and state of New-York, hath been lately chosen, (or appointed, as the case may be,) to the office of collector of taxes for the said town of Kingston, and we C. D. and F. G. of the same place, have in in pursuance of the act in such case made and provided, offered ourselves as sureties that the said A. B. shall duly execute the duties of the said office, according to law. *Now, therefore*, Know all men by these presents, That we the said A. B. C. D. and F. G. are held and firmly bound to J. L. supervisor of the said town of Kingston, and his succcessors, in the sum of (double the amount of the taxes to be collected) of lawful money of the state of New-York, to be paid to the said J. L. or his successors in case default shall be made in the condition hereunder written. For which payment well and truly to be made, we bind ourselves jointly and severally, and our joint and several heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated the day of in the year of

The Condition of the above obligation is such, That if the above bound A. B. shall duly and faithfully execute the duties of the said office of collector of taxes, pursuant to the statute in such case provided, then the above obligation to be void, otherwise the same shall remain in full force and virtue.

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

Sealed and delivered in the presence of

CHAP. XI.

THE COUNTY TREASURER.

The County Treasurer, as we have seen under the title of *Loan Officer*, is an officer recognized by the constitution of this state; and in the preceding chapter we find, that he receives his appointment, according to statute, from the supervisors of his county. No oath of office is required from him: his bond with approved sureties to the supervisors is deemed a sufficient prerequisite to his official acts.

GENERAL DUTIES.

It is the duty of the county treasurer, to receive all the monies raised in his county, for defraying the public and necessary charges thereof, and for the use of the state, and to pay all the monies by him received for such charges, as the supervisors of such county shall by a written order for that purpose direct. All monies received by him for the use of the state, he must pay to the treasurer of the state, within the time required by law.

It is incumbent on him to keep a just and true account of the receipts and payments of all monies which shall come to his hands as treasurer of his county, and to enter the same in a book or books to be kept for that purpose, and once in every year at the annual meeting of the supervisors, or at such other time as they shall direct, to exhibit to them all such books and vouchers relating to the same, to be allowed and audited.

His duty to pay on sight the amount of the orders of courts for expences in criminal suits. The statute regulating proceedings in criminal cases, makes it the duty of the county treasurer to pay on sight, or as soon after as he shall have sufficient monies in his hands, the amount of any order from any court, for the expences of the prosecutor, of foreign witnesses, or of poor persons having been witnesses on the trial or conviction in any such court of any person, for a larceny or other felony. And the treasurer shall be allowed in his accounts all such payments, as part of the contingent charges of such county.

His duty when Collectors are in fault. If any collector in any city, town, or ward, shall not pay to the supervisor and overseers of the poor thereof, the monies directed to be paid such collector by his warrant, within the time therein mentioned, and produce to the county treasurer receipts for the same from one or more of the said overseers and supervisor, or satisfactory evidence of such payment, within one week after the expiration of the time mentioned in such warrant, the same shall be deemed to be unpaid, and it shall then be the duty of the treasurer to collect the same, together with other monies, if any, which may be due from such collector, for taxes, and to proceed in the same manner for the recovery thereof as is directed in such cases by the act, entitled "an act for the assessment and collection of taxes," and out of the first monies received by him on such proceedings, to pay the same to the said supervisor and overseers of the poor.

On forfeiture of Collector's Bond. If the collector of any town or ward, forfeits the bond he has executed to the supervisor of such town or ward, for the faithful collection of the taxes thereof, it then becomes the duty of the county treasurer to give notice to the supervisor with whom such bond is lodged, of the amount due from such collector; and thereupon the said supervisor will cause the said bond to be put in suit, and recover the amount due from such collector with costs of suit.

HIS DUTIES UNDER THE ACT FOR THE ASSESSMENT AND COLLECTION OF TAXES.

On settlement with Collectors. If any collector shall within the one week, allowed him by law, after the expiration of the time for collecting the taxes according to his warrant, make oath before the county treasurer, that the sums mentioned in an account, then delivered to such county treasurer, remain unpaid, and that such collector has not, upon diligent inquiry, been able to discover any goods or chattels belonging to or in possession of either of the persons charged with or liable to pay the said respective sums whereon he could levy the same, and that such account is a true transcript from the assessment roll, then and in every such case it is the duty of the county treasurer to audit the account of such collector with the amount thereof, and before the first day of April thereafter to transmit to the comptroller of this state the said account or return of arrears, with the affidavit of the collector written at the foot or on the back of the said account; and if the collector shall at any time receive the tax on part of any lot, piece or parcel of land, charged with taxes in his assessment roll, and have specified such part, he must,

enter in his arrears to the county treasurer such specification, in order that the part on which the taxes remain unpaid may be clearly known: Wherefore it is the duty of the treasurer carefully to compare the accounts of unpaid taxes with the original entries in the rolls, which must specify the owners' names of the real estate, the quantity of the land, description, valuation, tax due and unpaid; and on such account of unpaid taxes the treasurer must endorse a certificate accordingly.

When and how to enforce payment from the Collectors. If any collector shall refuse or neglect to pay, according to law, to the county treasurer the amount of the taxes mentioned in the assessment roll delivered to him, then it is incumbent on the said treasurer, within twenty days thereafter, to issue a warrant, under his hand and seal, directed to the sheriff of the county, thereby commanding him to cause the same, or if any part thereof is paid or accounted for, then so much thereof as shall remain unpaid and not accounted for, to be made and levied of the goods and chattles, lands and tenements of such collector, and to return the money to him the said treasurer, within forty days after the date thereof, together with the said warrant; and shall immediately deliver the same warrant to the sheriff of the county. And it is made the special duty of the treasurer, on receiving from the supervisors an account of the assessment rolls and warrants, to charge in his books each collector with the amount of the money he is to collect, and in case of neglect of the sheriff in returning such warrant as aforesaid, to transmit a certificate thereof to the comptroller, that he the said treasurer has issued such warrant, mentioning against whom and for what sum, and that the sheriff has neglected to pay the same, or to pay the money thereof.

If any county treasurer shall neglect to issue such warrant against any delinquent collector, or to transmit such account and certificate, he is thereby made answerable for the whole amount of the deficiency of such collector.

His duty on the receipt of rejected taxes from the comptroller.— In cases where taxes have been rejected by the comptroller for any causes whatever, and the transcripts thereof shall by him be transmitted to the county treasurer, it then becomes his duty to deliver such transcripts to the board of supervisors of his county, at their next meeting after he shall have received the same; to the intent that they may forthwith act thereupon as the law further requires.

When and how to receive arrears of county taxes from the state treasury. Whenever there are any arrears of taxes due any county, and the county treasurer shall produce to the comptroller, a copy of a resolution of the board of supervisors of such

county, certified by their clerk, agreeing to accept of such arrears of taxes and interest, then the comptroller is authorised to issue a warrant in favor of such county treasurer, on the treasurer of this state, for the amount of such arrears and interest.

Forms of Assessment Rolls and returns of unpaid Taxes. Whenever the comptroller transmits to him blank forms of assessment rolls, and returns of unpaid taxes, he shall distribute them among the town clerks, to be delivered to the assessors, whose duty it shall be to complete the assessments in their several towns, in the manner required thereby.

Comptroller's allowance of his Accounts. The comptroller in settling the accounts of the county treasurer, allows the deficiency on real estate only. All accounts of deficiencies on personal estate as well as the delinquencies of collectors, must be delivered by the treasurer to the supervisors, who will cause the amount thereof to be raised in the next tax.

Specialty of his Payments. The first monies received by the county treasurer, must be applied to the payment of the county charges certified by the supervisors, and the residue of the monies received by him, must be paid into the treasury of this state, on or before the *first day of March* in every year, retaining one cent upon every dollar for his services.

Ordinary Compensation. Every county treasurer shall be entitled to retain for his services a commission, at the rate of one cent, upon every dollar which he shall receive and pay, to wit, one half of such commission for receiving, and the other half for paying.

When and how to pay Creditors of the County. When any public monies are in the hands of the county treasurer, he shall pay to the creditors of such county, such sums, and in such manner, as the board of supervisors shall have directed.

His duty by the School Act. By the school act of 1814 it is made his duty to apply for and receive all such monies as are in virtue of the said act from time to time apportioned to his county, and to dispose of the same according to law.

In case of his Death or Removal from Office. Upon the death, resignation, or removal from office, of any county treasurer, all the books and papers belonging to his office, upon the oath of the preceding treasurer, or in case of his death, upon the oath of his executors or administrators, shall be delivered to his successor in office; and if any such preceding treasurer, or his executors or administrators, shall refuse or neglect to deliver the same upon oath as aforesaid, being lawfully demanded, every such person shall forfeit and pay for every such refusal or neglect, the sum of one thousand two hundred and fifty dollars, to be recovered with costs of suit for the use of the same county, in the

name of the supervisors of such county, by action of debt or by information, in any court of record; and in every such action or information, it shall be sufficient for the plaintiff to set forth, that the defendant on the day such demand was made, became indebted to the supervisors of such county in the sum of one thousand two hundred and fifty dollars, as a forfeiture for refusing and neglecting to deliver up the books and papers belonging to the office of the treasurer of such county, according to the form of the act, to be paid to the supervisors of the same county, when he should be thereunto required, and to give the special matter in evidence.

PRECEDENTS.

WARRANT TO THE SHERIFF AGAINST A DELINQUENT COLLECTOR.

State of New-York. } To the Sheriff of the
County of } said County of

You are hereby commanded, to cause the sum of dollars cents, to be made and levied of the goods and chattels, lands and tenements of A B. collector of the town of D. it being the amount of the tax of the year of remaining unpaid (or unaccounted for, if so) by the said collector. And you are hereby required, to return the money to me within *forty days* after the date hereof, together with this Warrant. And hereof fail not. Given under my hand and seal this day of in the year of

F. G. Treasurer (L. S.)
of County.

An account of the Names of the several Persons charged with Taxes of the year one thousand eight hundred and and the sums remaining due thereon from each of them respectively.

Names of Possessors or reputed Owners.		Description of real Estate Assessed.	Qantity.	Value of real Estate.	Tax.

I, A. B. Collector of the town of do swear, that the sums mentioned in the preceding account remain due and unpaid, and that I have not upon diligent enquiry been able to collect from either of the persons charged with or liable to pay the said respective sums, the same, or any part thereof: So help me God.

Sworn before me, &c.

A. B. Collector.

County of } I, C. D. Treasurer of said county, have compared the preceding account of unpaid
Treasurer's Office. } taxes, in the town of with the original entries of the same taxes in the assessment roll, and do hereby certify that the same are an exact transcript from the said roll.

Dated at the day of 1816.

C. D. Treasurer.

CHAP. XII.

THE AUCTIONEER.

NATURE OF THE OFFICE.

The office of Auctioneer in this state, being created by statute, is only to be understood from correct conceptions of the statutory requisitions and directions on the subject. The title of the act, instituting this office, at once affords a proper comment on the exigency and utility of the institution. It was passed April 6, 1813, and is entitled, "an act to regulate sales by public auction and to prevent *stock-jobbing*."

The term "stock-jobbing," signifies a false, fraudulent, or deceptive contract for the sale or transfer of stock; as if a person should contract for the sale and delivery of stock of which he was not at the time possessed, and thus speculate on a false capital.

In London, *brokers*, being those that contrive, make, and conclude bargains and contracts, between merchants and tradesmen, in matters of money and merchandize, are annually to be licensed by the lord-mayor and aldermen; and if any persons shall act as brokers, without being thus licensed and admitted, they shall forfeit the sum of 500 pounds, and the persons employing them, 50 pounds.

That sales by public auction ought to be regulated by law, must be obvious to every citizen; for if each were permitted, without license, or legal restraint, to hold public auctions, an avenue would, unquestionably, be thereby left open for fraudulent and deceitful practices on contracts and sales.

Our legislature in their collective wisdom have given this subject a more mature and discreet consideration, than we as individual can bestow upon it. Let us therefore proceed to consider the provisions of the act.

Appointment. By section 2, it is made the duty of the Governor and council of appointment, annually to appoint so many persons within this state, to be *Auctioneers*, as they shall deem proper: *Provided*, That the number to be appointed in the city of New-York, shall not at any one time exceed thirty-six.

Section 3 declares, that if any person or persons not appointed and authorized as by this act directed, nor by or under the authority of the United States, shall sell or attempt to sell any goods, wares, merchandize or effects whatsoever by way of public auction or vendue, within this state, he shall be guilty of a misdemeanor, and shall on conviction, be fined in a sum not exceeding 250 dollars, or imprisoned for a time, not exceeding three months, or both, in the discretion of the court before whom such conviction takes place.

The reader will from the said sections infer two facts: First, that unless a person is appointed an auctioneer according to this statute, he has no right to sell any goods, wares, merchandize, or effects whatsoever, at public auction. Secondly, that although he be thus duly appointed, yet if he is not regularly qualified for this office according to law, he is not authorized to make such sales at public auction, but is debarred on pain of fine and imprisonment.

Sureties for Office. Section 4, prohibits every person who is appointed an auctioneer by virtue of this act, from entering on the execution of his office, until he shall have entered into a recognizance to the people of this state, with two sufficient freeholders as sureties, in the sum of 5000 dollars, conditioned for the payment of the duty in the said act specified to the treasurer of this state, and also that such person shall in all things well, truly and faithfully, behave and conform himself, according to the true intent and meaning of this act: which recognizance in the city and county of New-York, and in the cities of Albany and Hudson, shall be taken by the mayor and recorder of the said cities respectively, and in the counties of Albany and Columbia, and the other counties of this state, by a judge of the court of common pleas for such county, and duplicates shall be made of the record of every such recognizance by the person taking the same, one whereof shall be delivered as soon as conveniently may be to the comptroller of this state, and the other shall be retained by the person taking the recognizance.

Penalty. And it is further herein provided, that every auctioneer, who shall sell any goods, wares, merchandize or effects by way of public auction or vendue, without having entered into the recognizance aforesaid, shall forfeit the sum of 125 dollars, for each article so exposed to sale; to be sued for by the attorney-general, in the name and for the use of the people of this state, in any court having cognizance thereof.

Goods, &c. liable to Duties. Sec. 1. All goods, wares, merchandize and effects whatsoever, which shall at any time hereafter be sold at public auction in the city of New-York, shall be subject to the following duties, to wit: all such as are of the

growth or produce or imported from the East-Indies, and sold in packages, bales, trunks or casks as imported, and all such as are of the growth or produce of the United States, at the rate of 1 dollar and 50 cents for every 100 dollars of the value at which the same shall be sold: all such imported from the West-Indies, being the growth or produce thereof, and sold in packages, bales, casks or boxes, as the same were imported, and all wines and ardent spirits from whatever place imported, if sold in casks or vessels as imported, two dollars for every 100 dollars of the value for which the same shall be sold: and for all other goods, wares, merchandize or effects whatsoever, if sold in the city of New-York, three dollars for every 100 dollars of the value for which the same shall be sold; and if sold in any other city or county in this state, at the rate of two dollars, to be paid by the person who shall sell the same; and if the owner of such goods, or auctioneer is the highest bidder, the same duties are to be paid as if the same had been sold to any other person.

By an act entitled "an act relative to the duty upon goods sold by auctioneers," passed April 13, 1814, it is enacted, that all goods, wares, merchandize and effects whatsoever, made subject to the payment of a duty by the act, to which we have last above referred, shall be, and by this latter act, are made subject to the payment of a duty, at the rate of one dollar and fifty cents, and no more, for every 100 dollars, for which the same shall be sold, any thing in the said act of 1813 to the contrary notwithstanding; and that in all other respects the said act of 1813 and all the provisions thereof, shall operate the same as if the duty fixed by this new act, had been the duty fixed in the said act of 1813.

How and when to Account, in the City of New-York. Sec. 5. It is the duty of every licensed auctioneer in the city of New-York, within 20 days after the expiration of three months from the date of his sales (the first 3 months to be computed from the date of his recognizance as aforesaid) to render a just and true account in writing, subscribed by him, to the mayor of the said city, of all such sales, from the time of his entering into the said recognizance, or the time that the last account was rendered by him as aforesaid, the amount of each day's sale, and the day of each sale, distinguishing also the East and West India goods sold, and the goods of the produce of the United States, and all wines and ardent spirits, if sold in casks and vessels as imported, with the amount of the sales thereof, and the duties on each kind; and thereupon such auctioneer shall take before the said mayor or recorder the following oath or affirmation: "I A. B. do solemnly and sincerely swear (or affirm) that the account now exhibited by me, and to which I have subscribed my name, contains

a just and true account of all the goods, wares, merchandize and effects sold, or struck off, or bought in by me, subject to duty by law, within the time mentioned in the said account, and of the days upon which the same were respectively sold, and that I have attended such sales personally, and have examined the entries of such sales in the book kept by me for that purpose, and know this account to be, in all respects, correct."

And every auctioneer shall, within 10 days after the rendering such account and taking the said oath, pay the amount of duty upon such account of sales to the Bank of New-York for the use of this state; and in case no sales on which duties are payable, shall be made, it shall be the duty of the auctioneer to make an affidavit thereof, at the time and in the manner above directed, and to transmit such affidavit to the comptroller of this state.

How and when to Account, in the Counties in this State. Sec. 6. Every authorized auctioneer, in any other city or county of this state, shall within the time before limited, render a like account to one of the judges of the court of common pleas of the county in which such auctioneer shall reside, under the like oath to be administered by such judge, and shall within the like time thereafter, pay the amount of duty upon such account of sales to the treasurer of this state, and deliver such account with the oath thereon endorsed, to the comptroller of this state. And further, That every auctioneer to be appointed as aforesaid, if he make no sale of goods, wares, merchandize or effects, subject to duty, within the time limited for accounting as aforesaid, shall make oath of that fact before the said mayor, recorder or judge, and shall transmit a copy of such oath to the comptroller's office within the time limited for accounting in case of sales.

Penalty for neglecting to Account. Sec. 7. If any such auctioneer shall neglect or refuse to render his account, or pay the money due from him to the state for duties, or to make the oath required of him as aforesaid, he shall forfeit his appointment and 750 dollars for every such offence.

Goods declared Free of Duty. Sec. 8. *All lands and tenements and goods belonging to this state or the United States, and all goods and chattels which shall be seized by any public officer for any forfeiture, all ships and vessels, goods and effects of deceased persons, goods distrained for rent or taken in execution, effects of insolvent debtors, utensils of husbandry, goods damaged at sea and sold for the benefit of the owners or insurers, horses, neat cattle, sheep, and all articles the growth, produce or manufacture of this state,* shall in no wise be subject to duty, but are hereby exempted and declared Free from the duty aforesaid, and may be sold by any person, being a citizen of this state, in any part of this state, other than the city and county of New-York.

To have a stated House, and what Goods may be Sold Elsewhere. Sec. 9. In the cities of New-York, Albany and Hudson, he is not permitted to have more than one house or store for his sales, and to designate the same together with his partners, if any, to the mayor; and he is not permitted to sell any merchandize, liable to duty at any other place, except *rum, wine, brandy, molasses, indigo, rice, coffee, cotton, sugar, cordage, tobacco, mahogany, logwood, braziletto, fustick, camwood, earthenware in crates or casks, and provision in casks: Provided always,* That the mayor, aldermen and commonalty of the said cities, are authorized, to designate such place or places for the sale of horses, carriages, and household furniture, as to them shall seem proper and expedient.

Time of holding Vendue in New-York. The act requires, that in the city of New-York all goods liable to duty that are exposed to sale at auction, except books and prints, be so exposed in open day, between sun-rise and sun-set, on pain of forfeiture of such auctioneer's office.

When and where not to hold Private Sale. It is not lawful for an auctioneer at the day and place when and where he holds a public auction, to sell at private sale any goods liable to duty, under the penalty of 1250 dollars for each offence.

Who deemed a Purchaser at Auction. It is the duty of the auctioneer, on any sale at public auction, to strike off each and every article so exposed, to the highest bidder for the same, who is on all such sales to be deemed a lawful purchaser.

All Sales on Commission liable to Duty. All articles sent or entrusted to an auctioneer for sale, and by him sold on commission, whether at auction or private sale, shall be liable to the duty aforesaid, and no person as a deputy to a licensed auctioneer, shall expose to sale any goods liable to duty, under the penalty of 250 dollars.

When a Deputy may act. Any auctioneer may employ his co-partner or his clerk to hold such vendue, in case of his inability to attend, from sickness; in which case the person so acting, shall for the sale so made by him, take the oath aforesaid, prescribed in the act aforesaid for auctioneers, and at the same time make oath that the auctioneer he represents is unable to attend for the reason aforesaid.

No Public Stock to be Sold at Auction. It is not lawful for an auctioneer to sell at public vendue any public securities or stock of the United States, or of any individual state under the penalty of 250 dollars for each offence.

His Stated Commissions. Every auctioneer who shall receive or accept any higher or further reward for his service in the sale of goods, wares, merchandize or effects, which shall be commit-

ted to his care, than at the rate of two and an half per cent in value of the amount of such sale, unless a previous agreement be made in writing between the owner and the auctioneer for a higher and further reward, shall forfeit the sum of 250 dollars for every offence.

PRECEDENTS.

AUCTIONEER'S RECOGNIZANCE.

Ulster County, ss. Be it remembered, That on the day of in the year one thousand, &c. before me C. D. one of the judges of the court of common pleas for the said county, came A. B. who is said to be appointed an auctioneer for the said county, and G. F. and J. L. two freeholders of the said county who offer themselves as sureties for the due execution of the said office by the said A. B. and the said A. B. G. F. and J. L. do acknowledge themselves to be indebted to the people of the state of New-York in the sum of five thousand dollars, to be levied upon their respective goods and chattels, lands and tenements, to the use of the people of the said state, in case default shall be made in the following condition.

The Condition of this recognizance is such, that if the above bounden A. B. shall well and faithfully pay to the treasurer of this state the duties which shall accrue to the state of New-York, in the execution of his office, as auctioneer for the county of Ulster, according to the true intent and meaning of the act entitled "an act to regulate sales by public auction and to prevent stock-jobbing," passed April 6, 1813, and the act amending the same, and shall in all things well, truly and faithfully behave and conform himself accordingly, then the said recognizance to be void, or else to remain in full force and virtue.

Taken and acknowledged the day and year abovementioned, before me C. D. one of the judges of court of common pleas for Ulster county.

N. B. The auctioneer must take and enter two recognizances in the above form exactly alike, one whereof must be delivered to the comptroller, and the other retained by the judge.

AUCTIONEER'S ACCOUNT IN THE CITY OF NEW-YORK.

A just and true account of goods, wares, merchandize and effects, liable to duty, sold by A. B. one of the auctioneers for the city of New-York, duly appointed, from the first day of May, 1815, to the first day of August in the same year, with the amount of each day's sale, and the respective days of sale.

May 20.

	East India Goods.	*Sold.*
10	Chests Hyson Tea,	$500
6	Crates China Ware	300
	West-India Goods.	
4	hogsheads Jamaica Rum, as imported	250
2	do. Havanna Sugar	200
	Produce of the United States.	
10	Bales Carolina Cotton	130
4	Hogsheads New-Orleans Sugar	350

May 28th.

(State sales as above) amount 150

July 15.

(As above) 100

Total amount of sales $ 1980

Duties thereupon due the state $

A. B. one of the Auctioneers of the city of New-York.

New-York, August 1st 1815.

Note. The above and all similar accounts must be rendered on oath. See title "How and when to account in the city of New-York."

AFFIDAVIT IN CASE NO SALES HAVE BEEN MADE WITHIN THREE MONTHS.

I A. B. one of the Auctioneers for the county of Ulster, duly appointed, in pursuance of the "act to regulate sales by auction and to prevent stock-jobbing," do hereby certify, as a just and true account, touching goods, wares, merchandize and effects,

liable to duty, according to the said act, by me as such auctioneer sold, from the first day of May, 1815, to the first day of August in the same year, that during the period aforesaid, I the said A. B. have not made any sales of such goods, wares, merchandize or effects whatsoever. Given under my hand this 1st day of August, 1815. A. B. one of the Auctioneers for Ulster County.

I A. B. do solemnly and sincerely swear, that the account now exhibited by me, and to which I have subscribed my name, is in all respects just and true.

Sworn before me, C. D.

one of the judges of the court of common pleas of the county of Ulster.

CHAP. XIII.

THE INSPECTOR OF COMMODITIES.

It is a received opinion among all civilized nations, that commerce and agriculture are not only two great sources of national wealth, but that their progress and advancement are so materially identified, that the one is seldom known to prosper in the absence of the other. And as the variety of countries and climates afford products peculiar to their locality, of which the surplus of a home consumption, after being properly manufactured, usually constitutes the staple commodities of each, it hence becomes an object of great importance in the commercial world, that before the farmer or manufacturer is permitted to sell such commodities at the prices regulated by the ordinary course of trade, the purchaser should have a guarantee that they are sound and merchantable. Nay, every individual in a community is in fact more or less concerned, that all the mercantile transactions of his country should be conducted on fair and honorable principles. To subserve purposes so salutary, the legislature of this great and commercial state have made such statutory regulations touching this topic, as the policy of government and the interest of trade required. Our statutes of this character are commonly called "*The Inspection Laws.*" To execute these in conformity to the views of the legislature, the offices and duties have been created which we intend here to delineate.

THE INSPECTION LAWS.

Although these laws vary according as the nature or quality of the commodity to be inspected may be diversified, yet they uniformly enjoin, that every such officer of inspection, for whatever section of the state he be constituted, shall be appointed by the council of appointment, and hence he may be properly considered as a county officer.

To understand the duties attached to this office correctly, it is only material that we should give a just exposition of our statutes on this subject.

These laws, collectively brought to view, bear the following titles, to wit.

"An act for the Inspection of Flour and Meal and to establish the standard weight of grain therein mentioned," passed March 5, 1813.

"An act for Repacking and Inspection of Beef and Pork," passed March 12, 1813.

"An act for the inspection of Fish," passed March 26, 1813.

"An act concerning the Inspection of Pot and Pearl Ashes," passed February 25, 1813

"An act to regulate the Culling of Staves and Heading," passed March 26, 1813.

"An act for the Inspection of Sole Leather," passed March 5, 1813.

We shall endeavor to furnish the reader with such a digest of these statutes as will suffice to answer the general design of this work.

THE INSPECTOR OF FLOUR AND MEAL.

Appointment. An Inspector of Flour and Meal in each of the cities of New York and Albany, and as many in each county in this state as shall appear necessary, shall be appointed by the council to hold their respective offices during its pleasure. Those in New-York and Albany, are authorised to appoint deputies under their respective hands and seals, to assist them in the execution of their office, and to displace them at pleasure. And the officer in New-York may perform his office in its vicinity, and appoint a deputy in Kings county, to inspect flour and meal for exportation.

Oath. The inspector and each of his deputies must take the following oath of office, before one of the judges of the court of common pleas, or if in New-York or Albany, before the mayor or recorder thereof, viz. "I do swear (or affirm) that I will faithfully, truly and impartially, according to the best of my judgment, skill and understanding, execute, do and perform the office and duty of inspector and examiner of flour and meal, according to law."

What Flour to be Inspected and how put up. No wheat flour, rye flour, Indian meal, or buckwheat meal, shall be shipped for exportation, before the same has been lawfully inspected and packed in good strong casks made of seasoned oak, or other suitable timber, each cask whereof shall be hooped with at least ten hoops, three of which shall be on the chime and properly nailed; which said casks shall be of *two sizes:* one to contain 196 pounds of flour or meal, with staves of 27 inches long, and each head 16 inches and a half diameter: the other to contain 98 pounds

of flour or meal, with staves of 22 inches long, and each head 14 inches diameter, or the staves may be 22 inches long, and each head not to exceed 12 inches diameter; both sizes to be nearly straight, for the convenience of stowage, and the tare to be marked on one head with a marking iron

Indian Meal how to be put up and marked. It is not lawful for an inspector, to brand any cask containing Indian meal, unless the same shall have been made of corn properly *kiln dried* and ground fine and bolted. And it is provided that this act shall not be construed to prevent the packing of Indian meal in hogsheads for exportation to contain 800 pounds, and to be duly inspected and branded with the net weight only of the meal therein. On each cask of meal packed as aforesaid, hogsheads always excepted, shall before inspection be branded with the initials of the christian and surname of the manufacturers thereof at full length, together with the net weight of the meal in each cask, and the words "*Indian Meal.*"

Wheat Flour. Each cask of wheat flour intended for the first quality, shall, before inspection, be branded in like manner as aforesaid, and with the word "*Superfine;*" and on each cask intended for the second quality, shall be branded the word "*Fine;*" and on each cask intended for the third quality, shall be branded the words "*Fine Middlings;*" and on each cask intended for the fourth quality, shall be branded the word "*Middlings.*"

Rye Flour. Each cask of rye flour, intended for the first quality, shall, before inspection, be branded in like manner as aforesaid, and with the words "*Superfine Rye Flour;*" and on each cask intended for the second quality, shall be branded the words "*Fine Rye Flour.*"

Buckwheat Meal. Each cask of buckwheat meal shall, before inspection, be branded in like manner as aforesaid with the word and letter "*B. Meal.*"

GENERAL DUTIES OF INSPECTOR.

False Tare. If an Inspector of flour or meal, has reason to suspect, that a cask is falsely tared, he may ascertain the same by a suitable examination thereof. And every manufacturer or owner is subject to a penalty of fifty cents for every pound each such cask is tared less than the true weight thereof. And it is lawful for the inspector to seize and sell such casks, and out of the net proceeds to retain the lawful penalty and to dispose of the same according to law.

How to Inspect Flour and Meal. It is the duty of the inspector, on application, to examine and determine the quality of such flour and meal and on each cask made, branded and packed

according to law as aforesaid he shall, and not otherwise, brand the initial letter of his christian and surname at full length, with the name of the county where inspected on the quarter in a distinguishable manner; and he shall, in his discretion, correct according to law, all brands which do not correspond with the quality of the flour or meal marked.

When to Mark Flour or Meal "Light." It is his duty from time to time to weigh such casks as he shall suspect to be too light, and if so, to mark the word "*Light*" on the head of the same; in which case the owner or shipper of the flour or meal so put up, shall pay for the weighing every barrel or half barrel the sum of 20 cents, and for each hogshead 45 cents; and the same shall not be shipped out of this state, under the penalty of 5 dollars for every cask so marked.

When to Mark Flour and Meal "Bad." If the Inspector shall find, that flour or meal has been injured in manufacturing, or otherwise damaged, so as not to be fit for exportation, he shall brand on the same the word "*Bad*" only, and shall be entitled to receive 2 cents for every cask of such flour or meal, and four cents for every hogshead of Indian meal he shall so inspect, to be paid by the owner or possessor of such flour or meal, who shall charge the purchaser with one half of the amount of such inspection, over and above the price of such flour or meal.

When the Manufacturer is Liable. Every cask of flour or meal which shall not contain the full weight branded thereon, the manufacturer shall forfeit and pay for every pound weight of flour and meal so deficient, the sum of 20 cents.

The Fees of his Deputies in New-York. The Inspector shall allow and pay to his deputies in the city of New-York, as follows; that is to say, when only one deputy is employed, 33 1-3 per cent. of the fees and emoluments to which such inspector is entitled by law, and when two deputies are employed, 25 per cent of the same to each of them.

His Power to Search Vessels. All flour and meal purchased for exportation, shall be inspected as aforesaid, at the time and place of such exportation, and it is lawful for such inspector to enter on board of any vessel, between sun-rise and sun-set, to search for flour or meal that he may have reason to suspect has been shipped contrary to law; and if any person shall therein hinder him, he shall forfeit 100 dollars.

Not to Purchase Flour or Meal except for his own Use. No inspector of flour or meal, shall purchase any flour or meal, other than for his own private use, under the penalty of 500 dollars.

When and Where to Account. It is his duty annually on the 15th day of February, to report to the legislature the quantity of flour and meal that shall have been inspected by him,

As it is connected with this subject, we shall close it with shewing the

Standard Weight of Wheat, Rye and Indian Corn. The standard weight of wheat sold in this state, shall be 60 pounds net to the bushel; of rye and Indian corn 56 pounds net to the bushel; and in all cases of sales thereof, if the same shall exceed the standard weight, the buyer shall pay a proportionably greater price, and if less, a like less price: Provided that this regulation shall not extend to any special contracts, respecting sales of wheat, rye or corn, whatever may be the weight thereof. Law N. Y. as above.

The act for the inspection of flour and meal (sess. 24, c. 130) extends only to flour and meal intended for exportation; and it is only in case of their being intended for exportation, that the penalties of the act attach. 3 Caines' Rep. 207.

If flour, once inspected, after having been put on board of a vessel, should receive an injury, and in consequence be relanded, it may be shipped on board the same vessel, and for the same voyage, without another inspection. 1 Johns. Rep. 205.

THE INSPECTOR OF BEEF AND PORK.

Appointment. Ten inspectors and repackers of beef and pork shall be appointed in form aforesaid for the city and county of New-York, and one or more for each of the other counties in this state, as shall from time to time be necessary.

Oath. "I do solemnly swear, (or affirm) that I will faithfully, truly and impartially, according to the best of my judgment, skill and understanding, execute, do and perform the office and duty of an inspector and repacker of beef and pork, or of beef (as the case may be) according to the true intent and meaning of the laws of this state relative to the same, and that I will not directly or indirectly, brand, or suffer to be branded, any barrels of beef or pork, unless the same shall be of the qualities, and repacked according to the laws of this state."

GENERAL DUTIES.

Pork, how to be put up and re-packed. All barrels in which any beef or pork shall be re-packed, shall be made of good seasoned white oak, or white ash staves and heading, free from every defect; and each barrel shall contain 200 pounds weight of beef or pork, the barrels to measure 17 inches and a half between the chimes, and to be 28 inches long, to be hooped with 12 good hickory, white oak or other substantial hoops; if the barrel be made of ash staves, the same shall be hooped with 14

hoops at least; the staves and heads to be made of good thick stuff, the heads not less than three quarters of an inch thick, and each and every stave on each edge at the bilge, shall not be less than half an inch thick, and at each chime not less than half an inch thick; the hoops must be well set and drove, and the barrels be branded on the bilge, with at least the initial letters of the cooper's name; otherwise it becomes the duty of the re-packer to condemn the same when brought before him.

It is the duty of the re-packer to examine and sort all beef and pork which shall be killed to be re-packed, and to brand such only as shall be well fatted.

The best quality of pork, shall consist of none but the sides of good fat hogs, and the barrels containing it shall be branded on one of the heads "*Mess Pork.*" The second quality, shall not consist of more in a barrel, than three shoulders, the legs being cut off at the knee joint, and shall not contain more than 24 pounds of head, which shall have the ears and snouts cut off, the snouts cut off to the opening of the jaws, and the brains and bloody grizzle taken out of the heads, and the rest of the pork shall be made of side pieces, neck and tail pieces; and on one head of every barrel of such pork, shall be branded "*Prime Pork.*" The third quality, shall not consist of more in a barrel, than 30 pounds of head and four shoulders, and shall be otherwise merchantable pork, and shall be branded on one head of each barrel "*Cargo Pork.*"

Beef, how to be put up and re-packed. No beef shall be re-packed in barrels for exportation, unless it be of fat cattle not under three years old, and all such beef shall be cut in pieces as square as may be, not to exceed 12, nor be under 4 pounds weight. Such beef as the city or county inspector shall find on examination to have been killed at a proper age and to be fat and merchantable, shall be salted and divided into three different sorts, for packing and re-packing in barrels to be constructed as aforesaid, to be denominated "*Mess,*" "*Prime,*" and "*Cargo.*" The first, shall consist of the choice pieces of such beef as is large and well fatted, without hocks, shanks, clod or necks, and may or may not contain two choice rounds out of the same cattle not exceeding 10 pounds weight each, and on one of the heads of each barrel, containing 200 pounds weight of beef of this description, shall be branded "*Mess Beef.*" The second, shall consist of choice pieces of good fat cattle, of which there shall not be more than one half neck, nor more than two shanks with the hocks cut off the hind legs at the smallest place above the joint, in a barrel on which shall be branded "*Prime Beef.*" The third, shall be of fat cattle, with a proportion of good pieces, and not more than one half of a neck, three shanks, with

hocks cut off in the same manner as in prime beef in a barrel, and to be otherwise merchantable, and shall be branded "*Cargo Beef.*"

What Salt to be used. The re-packer is not allowed to put less than two pecks of good St. Ubes, Isle of May, or other coarse salt, of equal quality, into each barrel of the said beef, together with four ounces of salt petre. In certain counties of the Western District, the salt there manufactured, may be used in packing beef and pork: *Provided*, The quantity for each barrel of pork, shall not be less than 46 pounds weight, and for each barrel of beef not less that 38 pounds, or be equivalent to the quantity for each barrel of salt of the description above mentioned.

Where the inspector inspects any beef or pork that is entirely fresh, he shall put in each barrel not less than 28 quarts of St. Ubes. Isle of May or other coarse salt, except in the counties aforesaid.

SPECIAL DUTIES.

To provide a Store. It is the duty of the re-packer to provide himself with a good and convenient store or yard, capable of receiving and storing such beef and pork as may be brought to him for inspection, in such a place as will be most accommodating to his employers.

Conduct on Inspection. As no beef or pork, not inspected, pickled or branded by a sworn inspector, may be lawfully exported out of this state, it is his duty to see that all beef and pork which he is requested to inspect and re-pack, shall be pickled with strong good pickle made of any kind of good clean salt, as much as will dissolve in good fresh water; and if a barrel be larger than the dimensions aforesaid, he shall condemn the same, or fill it up with good pieces of beef or pork, at the expence of the owner, if the owner shall so elect; and on the head of every barrel of merchantable beef or pork, inspected and re-packed as aforesaid, he shall distinctly brand the weight it contains, with the first letter of the christian name and the surname at full length, with the words "*New-York City*," if inspected in the city and county of New-York, and if inspected and branded in any other county, he shall brand the name and weight as aforesaid with the name of such county, and the words "*State of New-York.*"

How and when to Account. The inspector of each city and county, in the month of June in every year, shall make a return to the Governor, of the whole number of barrels and half barrels of beef and pork inspected by him according to law the preceding year, designating the different qualities of beef and

pork, and the cities and counties in which the same were packed and inspected.

Penalties for misconduct. No inspector, shall inspect or brand any cask of beef or pork out of the city or county for which he shall be appointed, under the penalty of twenty-five dollars for each barrel so inspected or branded. And if he shall be guilty of any fraud or neglect in his office, he shall forfeit and pay the sum of 10 dollars for every offence. He shall not re-pack any beef or pork in the city and county of New-York, except at his store, under the penalty of 20 dollars.

Under the act (ses. 24 c. 138) for re-packing and inspecting beef, an offer to brand a cask, and a refusal by the inspector-general to have it branded, are not equivalent to a branding, he having no authority to order or refuse the branding of a cask. 2 Caines' Rep. 312.

HIS FEES.

Every inspector shall have 25 cents for each barrel of pork he shall inspect, salt and re-pack; 12 1-2 cents for flagging, pegging, nailing, salting and pickling; 9 cents for 4 ounces of salt-petre to each barrel; 3 cents for each hoop. And all beef and pork inspected, packed, re-packed and pickled by him, shall be paid for before the same is taken from his store; but nothing shall be allowed for storage thereof, if taken away within 3 days after notice to the owner or agent of its being re-packed. Law N. Y. as above.

THE INSPECTOR OF FISH.

Appointment. It is lawful, that four inspectors of Fish shall be appointed in form aforesaid in the city and county of New-York, and as many in each of the other counties in this state as shall appear necessary.

Oath. Before the inspector of fish enters upon the duties of his office, he shall take and subscribe before a magistrate authorised to take the same, the following oath, or affirmation, to wit: "I do solemnly swear (or affirm) that I will faithfully, truly and impartially, according to the best of my judgment, skill and understanding, execute, do and perform the duty and office of an inspector and re-packer of Fish, according to the true intent and meaning of the act, entitled, "an act for the inspection of fish."

STATUTORY DIRECTIONS.

1st. It is directed by statute, that every barrel or half barrel

in which pickled fish shall be packed for inspection, shall be made of well seasoned white oak, rock oak, white ash or pine staves, and heading, free from defect; to have 12 good hoops on them, and to be perfectly tight—the length of the stave for a barrel to be 28 inches, and the distance between the chimes not less than 26 inches, the diameter of the head from stave to stave 16 and a half inches; and for every half barrel to be 24 inches long, and 13 inches head—That *dry salted herrings* may, however, be put up in barrels made of red oak or black oak, with heads made of pine, of the dimensions aforesaid, to be hooped with 12 good hickory, white oak or other substantial hoops, to be nailed and well set and drove—That all barrels in which *shad* shall be re-packed, shall be of the size and quality of lawful beef and pork barrels, to contain 200 pounds weight.

2. That no fish shall be exported from this state put up in barrels or half barrels, pickled or dry salted, unless the same has been inspected and branded according to law.

3. That every person who puts up or barrels any fish for exportation, shall put one bushel of good salt in each barrel, and brand the same with the name of the fish in the cask, together with the initials of his christian and surname, and the name of the place where put up.

It is therefore made the duty of the Inspector to inspect all such fish, by opening one of the heads of each barrel, and if the same is found to contain sound and merchantable fish, with a sufficient quantity of salt to preserve the same, he shall then brand his name on the head of such barrel, and the place of his residence; and if he finds the fish unsound or unmerchantable, he shall destroy the same; and if the barrel is not full, or salted with a sufficient quantity of salt, he shall fill the same with sound and merchantable fish, or add such quantity of salt as may be requisite, as the case may be.

When to condemn fish. It is his further duty, that if he finds part of the fish inspected by him, to be sound, and part not, to separate the sound from the unsound, and repack the sound, and to add such salt or pickle as he may judge necessary, and brand the same as aforesaid; and such fish as he shall deem not capable of preservation, he shall condemn as bad.

To provide a Store. It is his duty to provide a commodious store and yard, in a place most convenient for his business and employers.

Penalty for misconduct. If he shall be guilty of any fraud or neglect in his office, he shall forfeit and pay the sum of five dollars for every barrel of fish in respect of which such fraud or neglect has happened.

HIS FEES.

He shall be allowed for every barrel of pickled fish he may inspect and repack, 37 and a half cents; and for every barrel, 18 cents; and for every barrel or half barrel by him inspected, and not re-packed, 12 and a half cents; and for every barrel and half barrel of dry salted fish, 12 and a half cents; and for every bushel of salt used as aforesaid, the market price of salt at the time and place of inspection. But nothing shall be allowed him for storage of any fish inspected by him, if removed within three days after notice of such inspection is given. Law N. Y. as above.

THE INSPECTOR OF POT AND PEARL ASHES.

Appointment. So many inspectors of pot and pearl ashes in the cities of New-York and Albany, not less than two nor more than six, in each city, and one in each city and county in this state where it shall be necessary, shall from time to time be appointed in manner and form aforesaid.

Oath. Such inspector must take and subscribe the following oath or affirmation of office. "I do solemnly swear, (or affirm) that I will faithfully, truly and impartially, to the best of my judgment, skill and understanding, execute, do and perform the office and duty of an inspector and examiner of pot and pearl ashes, according to law; and that I will not directly or indirectly, by myself, or any other persons for me, buy or sell any pot or pearl ashes, during the time I continue inspector of the same, on my own account, or upon the account of any other person or persons whomsoever, so help me God."

ORDINARY DUTIES.

Every person who shall manufacture any pot or pearl ashes, shall, with a distinguishable brand or marking iron, impress upon each cask of his own manufacture, the initial letters of his christian and surname, before the removal of the same from the place of manufacture, under the penalty of five dollars for every cask. And no person whatsoever shall ship, except to the provinces of Upper and Lower Canada, any pot or pearl ashes for exportation, before he shall submit the same to the view and examination of the lawful inspector, who shall start the same out of the casks, and carefully examine, try and inspect the same, and sort the same in different sorts if necessary. It is his duty to put each such sort by itself into tight casks, well hooped and coopered, which he shall distinguish by the words "*First Sort*," "*Se-*

ond Sort," or "*Third Sort,*" with the words "*Pot*" or "*Pearl Ashes,*" branded in plain legible letters, together with the letters of his name, and place where inspected.—He shall also weigh, and mark with a marking iron on each cask, the gross weight thereof, and deliver the proprietor an invoice or weigh note, under his hand, of the weight of each cask, distinguishing the pot or pearl ashes as aforesaid, and not otherwise.

His duty in cases of frauds. When any inspector shall, on examination of any pot or pearl ashes submitted to him for inspection, discover any fraud, either by mixture of stone, lime, salt, or other improper substance, it shall be his duty to brand such cask with the word "*Condemned,*" and shall be entitled to receive from the owner the same compensation as if the same had been good.

His power to search Vessels. He has full power to enter any ship or vessel in harbor to search for pot or pearl ashes, and if he find any not branded according to law, to cause the same to be forfeited.

When no re-inspection to be made. Pot or pearl ashes inspected in the city of Albany, or any other place of trade upon the Hudson river where an inspector has been appointed, may be shipped for exportation, or may be vended or disposed of in the city of New-York, and from thence shipped for exportation out of this state, without any other inspection in the city of New-York.

Penalty for misconduct. If any such inspector not employed in the duties of his said office, shall, on application to him to examine any pot or pearl ashes, refuse or delay to proceed to such examination and inspection for the space of three hours thereafter, he shall for every such offence, forfeit two dollars and fifty cents, for the use of the person so delayed.

HIS FEES AND SPECIAL DUTIES.

Such inspector shall receive for his services, and also for the the additional service of re-packing the said pot and pearl ashes and for putting the casks in the same condition they were in when brought to him for inspection, nine cents for every hundred weight so inspected, one half to be paid by the buyer, and the other half by the seller: *Provided,* That if any such cask or casks shall, in his judgment, be unfit for shipping, such cooperage, or such new casks as may be necessary, shall be made or done at the expence of the seller: *And provided further,* That no inspector shall brand any cask, containing pot or pearl ashes, unless the same be 29 inches in length, 19 inches in diameter at each head, be full bound, be made of white oak staves and head-

ing, or such other timber as such inspector may think proper, and be sound and tight; and every such inspector at the time of starting such pot or pearl ashes for inspection, shall weigh the casks containing the same, and mark the tare thereon with a marking iron, under the gross weight in each cask. Law N. Y. as above.

THE INSPECTOR AND CULLER OF STAVES AND HEADING.

Appointment. An Inspector-general of staves and heading, and eight or more cullers for the city and county of New-York, four or more cullers for the city and county of Albany, as many cullers as may be found necessary for the other counties in this state, shall, from time to time, in manner aforesaid, be appointed.

Oath of Inspector-general. The Inspector-general shall, before he enters on his office, take and subscribe the following oath or affirmation, before the mayor or recorder of the said city. "I do solemnly swear (or affirm) that I will truly, faithfully and impartially, according to the best of my ability, perform the duty of Inspector-general of staves and heading, according to law, without any wilful omission, neglect or delay whatsoever."

Oath of the Culler. The culler shall take the following oath before some person authorised to take the same: "I do solemnly swear, that I will well, faithfully, truly and impartially, according to the best of my judgment, skill and understanding, execute, do and perform the office of a culler and examiner of staves and heading, according to the true intent and meaning of the laws of this state relative thereto."

STATUTORY DIRECTIONS.

Butt-Staves. The statute having provided, that no staves or heading shall be exported out of this state to a foreign market, but such as shall be culled by the cullers appointed by law, directs, that all butt-staves shall be made of good white oak timber, of the following dimensions: the *long butts*, shall be 5 feet 6 inches long; the *short butts* 4 feet 6 inches long, and both at least 5 inches broad when dressed, clear of sap, 2 inches thick on the thinest edge, and not more than 2 and a half inches thick in any place, and shall be regularly split with the grain of the wood, and free from twist, and be otherwise good and sufficient.

Pipe-Staves. That all pipe staves shall be made of good white oak timber, and shall be 4 feet 6 inches long, and shall work three inches broad when dressed, clear of sap, and shall be

3 quarters of an inch thick on the thin edge, regularly split with the grain of the wood, and shall not have more than 6 worm holes, and be otherwise good and sufficient.

White Oak Hogshead Staves. That all white oak hogshead staves, shall be made of good timber, and shall be 3 feet 6 inches long, and shall work 3 inches broad when dressed, clear of sap, and shall be 3 quarters of an inch thick on the thin edge, regularly split with the grain of the wood, and shall not have more than 4 worm holes, and be otherwise good and sufficient.

Red Oak Hogshead Staves. That all red oak hogshead staves shall be 3 feet 6 inches long, 3 inches and a half broad, including sap, and shall be 3 quarters of an inch thick on the thin edge.

Barrel Staves. That all barrel staves shall be 2 feet 8 inches long, and shall work 3 and a half inches broad when dressed, clear of sap, and shall be 3 quarters of an inch thick on the thin edge, regularly split with the grain of the wood, and not more than 4 worm holes, and otherwise good and sufficient.

Heading. That all heading shall be made of good white oak or white ash timber, and shall be 2 feet 8 inches long, and shall not be less than 6 inches broad, clear of sap, 3 fifths of which shall be fit for middle pieces, and shall not be less than 3 fourths of an inch thick on the thin edge, and be otherwise good and sufficient.

DUTIES OF THE INSPECTOR-GENERAL.

The inspector-general is authorised and required to superintend the Cullers of Staves and Heading within the city and county of New-York, in order that the laws relative thereto may be duly executed, and to displace any of them who in his opinion shall act inconsistently with the trust reposed in him, and to appoint another in his room until the pleasure of the council of appointment be known. He has also power to supply, until such time as aforesaid, the vacancy occasioned in the culler's office by death or resignation: *Provided however*, That he shall specially report such cases to the governor.

When any dispute shall arise respecting the culling of staves and heading, such dispute shall be submitted to the inspector-general, whose determination therein shall be final.

He is authorised to search vessels, and if he finds any staves or heading which have been culled out or condemned, to cause the same to be re-landed and forfeited.

It is not lawful for him to buy staves or heading on his own account.

How and when to Account. It is his duty, annually to make report to the governor, to be laid before the legislature, setting

forth, whether any, and if any, what amendments are proper to be made to the laws relative to the culling of staves and heading, and likewise what number of the respective kinds of staves and heading have been culled in the city of New-York in the year in which the said report may be made.

HIS FEES.

He shall be entitled to receive on every 1,000 merchantable staves and heading which shall be culled in the city and county of New-York, 10 cents, one half to be paid by the buyer, the other half by the seller; and for staves and heading that are culled out and not merchantable, he shall be entitled to receive of the proprietor thereof, one half of the above mentioned compensation.

DUTIES OF THE CULLER IN THE CITY OF NEW-YORK.

The culler in the city of New-York is required to follow such instructions and directions, as he may receive from time to time from the inspector-general, in relation to the duties required of him by law, and shall as often as once in every month, make a return to him of the quantity of staves and heading which they cull, and of whom, specifying the different kinds.

He is not permitted to buy any staves or heading on his own account, except he be a cooper.

HIS FEES.

He shall be entitled to receive, as a compensation for culling every 1,000 pipe-staves, 62 and a half cents; for every 1,000 hogshead staves and heading, 50 cents; for every 1,000 barrel staves, 37 and a half cents; for every 1,000 long butt-staves, one dollar and 50 cents; for every 1,000 short butt-staves, one dollar and 25 cents: one half to be paid by the buyer, and the other half by the seller.

THE COUNTY CULLER.

Where any dispute shall arise in any city or county in this state (except in the city and county of New-York) between the buyer and seller of staves and heading, respecting the culling of the staves by the culler who was employed for the purpose, such dispute shall be submitted to two other cullers of staves or head-

ing, one to be chosen by the buyer, and the other by the seller; and their determination shall be conclusive.

HIS FEES.

Every culler of any city or county in this state, other than in the city and county of New-York, shall be entitled to receive as a compensation, for culling every 1,000 pipe staves, 50 cents; for every 1,000 hogshead staves and heading, 37 and a half cents; for every 1,000 barrel staves, 25 cents; for every 1,000 long butt-staves, one dollar and 25 cents; and for every 1,000 short butt-staves, one dollar, computing 1,200 staves or heading to a 1,000: the one half to be paid by the buyer, and the other half by the seller; and for unmerchantable cullings, from the owner, half the price of staves and heading that are merchantable.—Law N. Y. as above.

THE INSPECTOR OF SOLE LEATHER.

Appointment. Two inspectors of sole leather for the city of New-York, and one for each of the cities of Hudson, Albany, and Schenectady, one for the village of Troy, one for the village of Brooklyn, one for the village of Catskill, and one for the port of Sag-Harbor, shall from time to time in manner aforesaid be appointed.

Oath. Before the inspector enters on the execution of his office, he shall take the following oath or affirmation before one of the judges of the court of common pleas of his county, or if he reside within one of the said cities, then before the mayor or recorder thereof, to wit: "I do solemnly swear (or affirm) that I will faithfully and impartially, to the best of my knowledge and skill, execute and perform the office and duty of an inspector of sole leather, according to law, and that I will not directly or indirectly, buy or sell any sole leather inspected by me or any other person within this county, during the time I continue inspector in the same, so help me God."

STATUTORY DIRECTIONS.

It is directed by statute, that no sole leather, except such as shall be previously inspected by one of the inspectors in this state, shall be sold for any purpose whatsoever, within any place for which an inspector has been appointed, whether such sole leather be manufactured within the same or imported, or brought therein from any place whatsoever, until the same shall have

been examined, weighed, and sealed by an inspector, under the penalty of five dollars for every such side of sole leather.

DUTY.

It shall be the duty of the inspector, to go, whenever required, within the place for which he is appointed inspector, to examine and inspect any sides of sole leather.

It is also his duty to provide himself with proper scales, weights and seals for the purpose aforesaid, and weigh and impress on every side of sole leather he shall have inspected, his surname and the name of the place for which he is inspector, at full length, and also the weight thereof, and on all leather he may deem manufactured of good hides and in the best manner, the word "*Best*," and on all leather manufactured of good hides in a merchantable manner, the word "*Good*," and on all leather manufactured of damaged hides, in a merchantable manner, the word "*Damaged*," and on all other sole leather, the word "*Bad*."

When he may Officiate out of his County. It is lawful for an inspector on application, to inspect sole leather in any other part of his county or in any adjoining county: *Provided*, no inspector of sole leather be appointed in the same.

When he is answerable. He is authorised where sole leather is not perfectly dry, to make such a deduction for moisture as in his judgment he may deem just and right; but if any side or sides of sole leather shall dry away so as to weigh ten per cent. less than the weight marked thereon by such inspector, he shall be subject to pay for the whole of such deficiency at a just valuation, to be sued for and recovered by any person who has purchased such leather.

HIS FEES.

There shall be paid to the inspector, for inspecting, weighing and sealing each side of sole leather, 4 cents, the one half to be always considered as a lawful charge, to be paid by the buyer to the seller. Law N. Y. as above.

CHAP. XIV.

THE SEALER OF WEIGHTS AND MEASURES.

OFFICE.

In the foregoing chapter we have concisely contemplated the offices and duties of the Inspectors of Commodities: in the course of which we were essentially constrained to be guided by the directions of the several statutes relating to the same. Although we may not have elucidated their official duties, or added any thing new respecting them; yet we feel persuaded, that the mode in which we have presented them to the reader, will not be altogether destitute of common utility; inasmuch as it is important in a commercial point of view, that not only our inspectors of commodities, but our citizens at large, should be introduced to a familiar acquaintance with our "*Inspection Laws.*"

As relevant to this topic, it may not be improper that we should furnish a sketch of the act, entitled "an act to regulate weights and measures," passed March 19th, 1813. The provisions of this act will be deemed peculiarly calculated to arrest attention, when it is considered that its rudiments are sanctioned by the precepts of an inspired legislator thus inculcated: "Thou shalt not have in thy bag divers weights, a great and a small. Thou shalt not have in thy house divers measures, a great and a small. But thou shalt have a perfect and just weight, and a perfect and just measure; that thy days may be lengthened in the land which the Lord thy God giveth thee."

Appointment. Besides the secretary of state, who is ex-officio the state sealer of weights and measures, and three assistant state sealers, one of whom shall reside in the city of New-York, one in the city of Albany, and one in the county of Oneida, to be appointed by the council as the occasion may require, there shall be appointed one county sealer of weights and measures in each county in this state, by the board of supervisors of the respective counties, at their annual meeting in October, to continue in office during pleasure, and one town sealer of weights and measures in each town in this state, shall be elected at the annual town meetings, who shall continue in office for one year, and until another shall be appointed in his stead.

Oath of the County and Town Sealer. Before either of them enter on the duties of his office, he shall take and subscribe an oath or affirmation before one of the justices of the supreme court, or one of the judges of the court of common pleas or justice of the peace of the county in which he resides, "well and truly, according to the best of his skill and ability, to perform the duties enjoined on him by the act, entitled "an act to regulate weights and measures;" and shall cause the certificate of the oath so taken to be filed in the clerk's office of his county.

STATUTORY PROVISIONS AND DECLARATIONS.

It is provided by statute, that no person shall use any weights, measures, or beams, in weighing or measuring, which shall not be conformable to the standard of this state, whereby any purchaser of any commodity, or article of trade or traffic, shall be injured or defrauded, on pain that an action on the case may be maintained against the offender, in any court having cognizance thereof; and that if judgment shall be rendered for the plaintiff, he shall recover treble damages against the defendant, with costs of suit.

State Standard. The act declares, that the standard for ascertaining all beams, weights and measures throughout this state, until otherwise provided by Congress, shall be that now in the office of the secretary of this state—That there shall be one just beam, one certain weight and measure, for distance and capacity, that is to say: avoirdupoise and troy weights, bushels, half-bushels, pecks, and quarts, and gallons, quarts, pints and gills, and one certain rod furlong measure, according to the standard in use in this state on the day of declaration of independence thereof—That the several *State standard* weights, beams and measures, shall be made of iron, brass or copper, as the secretary shall direct; and the several *County standard* weights and measures, shall be made of such materials as the several boards of supervisors shall direct; and the several *Town standard* weights and measures, shall be made of such materials as the supervisors of each town shall direct—And that no surveyor shall give evidence in any cause pending in any of the courts of this state, or before arbitrators respecting the survey of measurment of land, unless such surveyor shall make oath, if required, that the chain or measure used by him in surveying or measuring such lands was conformable to the standard measure of this state.

DUTIES OF COUNTY AND TOWN SEALERS.

It is the duty of the *County Sealer*, at the expence of his county, within six months after notice of his appointment from the clerk of the supervisors, and after receiving from the county treasurer, by their order, so much money as may be necessary for the purpose, to procure a complete set of the said standard weights and measures, for the use of his county, and after having procured the same, to deliver to the said clerk a statement in writing of the expence thereof, and that such standard is in his possession. And it is the duty of the *Town Sealer* at the expence of his town, within six months after his election, and after having received sufficient money for the purpose, to procure a complete set of the said standard weights and measures for the use of his town; and having procured the same to deliver to the clerk of the town such statement in writing as before specified.

It is the further duty of the *County Sealer* to impress the several town standard weights, measures and beams, with such device, in addition to the state and county device, as the board of supervisors shall direct for the several towns—He must receive from the county clerk, the standard brass yard measure which such clerk shall have received from the secretary of state, for the use of the county; and it is made the duty of such clerk to deliver the same to such county sealer accordingly—He must also compare his standard weights and measures, with one of the state standards, once at least in seven years. And the *Town Sealer* must compare his town standard with the county standard once at least in three years.

In case of removal, resignation or death. Whenever any county or town sealer shall remove or resign, it is his duty to deliver such standard to his successor in office; and in case of death, his executors or administrators must in like manner deliver the same. On neglect or default in the premises, such successor may maintain an action on the case against such person so removing or resigning, or against his executors or administrators, as the case may be, and receive double the value of such standard, or such parts thereof as have not been so delivered, with double costs of suit; the one half to be retained by the plaintiff, and the other half to be applied to the purchase of such standard beams, weights and measures as may not be delivered over as aforesaid.

FEES.

Each of the sealers of weights and measures within this state, shall be entitled to receive for his services, in sealing and marking measures and beams, which shall from time to time be

brought to him for that purpose, twelve and a half cents, and for every weight and every small liquid measure, three cents, over and above a reasonable compensation, for making them conform to the standard established by law.

OMISSIONS.

Between the first and second paragraphs in page 18, read: "In relation to the said statute law of England it is only material to note, that by the act of this state for the amendment of the law, passed April 5, 1813, it is declared that none of the statutes of England or Great Britain shall be considered as laws of this state."

Also, page 120, in continuation of *Note*, read: "And that so much of the eleventh section of the act, entitled "an act for the recovery of debts to the value of twenty-five dollars," as exempts the defendant's body from execution, be, and the same is hereby repealed."

END OF PART FIRST.

APPENDIX.

AN ACT CONCERNING OATHS.

Passed February 25th, 1813.

I. *Be it enacted by the people of the state of New-York, represented in Senate and Assembly,* That every person who shall hereafter be elected a member of the senate or of the assembly of this state, before he takes his seat, and every person who shall hereafter be elected governor or lieutenant-governor of this state, and every person who shall hereafter be appointed to any office, civil or military, before he enters upon the execution of his trust or office, shall and hereby is required to take and subscribe the following oath, that is to say: "I do solemnly, without any mental reservation or equivocation, swear and declare, (or affirm, as the case may require) that I renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatever, and that I will bear faith and true allegiance to the state of New-York, as a free and independent state."

II. *And be it further enacted,* That every person who shall hereafter be elected governor or lieutenant-governor of this state, and every president of the senate who shall at any time administer the government of this state, shall also, before he enters upon the execution of his trust or office, take the following oath of office, to wit: "I elected governor, (lieutenant-governor or president of the senate, as the case be) of the state of New-York, do solemnly swear and declare, that I will in all things, to the best of my knowledge and ability, faithfully perform the trust reposed in me as governor, (lieutenant-governor or president of the senate as the case may be) of the state of New-York, by executing the laws, and maintaining the peace, freedom and independence of the said state, in conformity to the powers delegated unto me by the constitution of the said state.

III. *And be it further enacted,* That the president of the court for the trial of impeachments and the correction of errors, and

every member of the said court, and all judicial officers in this state hereafter to be elected or appointed, shall also, before they enter upon the execution of their respective offices, severally take and subscribe the following oath, to wit; "I do solemnly swear and declare that I will, to the best of my knowledge and ability, execute the office of (here describe the office) according to the constitution and laws of the state of New-York, in defence of the freedom and independence thereof, and for the maintenance of liberty and the distribution of justice among the citizens and inhabitants of the said state, without any fear, favor, partiality, affection or hope of reward."

IV. *And be it further enacted*, That every person who shall hereafter be appointed secretary of this state, shall also, before he enters upon the execution of his office, take and subscribe the following oath, to wit: "I secretary of the state of New-York, do solemnly swear and declare, that I will in all things, according to the best of my knowledge and ability, justly and honestly keep the records, parchments, papers and instruments of writing committed unto me, and which shall be from time to time hereafter committed unto me, by virtue of my said office, and in all things, to the best of my knowledge and understanding, faithfully and honestly perform the duty of my said office of secretary, and the trust reposed in me, without favor or partiality."

V. *And be it further enacted*, That every person who shall hereafter be appointed sheriff or coroner of the city and county of New-York or Albany, or of any other county in this state, and the chief-marshal of the city of Hudson, and every of their deputies, except such persons as may at any time be deputed by any sheriff to do a particular act only, shall also, before he, they or any of them, shall enter upon the execution of the said office, take the following oath, to wit: "I sheriff, (or coroner, or chief-marshal, or deputy-marshal, or under sheriff, or one of the deputies of the sheriff, as the case may be) of the city and county of New-York, (or Albany, or Hudson, or of the county of , as the case may be) do solemnly swear and declare that I will well and truly serve the people of the state of New-York, in the office of sheriff, (or coroner, or chief-marshal, or deputy-marshal, or under sheriff, or one of the deputies of the sheriff, as the case may be) of the said county, (or city and county, or city, as the case may be) during my continuance therein, and will faithfully and truly execute, or cause to be executed, [the words, or cause to be executed, to be omitted in the oath to be administered to an under sheriff, or deputy-sheriff, or deputy-marshal] all writs and precepts which shall be delivered to me, or come to and remain in my hands for that purpose, according

to the best of my knowledge, skill and judgment; and that I will not corruptly or unjustly use or exercise the said office during the time that I shall remain therein, neither will I directly or indirectly accept, receive or take, by any colour, means or device whatsoever, or consent to the taking any manner of fee or reward whatsoever, of or from any person or persons whomsoever, for the summoning, impannelling or returning of any inquest, jury or *tales*, in any court for the people of this state, or between party and party, other than such fees or reward as now are or hereafter shall be allowed by law for the same; and that I will not directly or indirectly exact or demand any manner of fee or reward whatsoever, from any person or persons whomsoever, for serving or returning of any writ, precept or process whatsoever, or for any other service whatsoever in my said office, other than such fees or reward as now are or hereafter shall be allowed by law; but that I will demean myself honestly and impartially in all things that shall belong to the duty of my said office, according to the best of my knowledge, skill and ability."

VI. *And be it further enacted*, That every person who shall hereafter be appointed attorney-general of this state, or district-attorney, shall, before he enters upon the execution of his office, take and subscribe the following oath, viz: "I appointed attorney-general, (or district-attorney,) do solemnly swear, that I will in all things, to the best of my knowledge and ability, perform the trust reposed in me."

VII. *And be it further enacted*, That every surrogate hereafter to be appointed, shall, before he enters upon the execution of his office, take and subscribe the following oath, viz: "I, surrogate of the county of do solemnly swear, that I will in all things well and faithfully execute the office of surrogate of the said county, according to the best of my knowledge and ability."

VIII. *And be it further enacted*, That every person who shall hereafter be appointed register or clerk of any court, or clerk of any city or county in this state, shall also, before he enters upon the execution of his office, take the following oath, to wit: "I, register, (or clerk, or one of the clerks,) of the court of (or clerk of the county of or of the city and county of or of the city of as the case may be) do solemnly swear and declare, that I will justly and honestly keep the records, parchments, papers and writings committed to me by virtue of my said office, and which shall be from time to time hereafter committed unto me; and in all things, to the best of my knowledge and understanding, faithfully and honestly perform the duty of my said office, and the trust reposed in me, without favour or partiality."

IX. *And be it further enacted*, That all other ministerial officers hereafter to be appointed, shall also, before they respectively enter upon the execution of their respective offices, severally take and subscribe the following oath, to wit: "I, appointed to the office (here insert the officer's title of office) do solemnly promise and swear, that I will in all things, to the best of my knowledge and ability, faithfully perform the trust reposed in me."

X. *And be it further enacted*, That the lieutenant-governor of this state, the chancellor of this state, the judges of the supreme court, secretary of this state and attorney general, the mayors, recorders and clerks of the several cities, the judges and clerks of the respective counties of this state, shall, by virtue of their several offices, be commissioners for administering oaths to every person who shall hereafter be appointed to any office civil or military; and the said commissioners, after admnistering the said oath or oaths, shall cause the same to be subscribed with the proper names and hand-writing of the person or persons taking the same, on rolls to be provided for that purpose, containing proper captions, with the said oaths written at length thereon, which rolls shall be deposited as follows, to wit: Those containing the oaths and subscriptions of any governor, lieutenant-governor, president of the senate, member of the senate or assembly, chancellor, judge of the supreme court, judge of the court of probates, or any officer of either of the said courts, or attorney-general, or secretary of this state, or district-attorney, or military officer whose office shall extend into more than one county, shall be deposited and kept in the office of the secretary of this state; and those containing the oaths and subscriptions of the respective county officers, both civil and military, shall be deposited and kept in the office of the clerk of the same county.

XI. *And be it further enacted*, That if any officer, civil or military, in this state, shall execute his office without having first taken and subscribed the oaths or affirmations required by law, and the oath to support the constitution of the United States, such officers shall thereby forfeit their said offices respectively, and be removed therefrom; and such neglect or omission is hereby declared to be a misdemeanor, indictable and punishable by fine and imprisonment.

XII. *And be it further enacted*, That the clerk of each county in this state shall, on or before the fifteenth day of January in every year, at the expense of this state, give information to the person administering the government of this state, of such persons as have taken the oaths required by law to be taken, and of such as have neglected to take the same, and also of all vacan-

cies in such county, occasioned by death, removal or otherwise, in any civil office.

XIII. *And be it further enacted*, That if any commissioner herein before named, shall not make a return of the rolls, containing the names of all such officers to whom he shall have administered the oaths of office, within six months after he shall have administered the said oaths, every such person neglecting to make such return as aforesaid, shall forfeit to the people of this state the sum of twenty-five dollars, to be sued for and recovered with costs of suit, before any court having cognizance of the same, by the clerk of the county in which the said person so making default as aforesaid shall reside, one moiety of which forfeiture, when recovered, shall, by the clerk, be paid into the hands of the treasurer of the said county, to be disposed of in such manner as the board of supervisors of the county shall direct; and it shall be lawful for the said clerk to retain the other moiety of the said forfeiture for his own use.

XIV. *And be it further enacted*, That nothing herein before contained shall be construed to extend to any county treasurer, supervisor, town clerk, commissioner of the highways, overseer of the highways, assessor, collector, constable, or other town officer.

XV. *And be it further enacted*, That it shall be lawful for every person empowered to administer an oath, to administer it in the following form to all persons who shall declare they have conscientious scruples about the present mode of administering oaths, by laying the hand on and kissing the gospels, to wit: The person swearing shall, with his or her hand uplifted, swear by the ever-living God, and shall not be compelled to lay the hand on or kiss the gospels; and oaths so administered shall be equally effectual, and expose such person to the like pains and penalties for wilful and corrupt perjury, as oaths administered in the usual form.

XVI. *And be it further enacted*, That every person believing in the existence of a Supreme Being, and a future state of rewards and punishments, who shall have conscientious scruples against taking an oath, shall, in all cases where an oath is upon any lawful occasion to be administered, be admitted, instead of taking an oath, to make his or her solemn affirmation or declaration, in the following form, to wit: "You do solemnly, sincerely and truly declare and affirm," which solemn affirmation or declaration shall be equally valid as if such person had taken an oath in the usual form; and every person guilty of falsely and corruptly affirming and declaring as aforesaid, shall incur and suffer the like pains and penalties as are or shall be inflicted on persons convicted of wilful and corrupt perjury.

XVII. *And be it further enacted*, That it shall not be necessary for any commissioner of oyer and terminer and gaol delivery, who at the time of acting as such shall hold any judicial office in this state, to take any oath mentioned in this act, but every other person named as such commissioner shall, before he acts as such, take and subscribe the oath first mentioned in this act, and also the oath herein prescribed to be taken by judicial officers: *And further*, That no proceeding whatsoever before any commissioner named in any commission of oyer and terminer and gaol delivery, shall be void or in any manner impeached by reason that any commissioner therein named shall not have taken any oath in this act mentioned.

AN ACT FOR THE INSPECTION OF LUMBER.

Passed March 27, 1807.

I. *Be it enacted by the people of the state of New-York, represented in Senate and Assembly*, That the person administering the government of this state, by and with the advice and consent of the council of appointment, shall appoint from time to time, whenever it shall be necessary, not less than seven nor more than ten inspectors of lumber for the city and county of New-York; two inspectors for the city of Albany; one inspector for the city of Hudson; one inspector for the landing of Kinderhook, and as many more in other parts of this state as may be found necessary; and in case of death, resignation or otherwise, it shall be the duty of the person administering the government of this state, for the time being, to fill such vacancy until the pleasure of the council of appointment be known: *Provided however*, That the present inspectors shall continue in office until others shall be appointed in their stead.

II. *And be it further enacted*, That the said inspectors, before they enter on the duties of their office, shall take the following oath, viz: "I do solemnly swear, that I will faithfully, truly and impartially, according to the best of my skill and judgment, execute, do and perform the office and duty of an inspector of lumber, agreeable to the laws of this state, relative to the same."

III. *And be it further enacted*, That no inspector shall employ any deputy to inspect in his name, neither shall they purchase or sell lumber, except they may purchase for their own use, on pain of forfeiting their office.

IV. *And be it further enacted*, That it shall be the duty of said inspectors to measure the full length and bigness of raft timber

and spars, except in cases where, by express agreement, they are required both to measure and inspect, and in such cases there shall be no other deduction made, than what, in their judgment, is the exact quantity of unsound timber contained therein; and said inspectors shall render to their employers such bills as shall express whether the lumber has been measured only, or whether it has been both measured and inspected, together with the number of feet contained therein.

V. *And be it further enacted*, That if any person or persons shall ship on board any ship or vessel for exportation to foreign market, any lumber, that has not been inspected by some of said inspectors, he or they shall forfeit and pay for every thousand feet superficial measure, the sum of two dollars and fifty cents, and for every thousand feet cubic measure, the sum of five dollars, to be recovered with costs of suit, in any court having cognizance of the same, the one half to the use of the poor in the city or town in which such suit may be had, and the other half to the prosecutor; and if any person, other than those appointed by law, shall be convicted of practising the duties of inspectors of lumber, to the injury of said inspectors, such offender shall forfeit to the inspectors ten dollars for every such offence, to be recovered as aforesaid.

VI. *And be it further enacted*, That the said inspectors shall mark with a marking iron, on all timber by them inspected, the number of feet contained therein, either in cubic or superficial measure, except on mahogany, red cedar and live oak, the number of feet in which shall be expressed in their bills, severally annexed to the number of each log, and all raft timber shall be numbered, and the bills made in like manner; and the said inspectors shall be entitled to receive as a compensation for their services, the following sums, viz: On all raft timber, inspected and measured, for every ton consisting of forty cubic feet, fourteen cents; on all raft timber, only measured, for every ton, six cents; for every thousand feet, superficial measure, of boards, plank and scantling, thirty-seven and a half cents; for every thousand feet, superficial measure, of mahogany, one dollar; and in all cases where their fees cannot be calculated by reference to this act, the said inspectors may receive whatever compensation their employers may freely consent to pay: *Provided*, The inspectors first make known the fees allowed by this act; *Provided also*, That the purchaser shall pay one half of said inspection, and the seller the other half.

VII. *And be it further enacted*, That the act, entitled "an act for the inspection of lumber," passed the twenty-first day of March, one thousand eight hundred and one, shall be and is hereby repealed.

An ACT *to regulate the tare of* BUTTER FIRKINS, *and for other purposes.*

Passed April 12, 1816.

I. *Be it enacted by the people of the state of New-York, represented in Senate and Assembly,* That from and after the first day of March next, any firkin in which any butter or lard shall be packed for sale, shall be carefully weighed by the person or persons packing the same, and the true weight of such firkin shall be marked or stamped, in a legible or durable manner, on one of the staves thereof, together with the initial letters of the name of the person so packing the same.

II. *And be it further enacted,* That from and after the day aforesaid, no butter or lard shall be exposed to sale in any firkin, unless such firkin shall be so marked or stamped as aforesaid; and that if any person shall knowingly expose or offer for sale, any firkin of butter or lard, not marked or stamped as aforesaid, he shall forfeit and pay the sum of three dollars for every offence, to be recovered by any person who shall sue for the same, in an action of debt, in any court having cognizance thereof.

III. *And be it further enacted,* That if any person, from and after the day aforesaid, shall put any false mark on any such firkin, or shall expose or offer for sale, or shall sell any butter or lard, in any firkin which such person shall know to be falsely marked, such person shall forfeit and pay the sum of five dollars for every offence, to be recovered by any person who shall sue for the same in manner aforesaid.

IV. *And be it further enacted,* That on every sale of any firkin of butter or lard, the weight so marked or stamped on such firkin, together with an addition of two pounds weight, shall be deemed and taken to be the tare of such firkin.

THE

COUNTY AND TOWN OFFICER.

PART SECOND.

THE

COUNTY AND TOWN OFFICER.

PART SECOND.

CHAP. I.

WE have in the former part of this work noticed the formation of the larger civil divisions of this state, consisting of districts and counties, prefatory to the view we have taken of the duties and offices of county officers. Previous to the consideration of the second branch of our proposed subject, it may not be improper to remark, that as the said districts are composed of an indefinite number of counties, and the counties of an indefinite number of towns, so the towns consist of an unlimited number of families, and are in fact the smallest sectional parts of the civil divisions of this state. But let it not be supposed, that they are on that account entitled to no other than a subordinate regard. For if we reflect, that in a republican government, the powers devoted to the management of its civil and political policies, emanate directly from the people, may we not infer, that the nearer we approach the confines of their immediate jurisdiction, the more perfect will be our view of the genius and elementary principles of the government, and hence that an acquaintance with the regulations of towns and the duties of town officers, becomes a very important branch of science, not only for the state politician, but for every citizen.

THE FORMATION AND DIVISION OF TOWNS.

According to statute, "no town in this state shall be divided, nor any new town erected, without an application to the legislature by the inhabitants of such town so to be divided, or of the several towns out of which such new town is to be erected, or some of them, accompanied with a map of such town or towns, with the lines of such proposed division or new town marked thereon; and that notice of such intended application shall be given at least ten days previous to the town meeting in each of the towns to be effected thereby, which notice shall be in writing, and affixed on the door of the house where such town-meeting shall be held. and shall be subscribed by at least five persons resident and freeholders in such towns, a copy of which notice shall be read in such town-meeting to the people there assembled, by the clerk of such town, immediately before proceeding to the election of town officers."

THE POWERS AND PRIVILEGES OF TOWNS.

The freeholders and inhabitants of each of the towns in this state are authorised by law to make, at their annual or any special town-meeting, such prudential rules and regulations as the majority of the freeholders and inhabitants so assembled and having a right to vote there, shall from time to time judge necessary and convenient, for the following purposes, to wit:

1st. For the better improving of their common lands in tillage, pasturage, or any other reasonable way.

2d. For making and amending their partition and circular fences for their lands, gardens, orchards and meadows.

3d. For ascertaining and directing the use and management and times and manner of using their common lands and meadows and other commons.

4th. For ascertaining and directing the times, places, and manner of permitting or preventing cattle, horses, sheep and swine, or any of them, to go at large.

5th. For impounding all manner of cattle and creatures whatsoever.

6th. For ascertaining the sufficiency of all partition and other fences.

7th. For making such and so many pounds and at such places as may be convenient.

8th. For ascertaining and limiting the fees to be taken by the fence viewers.

9th. And to impose such penalties on the offenders against such rules and regulations, or any of them, as the majority of

such freeholders and inhabitants so assembled, shall from time to time deem proper, not exceeding twelve dollars and fifty cents for each offence, to be recovered with costs of suit by the supervisor of the town where such offence shall be committed. Law N. Y. Town privileges. March 1813.

In case any city or town neglect to choose their town officers, or any of them, or any town officer that is duly chosen shall refuse to serve, die, move away, or become incapable to serve before the next annual election, then such city or town is authorised within 15 days after the happening of any such contingency, to choose another according to law in the room of such person, And if such city or town are negligent in this respect, such vacancy is to be supplied by a legal appointment of any three justices of the peace of the same county. Ibid.

When no justice of the peace or any town clerk attend at any town meeting, then the freeholders and inhabitants assembled, are authorised to choose a person to preside at such meeting and have and exercise all the powers and authorities in such case vested in the justices. Ibid.

No town meeting shall be held longer than two days, and shall only be held open between sunrise and sunset, and shall be held in such place in each town as the freeholders and inhabitants thereof at their town-meeting, shall from time to time appoint. Ibid.

It is lawful for the freeholders and inhabitants of a town at any annual or special town-meeting, to make provision for raising money and to allow rewards for the destruction of wolves, bears, panthers, wild cats and foxes, and for prosecuting and defending the common rights of such town—And also at any such annual meeting to direct the clerk of such town, to procure and deposit in his office, a standard brass yard, to be sealed by the person authorised to seal and compare such yard, and to be considered the true yard. Ibid.

Also it is lawful for any such meeting to vote such sum of money to be raised in such town as may be necessary for the support of the poor in the same.

TOWN OFFICERS.

It is ordained by the constitution, that town clerks, supervisors, assessors, constables and collectors, and all other officers before eligible by the people, shall always continue to be so eligible, in the manner directed by the present or future acts of the legislature. In conformity to that article of the constitution, the legislature have from time to time provided for the election of such town officers as they deemed requisite, as well to manage

the political institutions of the respective towns, as to enforce the various acts of government. The town offices of inspectors of elections, and commissioners of excise, have been created by particular statutes, and by the 9th section of the common school act of 1814, it is enacted, "that the freeholders and inhabitants of each and every town in this state, who are or shall be qualified by law to vote at town meetings, shall annually at their annual town meeting, or at any special town meeting for that purpose called, choose three of the inhabitants of their town, being freeholders, to be commissioners of common schools in such town, also, a suitable number of persons not exceeding six, being inhabitants of such town, who together with the commissioners aforesaid, shall be inspectors of common schools in such town; which said commissioners and inspectors shall be chosen by ballot; and shall hold their respective offices for one year, and until others shall be chosen in their places; and in case any of the said officers so chosen, or to be chosen, as aforesaid, in any such town, shall refuse to serve, or die, or remove out of the town, or be incapable of serving, before the next annual town meeting, the vacancy consequent thereon, shall be supplied in the same manner as is provided for filling similar vacancies in other town officers, in and by the act, entitled an "act relative to the duties and privileges of towns," and each of the officers so to be chosen or appointed to supply such vacancy as aforesaid, shall hold his office in the same manner as if he had been elected to the same office by the freeholders and inhabitants of such town at their annual town meeting.

The town officers at present in authority in the several towns in this state may therefore be enumerated as follows, to wit:

THE TOWN CLERK,
ASSESSORS,
INSPECTORS OF ELECTIONS,
COMMISSIONERS OF EXCISE,
COLLECTORS OF TAXES,
COMMISSIONERS OF HIGHWAYS,
OVERSEERS OF HIGHWAYS,
OVERSEERS OF THE POOR,
COMMISSIONERS OF SCHOOLS,
INSPECTORS OF SCHOOLS,
CONSTABLE,
FENCE VIEWERS, &
POUND MASTER.

The first section of the act entitled, "an act relative to the duties and privileges of towns," passed March 19, 1813, with the exceptions as above noted, provides for the election of all the town officers now in office, as follows, to wit: "Be it enacted by the people of the state of New-York, represented in Senate and Assembly, That the freeholders and inhabitants of the several towns in this state who are or shall be qualified by law to vote at town meetings, shall assemble together and hold town meetings in their respective towns, on the first Tuesday in April in every year, and then and there choose, one Supervisor, one Town-Clerk, not less than three, nor more than five Assessors, one or more Collectors, two Overseers of the Poor, three Commissioners of Highways, each of which town officers shall be a freeholder and inhabitant of the same town; and so many Constables, Fence-Viewers, and Pound-Masters, being inhabitants of the same town, as to the freeholders and inhabitants of the said town so met, or the major part of them, shall seem necessary and convenient: And as many Overseers of Highways as there are road districts in each of the towns respectively (except in the counties of Kings, Queens, Suffolk and Richmond wherein as many overseers of highways are to be chosen as may be found necessary) which said several officers shall hold their respective offices for one year, and until others shall be chosen in their places; and the said Supervisor, Town-Clerk, Assessors, Collectors, Overseers of the Poor, Commissioners of Highways, and Constables, shall be chosen by ballot

Penalty. If any of the said last named officers, shall refuse to serve in any such office, or proceed therein before he shall have taken the oath of such office, or if any constable or collector shall proceed in his office before he shall have given lawful security, every such person, shall forfeit to the people of this state, the sum of sixty-two dollars and fifty cents, to be recovered in an action of debt. Ibid.

Oaths amended. It is to be observed, that it is especially enjoined by a late statute, that in addition to the form of the several oaths of office, to be taken by the supervisor, town-clerk, assessors, commissioners of highways, and overseers of the poor, the following words shall be inserted, to wit: "And that I am a citizen of the United States, and that I am a freeholder, and an actual resident of the town of in the county of " (specify the town and county)

Oaths in general. And further we would observe on the subject of the oaths of town officers in general that it is requisite that the person taking any such oath should subscribe his name to the same.

Qualifications of voters at town-meeting. By the third section

of the said recited act, it is enacted, that every male person being a citizen of this state, who shall be above the age of twenty-one years, and shall have resided in any town six months next preceding such town-meeting and paid taxes within the same, or shall be possessed of a freehold, or shall have rented a tenement of the yearly value of five dollars, for the term of one year within the same, shall have a right to vote at such meeting, and no other person.

We shall in the following pages endeavor briefly to detail the duties and offices of the said several town officers, according to the order in which we have above arranged them, and first of the

TOWN CLERK.

OFFICE.

The office of town clerk is of secondary importance to that of the supervisor, and it will be seen that although it is not of such high responsibility, yet that his duties are more numerous than those of any other town officer.

HIS OATH.

It is incumbent on the town clerk within 15 days after his election or appointment, to take and subscribe before some justice of the peace the following oath, to wit: "I town clerk of the town of in the county of , do solemnly and sincerely promise and swear (or affirm) that I will faithfully and honestly, keep all the books, records, writings and papers by virtue of my said office of town clerk committed, and which shall from time to time be committed unto me, and in all things to the best of my knowledge and understanding, well and faithfully perform the duties of my said office of town clerk, without favor or partiality; and that I am a citizen of the United States, and that I am a freeholder and an actual resident of the said town of in the said county of "

DUTIES.

The duties of the town clerk may be concisely explained under the following heads, viz:

1. His duties touching town elections and town meetings.
2. As the recorder, filacer, and depositary, of all such town regulations and documents which it is incumbent on him by law to record, file or deposit in his office.
3. His special duties.

His duty as an "Inspector of Elections" for county, district, or state officers, we shall notice under the title of "*Inspectors of Elections.*"

HIS DUTIES TOUCHING TOWN ELECTIONS.

Town Elections. As all the elective town officers, are to be voted by ballot, except the overseers of highways, fence-viewers and pound-masters, it is necessary before the opening of a town election, that the town clerk prepare a box wherein to deposit the ballots to be taken at the poll, and also a blank sheet whereon to take down the names of the electors as they are polled; also to provide a separate blank sheet containing a description of the different road districts in his town, with sufficient blank spaces opposite each enumerated district, for inserting the names of the overseers of highways proposed to be chosen and marks of voters for each candidate: And on the same, or another sheet, a proper poll list to enter the names of the candidates and marks of votes for fence-viewers and pound-masters.

If no justice of the peace shall reside in the town at the time of holding town meeting, then it is made the duty, by statute, of the town clerk who was elected at the last preceding meeting, to preside at such meeting, superintend the same, and take care that the business thereof be orderly and regularly conducted; and shall in case of dispute, determine who have, and who have not a right to vote or be elected at such meeting, and shall have and exercise all the powers and authorities vested on such occasions in the justices.

It is the duty of the town clerk by the nature of his office to keep the minutes of the polls of every such election, even although a justice, or justices should preside.

When the poll of such election is closed, it then becomes his duty to canvass, cast up, and estimate the number of votes given for each candidate, and to declare such duly elected who have a majority of votes for any such office.

Town Meeting. At Town Meeting for the election of town officers it is his duty to give notice, that lists of all lands advertised for sale, for taxes, by the comptroller, are deposited in his office, where the same may be seen. After the close of the town election, it is usual for the freeholders and inhabitants assembled to contemplate their town concerns and regulations—such as to provide for raising monies for the support of the poor of their town and for destroying noxious animals—to regulate the improvement of their common lands, &c. On all such occasions it is the duty of the town clerk to minute on paper such proceedings and resolutions, and to translate them to the files of

his office; and thereupon to certify to the supervisor of his town the monies voted for and allowed at such meeting to be raised by tax from such town, with the purposes for which the same may be intended.

Special Town Meeting. Whenever it shall be necessary to hold a town meeting, for any purposes required by law, at any time between any annual town meetings, due notice thereof shall be given by the town clerk, in writing under his hand, specifying the time, place and purposes of such town meeting, and fixed up at four or more of the most public places in the same town, at least eight days before the time therein appointed for holding such town meeting; and it is made the duty of the town clerk to give such notice whenever it shall be necessary to hold such town meeting for electing any of the officers aforesaid in such town, or when he shall be required so to do by any twelve or more freeholders of such town, and when any such election shall become necessary according to law.

To certify the election of Constables. It is made his duty on or before the second Tuesday of May after every annual election for town officers, to transmit to the clerk of his county, a certified copy of the names of the constables chosen at such election; and in case of wilful omission so to do he will be declared guilty of a public misdemeanor and liable to pay a fine of 10 dollars.

HIS DUTIES AS RECORDER, FILACER AND DEPOSITORY OF THE RECORDS OF HIS TOWN.

Of Town Regulations. It is enjoined on the town clerk, to record all rules and regulations which are made at any town meeting of his town, in a book to be by him provided for that purpose, and the same are declared by law to be in full force until revoked or altered by a subsequent town meeting. See 7 Johns. Rep. 549.

Of Highways. It is his duty to enter of record in his office all such records of highways, as are handed to him for that purpose, by the commissioners of highways of his town, pursuant to the first and fortieth sections of the act, entitled, "an act to regulate highways," passed March 19, 1813, and immediately after making any such record, to fix a copy of the order of the commissioners thereupon on the outer door of the house where the town meeting is usually held, from which time an appeal from the commissioners to the judges shall be computed.

Of Elections. It is made his duty by the act, entitled, "an act to regulate elections," passed March 29, 1813, to record the certificate of the inspectors of any election in his town, for gov-

ernor, lieutenant governor, senators, assembly, or representatives of congress, in a book to be by him provided for that purpose.

Of Slaves. It is declared by law, that the children of slaves born between the 4th July, 1799, and the 31st March, 1804, and which previous to the last mentioned day have been abandoned by the owners, shall continue to be provided for at the expence of this state, and that "every person being an inhabitant of this state who shall be entitled to the service of a child born after the 4th day of July, 1799, shall within nine months after the birth of such child cause to be delivered to the clerk of the city or town whereof such person shall be an inhabitant, a certificate in writing, containing the name and addition of such person, and the name, age and sex of the child so born, which certificate, whether the same be delivered before or after the said nine months, shall be, by the said clerk recorded in a book to be by him provided for that purpose, and such record thereof shall be good evidence of the age of such child, and the clerk of such city or town shall receive from said person, twelve cents for every child so registered; and if any person shall neglect to deliver such certificate to the said clerk within the said nine months, such person shall forfeit and pay for every such offence 5 dollars, and the further sum of one dollar for every month such person shall neglect to deliver the same, to be sued for by the clerk of the city or town in which such person shall reside, the one half to the use of such clerk, and the residue for the use of the poor of such city or town. See Laws N. Y. Slaves, 1801 & 1813.

All certificates of abandonment of the service of any child born of a slave, must according to the 12th section of the act concerning slaves and servants, passed April 9, 1813, be registered in the office of the town clerk. And by the 28th section of the said act a like certificate must also be filed in the same office within six months, in case where any slave is imported or brought into such town, on pain of forfeiting 5 dollars for every such offence, and one dollar for every month of such neglect; to be sued for by the clerk of such town.

He is also authorised to record any certificate of freedom of any black or mulatto person, which shall be duly certified by a judge of the court of common pleas of his county, or other officer empowered by law for such purpose.

Assessment Rolls. The second section of the act for the assessment and collection of taxes, passed April 5, 1813, makes it the duty of the clerk of the board of supervisors or supervisor of the town, to whom the assessors of such town have delivered their assessment roll, when after the same has been examined and corrected according to the said act, to cause a fair copy thereof to be made, and deliver such copy or the corrected ori-

ginal, to the clerk of such city or town, who shall deposit the same in his office, for the use of the assessors of such city or town the succeeding year.

Of Strays. The act, entitled, "an act concerning strays," passed February 25, 1813, requires that every person who at any time between the first day of November, and the first day of April in any year, shall have any strayed neat cattle, horses or sheep upon his enclosed lands, shall within twenty days thereafter, deliver unto the town clerk, a note in writing of their several ages colors and marks, as near as may be, together with his or her name and place of abode; and that such clerk shall on the receipt of every such note, make a full entry thereof at large in a book to be provided by him for that purpose, and shall have for making such entry, the sum of six cents per head for all the neat cattle and horses, and the sum of three cents for each sheep so entered, to be paid to him by the person delivering such note. And that the book so to be provided by him shall always be free and open for any person to search therein: for which search no fee shall be taken on penalty of one dollar.

Of the Poor. After the majority of the freeholders and inhabitants at the annual town-meeting, have determined and agreed upon such sum of money as they may think proper, for maintaining the poor in the ensuing year, the town clerk shall make full and proper entries in the town book of such determination and agreement and as soon as may be, deliver a copy of such entry, certified under his hand, to the supervisor of such town, who is required by law to lay the same before the board of supervisors at their next meeting, in order that such sum may be raised in such town for the support of the poor thereof.—*See Law N. Y.* 1813.

Of common schools. The town clerk is required by the 9th section of the school act of 1814, to record in his office the description of the formation or alteration of the school district in his town, which may at any time be delivered to him for that purpose by the commissioners of common schools. And by an act of 1815 he is by virtue of his office declared to be the clerk of the said commissioners, and enjoined to receive and keep all books, records, writings and papers belonging to the said commissioners.

Excise. It is made his duty by statute to file in his office the oath of the commissioners of excise of his town, and also to file and deposit among the other papers of such town, the resolves of the said commissioners, granting licences to inn or tavern keepers.

HIS SPECIAL DUTIES.

He is authorised together with the justices of the peace of his town annually on the last Monday in September, to liquidate the accounts of the supervisor of his town, for town expences paid into such supervisors hands by the collector. And it his duty annually together with such supervisor and justices to audit the accounts of the overseers of the poor of his town.

It is his special duty to file in his office the certificates of the oaths of all the town officers required by law to take the same.

When any town is to be divided, or new town erected, he must read a copy of the lawful notice thereof in town meeting to the people there assembled, immediately before proceeding to the election of town officers.

It is his duty to pay to the overseers of highways on the order of the commissioners of highways such monies as have been paid to him by the collectors that were levied for repairing roads and bridges.

It is his co-equal duty with the supervisor of his town within ten days after the election or appointment of any constable of such town, to see that he gives competent security for the faithful execution of his office before he enters on the duties of the same, and if he approve such security, to endorse his approbation on the instrument offered for that purpose.

The 13th section of the act entitled, "an act for regulating trials of issues and for returning able and sufficient jurors passed February 25, 1813, makes it the duty of the supervisor, town clerk and assessors of the several towns annually on or before the first day of July, to cause to be made and transmitted to the clerk of the county, an alphabetical list of the names with the places of abode, and addition of all persons residing in their respective towns, qualified and of sufficient ability and understanding to serve on juries in the several courts in the said act mentioned, and not contained in either of the boxes kept by the said clerk for that purpose, who shall thereupon cause such names with the places of abode and additions, to be written on separate slips of paper and put into the box out of which the names of the jurors are next to be drawn as aforesaid. And it is also thereby made the duty of each of the town clerks in the several towns in the respective counties, to transmit to the clerk of the county annually on or before the first day of July, another and a like list of the names of all such persons who had before been returned as able and sufficient jurors, but have since died, or removed out of the county, or become otherwise disqualified, and the said clerk of the county shall thereupon destroy the several slips of paper containing such names.

Upon the death or expiration of office of the town clerk of any town, all the records, books, writings and papers, belonging to the same office, shall be delivered to the successor in office upon the oath of the preceding town clerk, or in case of his death, upon the oath of his executors or administrators, on penalty of two hundred and fifty dollars.

CHAP. II.

THE ASSESSOR.

The term *Assessor*, conveys the most expressive idea that can be communicated, relative to the general nature of the assessor's office.

Assessment signifies a ratement or apportionment, and the officer who performs it is called, "an Assessor: that is, one who makes assessments, ratements, or apportionments. And it appears, that the act which originally provided for the institution of this office, contemplated it to be only devoted to the execution of duties connected with such objects. But subsequent statutes have attached a few other distinct offices to this, which we shall notice in the proper place of our treatment of this subject.

We have seen in the preceding chapter, under the head of "*Town Officers*," that at least three assessors are to be chosen in each town, and that it is incumbent on them severally before they enter on the duties of their office, to take the oath prescribed by law.

OATH.

"I do solemnly and sincerely promise and swear (or affirm) that I will honestly and impartially assess the several persons and estates within the town of in the county of and that in making such assessments I will, to the best of my knowledge and judgment, observe the directions of the several laws of this state, directing and requiring such assessments to be made, and that I am a citizen of the United States, and that I am a freeholder and an actual resident of the town of in the county of "

It is to be inferred from the premises, that the duties of the assessor are divisible in two heads; *ordinary* and *extraordinary*.

HIS ORDINARY DUTIES.

These may be generally learned from a correct understanding

of the act entitled "an act for the assessment and collection of taxes," passed April 5, 1813. This act premises, that the taxes to be levied in this state, shall be assessed, levied and paid upon a valuation af real and personal estates as therein prescribed, and then goes on to describe the directions and provisions which we shall investigate under the following heads, viz.

Assessment Districts. The assessors of each town and ward may distribute such town or ward, by mutual agreement, into such number of divisions, to be called Assessment Districts, as they may deem convenient, not exceeding the number of assessors in such town or ward

How and when to enrol persons to be assessed. The assessors in every town or ward, shall in every year, between the first day of May and July, ascertain according to the best evidence in their power, and set down in their assessment roll the value of houses and lands in such town or ward, owned or possessed by any person residing in such town or ward, opposite to the name of such person, and also, in like manner the value of personal estate of every such person, over and above all debts and demands against such person.

Objections to Valuations. In case any person not satisfied with such valuations, shall make oath before such assessors or either of them, that the value of his real or personal estate does not exceed a certain sum, specifying the same, then, and in every such case, the assessors shall value such real and personal estates at the sums specified in such affidavit, and no more.

At what place personal estate is to be taxed. Every person liable to be taxed for any personal estate, shall be taxed for the same in the town or ward where such person shall reside at the time of making such assessments.

How the lands of non-residents are to be taxed It is the duty of the assessors to ascertain what lands are situate in their town or ward not owned by persons residing in the same, and in their assessment rolls (separate from the assessments made of the estates of residents) specifically to designate all such lands, in the following manner: If the estate be a township, a patent or tract of land, of the subdivision of which the assessors cannot obtain correct information, they shall enter the name of township, patent or tract, if known by any particular name, without regarding who may be the owner thereof; and if such tract be not known or designated by a particular name, they shall state by what other lands the same is bounded, and shall set down the quantity of land contained therein, and the value thereof in proper columns for the purpose; and if any such township, patent or tract, be divided or subdivided into lots, and the assessors can obtain a

map or any correct information of such subdivisions, they shall put down all the lots so owned in numerical order, with the quantity of land contained in each, and the value of each, in order that they may be taxed separately; and in case that only a part of any such lot shall be so owned, they shall place the number of the lot in its proper place in the series, and then designate particularly the part, and set down the quantity of land contained therein, and the value thereof.

Assessments, how and when to be completed. The assessors shall complete their assessments on or before the *first day of July* in every year, and make out one fair copy thereof, to be left with one of their board, and thereupon cause notices to be put up at three or more public places in their town or ward, setting forth that they have completed their assessments, and that a copy thereof is left with one of them, naming him, where the same may be seen and examined by any of the inhabitants during *ten days*, and that at the expiration of the said ten days, they meet on a day certain, at a place in the said notice to be specified, to review their assessments, on the application of any person conceiving himself aggrieved; and it shall be the duty of the said assessors, with whom the said assessment roll shall be left as aforesaid, during the said ten days, to submit the said roll to the inspection of any person who shall apply for that purpose.

On application of parties aggrieved. The said assessors having so met at the time and place aforesaid, shall on the application of any person conceiving himself aggrieved, review the said assessment, and may alter the same, on sufficient cause being shewn to the satisfaction of the said assessors.

How to dispose of the Assessment Roll. After the expiration of the said ten days, and all errors in the assessment roll have as aforesaid been corrected, the assessors or the major part of them shall sign the same and deliver the same on or before the *first day of August* in every year, to the supervisor of the town, (except in the city and county of New-York, where the same shall be delivered to the clerk of the said city) and such town supervisor shall deliver the same to the board of supervisors at their next meeting.

Penalty and consequent duty. If any assessor shall refuse, or without being prevented by sickness, neglect to perform the duties required of him by this act, he shall forfeit and pay to the people of this state, the sum of fifty dollars, with costs; and in such case the other assessors shall perform the said duties, and certify to the supervisors with their assessment roll, the name of such delinquent assessor, distinguishing which of them, if any, were prevented from performing the said duties by sickness.

When one or more may act. Any one or more of the asses-

sors in any town or ward, in case of the absence or default of the other assessors, shall and may perform all the duties required of such assessors respectively by the said act

Special duty on Assessments. It is the special duty of the assessors, in making their assessment rolls, to set down the real and personal estates at the value they would appraise such estate in payment of a *bona fide* debt due from a solvent debtor; and all stock in the funds of the United States, or any other funds, and all bank stock, or stock in any other company, and all debts due from solvent debtors to any persons so assessed, over and above the debts *bona fide* owing by him, shall be assessed as part of such person's personal estate; and in case any person will make oath before any assessor, that his personal estate, including all stock and debts due by him so directed to be assessed, does not exceed a certain sum to be specified in such oath, over and above what is sufficient to pay his debts, then such personal estate shall be put down in the assessment roll, at the sum specified in such assessment roll, and no more.*

How to assess subdivided and partly improved Lands. "When a tract of land is subdivided, and the subdivisions thereof not known to the assessors, and they cannot, upon diligent enquiry, be able to ascertain and designate the subdivisions, it shall be lawful for them to assess the whole tract, stating, however, in their roll, that they have not been able to ascertain upon diligent enquiry, how such tract was subdivided; and in case any part or parts of any such tract, or of a tract that is not subdivided, shall be settled and improved, and in the actual occupation of a resident of the town, and the assessors cannot otherwise ascertain and designate the part or parts so occupied and improved, in order to have the same excepted out of the assessment of the whole tract, they shall notify the supervisor of the town thereof, who shall cause a survey and two maps to be made to ascertain and shew the situation of such part or parts in the tract, and the quantity therein, one of which maps the said supervisor shall deliver to the county treasurer, to be by him transmitted to the comptroller, and the other to the assessors; and the said assessors shall then complete the assessment of such tract, and deposit said map in the town clerk's office, for the information and guidance of future assessors; and it shall be law-

* By an act of April 17, 1816, the assessors are required to make such valuation of houses and lands, that the value of the real estate, set opposite the names of the several persons assessed, shall bear a just proportion to each other in the same town, and for that purpose they may alter the valuation of real estates, as justice may require.

ful for the board of supervisors to add the expense of making said survey and maps to the tax on such tract, designating it from the ordinary tax; and the said expense shall, in the first instance, be paid to the said supervisor as county charges are usually paid: and further, where it shall be deemed necessary by the assessors of any town to have an actual survey made to ascertain the quantity of any lot or tract situate in their town, which the town line divides, and shall give notice to the supervisor of such town, such supervisor shall at the expense of such town, cause the necessary surveys to be made."

Compensation. The compensation to the assessors and supervisors, for executing the duties enjoined on them by this act, shall be allowed and paid in like manner as the county charges in this state are allowed and paid, and each assessor shall be entitled to receive for his services, one dollar and twenty-five cents per day.

Touching the ordinary duties of the assessors, we do not know that we have it in our power to furnish a more correct detail, than is contained in a summary of Instructions, furnished March, 1805, by Elisha Jenkins, Esquire, then comptroller of this state, as a guide for the assessors of the several towns. Although our statutes have been since revised and some amendments made to our tax laws, yet it will be seen by those instructions that their general principles are not materially variant at present from what they were in 1805.

"INSTRUCTIONS, &c.

"*Assessors.* The assessors will receive herewith forms of assessment rolls, which, for the purpose of obtaining an uniform and proper execution of the several statutes relative to taxes, it is earnestly requested may be adopted in future throughout the state. The manner of making the assessments, is designated by law with great precision, but owing to inattention or negligence, on the part of the assessors of many towns in this state, the returns heretofore made are very imperfect, particularly in the description and valuation of the real estates of non-resident proprietors. In many cases it is impossible to ascertain, without further information than what the assessment rolls furnish, what lands are intended to be comprised in many of the assessments; hence will arise serious embarrassments in selling such real estates for the arrearages of taxes. This difficulty it is to be hoped will cease to exist in future, for it is the duty of every board of assessors, instead of ingrafting the errors and defects of their predecessors into their assessments, to amend and complete them in the mode pointed out by law—particular attention, therefore, on the

part of the assessors, to a discharge of this part of their duty will be expected; for all arrearages of taxes upon real estates, which shall be hereafter returned to the comptroller's office, unless accompanied with so definite a description as that the estate may be designated with precision, in case of a sale, will be uniformly disallowed by the comptroller in settlement of the county treasurer's accounts. A better guide cannot be furnished the assessors than the following summary of the different laws on the subject of the assessment and collection of taxes.

"All taxes are to be assessed, levied and collected and paid upon the valuation of real and personal estates, and the valuation of houses and lands lately made under the authority of the United States is to be deemed to be the value thereof, but the assessors may make such alterations thereof as shall appear to them to be just and necessary to equalize the taxes upon real estate; but the aggregate amount of the said valuation is not to be *lessened* thereby. All houses or lands belonging to the United States or the people of this state, or any church or place of public worship, or personal property belonging to any minister of the gospel, or to any priest of any denomination whatsoever, or any real estate of such minister or priest not exceeding in value $1500, or any college or incorporated academy, or any school-house, court-house, gaol, alms-house or property belonging to any incorporated library, are exempted from being taxed. The assessors are to meet between the first days of May and June in every year, and shall set down in the assessment roll in the *first* column thereof the name of the possessor, or if there be no possessor the name of the reputed owner of all houses and lands; in the *second* column, if the owner does not reside in the town or ward, shall be inserted the word "*non-resident*"—and in the *third* column they shall specifically designate the real estate of such non-resident, to the end that one non-resident may not be assessed for the lands of another; *the patent in which the lands lie, the numbers of the lots, the quantity of acres and the value per acre* must be included in the description. If the land cannot be designated by reason of its not being included in any patent of notoriety, then it may be described by adding the names of the owners or possessors of the adjacent land. or in such other manner as will be deemed most descriptive of the property assessed. The *fourth* column shall contain the value of the real estate, and the *fifth* column the value of the personal property of every person residing in such town or ward, which shall be ascertained according to the best evidence in their power, after deducting all debts and demands against such person; and in case any person not satisfied with such estimate shall make affidavit before such assessors, or either of them, that the value of his or her

personal estate does not exceed a certain sum, specifying the same, then and in every such case, the assessors shall value such personal estate, at the sum specified in such affidavit and no more: In the *sixth* column is to be inserted the aggregate amount of real and personal estate, and the *seventh* column is to be left blank for the purpose of inserting the sums to be paid as a tax thereon. The assessors are to complete the assessment rolls and deliver the same signed by them, or a major part of them, on or before the *first Tuesday of July* in every year to the supervisor of their respective towns, who shall deliver the same to the board of supervisors at their next meeting, leaving a copy thereof with one of the assessors and thereupon cause notices in writing to be fixed up at two or more public places in their ward or town, setting forth that they have completed such assessment and that a copy thereof is left with one of the assessors, naming him and his place of residence, where the same may be seen and examined by any of the inhabitants during ten days, and that at the expiration of the said ten days they will meet at a place, to be designated in such notice, to review their said assessment on the application of any person conceiving himself aggrieved; and at the expiration of the said time the assessors shall meet, and on application of any person conceiving himself aggrieved, shall review the said assessment and may alter the same on sufficient cause being shewn to the satisfaction of the assessors or a majority of them.

In making a list of the taxable inhabitants, an alphabetical arrangement, beginning with the surname of each individual, will be found in practice to be the most convenient; it will afford the most expeditious mode of searching the lists for the purpose of ascertaining the sum with which any person is charged, and will also furnish the most certain means of discovering any omissions which may have occurred. In cases where lands are assessed as the property of non-residents, and the lots are distinguished by their numbers, a numerical arrangement, beginning with the lowest number, is recommended. The practice which has heretofore prevailed in various parts of the state of enumerating lots in an irregular order, is attended with several inconveniences. In some cases the same lot has been assessed more than once, and in others, many omissions have occurred: A repetition of similar errors, will be avoided by an observance of the arrangement before suggested."

EXTRAORDINARY DUTIES.

Strays. It is enacted by the second section of the act entitled, an act concerning strays, passed February 25, 1813, "That

every person who shall have kept any strayed neat cattle, horses, or sheep, and recorded the same as aforesaid, (in the town-clerk's office) shall between the *first* day of *May* and the *twentieth* thereof, give notice to one of the assessors of the town in which such neat cattle, horses or sheep may be, whose duty it shall be to ascertain, according to the best of his knowledge and judgment, the reasonable charges of keeping every such neat cattle, horses or sheep, and give the person applying for the same a certificate of such charges, for which the said assessor shall be paid, by the person applying for the same, six cents for every mile the said assessor shall be obliged to travel from his house to the place where such stray is kept, to do the same, and 25 cents for the said certificate." If the owner shall neglect or refuse to pay for giving such notice, making such entry, obtaining such certificate, and keeping such cattle, the possessor is authorised to sell the same at public vendue, giving 20 days notice of the time and place of such sale, by advertisement to be put up in three of the most public places of such town; and if such owner shall not within *one year* demand the surplus of such sale, he shall forever be precluded therefrom.

Jury. For the assessor's duty in virtue of the jury act, see title "Town Clerk," *Special Duties.*

Elections. We shall in the next chapter endeavour to explain his duty as an *Inspector of Elections.*

PRECEDENTS,

WITH EXPLANATORY REMARKS.

One object the assessor ought especially to hold in constant view; that is, to give such a definite description of the land to be assessed as that it may be designated with precision, in case of sale. And hence arises the necessity that subdivided lots, belonging to different owners, should be particularly described on the assessment roll; so that the land of one person may not be sold for the defalcation of another, and that every one may justly answer for the rates assessed on his own.

The 16th section of the act for the assessment and collection of taxes, declares, That any tax laid by virtue of any law of this state, or to be laid by the said act, upon any real estate, and the

interest and charges thereon, shall be a *lien*, (that is an incumbrance) upon the same real estate, until the same tax, interest and charges shall be paid or recovered, notwithstanding the same real estate may have been divided or alienated, made over and sold in the whole or in part; and whenever such tax and the interest aforesaid accruing thereon, shall remain unpaid for two years from the first day of May following the year in which any such tax was or shall be laid, the comptroller shall cause so much of the land charged with such tax and interest, to be sold at public auction, at the capitol in the city of Albany, as shall be necessary to pay the taxes, interest and charges thereon.

ASSESSMENT ROLL of the Real and Personal Estates in the town of in the county of made day of in the year of our Lord one thousand eight hundred and by assessors of the said town.

Names of the possessors or reputed owners.		Description of Real Estate.	Value of real estate.	Value of personal estate.	Tot. value of real and per. estate.	Tax.

EXTRACTS FROM REJECTED TAXES OF THE TOWN OF ———.

Heirs of L. W. All those three pieces or parcels of land in Rochester patent, known and distinguished on a map by lots No. in the containing as follows—Lots No. 2, containing, &c.	COMPTROLLER'S REMARKS. Each lot must be valued and taxed separately.
W. T. All that piece or parcel of land in patent, bounded, &c. by lands, &c.	The quantity of land wanted.
A. P. and others 760 acres in . 2d allotment. Also lot no. 23 acres, and lot no. in 2d allot. containing, &c. 1818.	Each lot must be valued and taxed separately.

COMPTROLLER'S OFFICE, 1815.

EXTRACT FROM A REJECTED TAX LIST OF THE TOWN OF K——.

Names of possessors or reputed owners,	Description of Real Estate.	Value of Real Estate.	Value of Personal Estate.	Aggregate Amount.
S. W.		$50 00	50 50	100 50
W. W.		250 00	39 23	289 24
W. P.		400 00	90 38	490 38

Remark. The above was duly sworn to by the collector of the town of K——, 1st February, 1815, before the county treasurer of U——, and by him certified in common form, and was endorsed by the comptroller thus: "Wholly rejected, as there are no descriptions of the land, and no quantity given. Omit personal property."

NOTICE ON COMPLETION OF TAX LISTS.

NOTICE

Is hereby given, That pursuant to the act of the legislature in such case provided, we, the subscribers, assessors of the town of in the county of have completed our assessments of the real and personal estates of the inhabitants of the said town, and that a copy thereof is left with A. B. one of the subscribers, with whom the same may be seen and examined by any of the inhabitants, during *ten days* from the date hereof, and that on the twelfth day of June instant, at ten o'clock in the forenoon, we will meet at the dwelling house of the said A. B. to review our said assessments, on application of any person conceiving himself agrieved.

Town of , June 1st, 1815.

A. B
C. D. } Assessors.
F. F.

CHAP. III.

THE INSPECTOR OF ELECTIONS.

There is probably no town officer, in the faithful discharge of whose duty, the citizens of a democracy are so materially interested as that of the Inspector of Elections. As long as the unrestrained exercise of the elective franchise is guaranteed to the immediate constituents of our public functionaries, and its purity and freedom be preserved, so long will the patriot be assured that the republic is not in danger. Not so, if duties be here neglected or perverted, or immunities denied or impaired, at the very fountain head whence we derive all our free institutions and the peaceable pursuit of life, liberty and happiness. The greatest privilege of a freeman, is to give a free vote for such of his fellow citizens as he may think proper to select for office. And no greater political injury can he experience, than to be debarred from the lawful use, or defrauded in the constitutional exercise of this inestimable right. Hence the due execution of the office of inspector of elections is of primary importance to every individual in the community.

The act entitled, an act to regulate elections, passed March 29, 1813, contains the whole system of duties and office of an Inspector of our elections, and premises that all elections for governor, lieutenant-governor, senators and members of assembly, shall be by *ballot*, and be held in the cities of New-York, Albany and Schenectady, by *Wards*, and in the other parts of this state by *Towns*, on the last *Tuesday* in *April* in every year, from which the same shall be continued by adjournment from day to day, for three successive days, including the first: And that no person shall vote at any such election except in the town or ward in which he actually resides.

OFFICE OF INSPECTOR OF ELECTIONS.

The supervisor, assessors and town clerks of the several towns, or a majority of them actually in office, shall from time to time be the *Inspectors* of such elections, preside at the same, conduct

and direct the same according to law, and be the returning officers thereof.

OATH.

At the time and place of opening such election, the said inspectors shall publicly administer to each other and severally take the following oath: "I do solemnly and sincerely swear and declare in the presence of Almighty God (or I do solemnly and sincerely affirm and declare) that I will in all things, well, faithfully, honestly and impartially, and according to the best of my knowledge and abilities, execute the office of inspector of this election, and that I will faithfully and impartially canvass and estimate the ballots taken at the same election, and certify a true and just statement of the same according to my best understanding, and that if I shall discover any of the other persons who shall attend with me for the purpose aforesaid, conducting himself or themselves partially, unduly or corruptly in the premises, that I will divulge or discover the same, to the end that the person so offending may be brought to justice."

DUTIES.

When and how to notify elections. When one of the inspectors of a town or ward in his county receives a notification in writing from the sheriff, of the number of senators to be elected in the district to which such county belongs, or that a governor and lieutenant-governor, or senator only, are to be chosen, such inspector shall immediately give notice thereof to the other inspectors of his town or ward, and the said inspectors or a majority of them, shall without delay convene together, and by writing under their hands, to be fixed up in at least five of the most public places of such town or ward, give *eight days* notice of the time and place or the times and places which to them shall appear most convenient for the electors within the same, at which such election for governor, lieutenant governor, senators, and members of assembly, or any of them shall be held.

To appoint and swear Clerks. In each town or ward, the inspectors shall appoint* two or more competent clerks of such election, each of whom shall keep a poll list of the same, under the direction of the Inspectors, and take the following oath, to

* Two or more clerks are to be appointed that their minutes may be compared together and errors more readily discovered and rectified.

be administered by the said inspectors, to wit: "I do solemnly and sincerely declare and swear, (or I do solemnly and sincerely affirm and declare) that I will faithfully, truly, honestly and impartially enter and keep the poll lists of this election, and in all things will faithfully, truly, honestly and impartially, according to the best of my knowledge and abilities, do, perform and fulfil my duty as clerk thereof."

Proclamation to be made. After the inspectors and clerks are sworn, the inspector shall cause proclamation to be three times made, as follows, viz: "Hear ye! Hear ye! Hear ye! The pole of this election is opened, and all manner of persons attending the same, are strictly charged and commanded, by the authority and in the name of the people of this state, to keep the peace thereof during their attendance at this election, upon pain of imprisonment;" which proclamation shall be repeated at every subsequent opening of the poll after an adjournment thereof, and proclamation of every such adjournment, and of the closing thereof, shall also in like manner be made: *Provided always*, That the proclamation by which the same shall be closed, shall be preceded three hours before, by a proclamation notifying that the same will be closed; and that the poll of every such election shall be opened in the day time only, between the rising and setting of the sun.

Poll-lists how to be kept separate. The poll-lists for governor, lieutenant-governor and senators, of such of them as shall be chosen at any such election, shall be kept distinct and *separate*, from those of members of assembly.

How to conduct election for governor, lieutenant-governor and senators. The mode of conducting every such election shall be as follows: Every lawful elector for governor, lieutenant governor and senators, shall openly deliver his *ballot* for them, or such of them as shall then be chosen, to one of the inspectors, who shall receive the same in the presence of the other inspectors, and they shall cause the name of such elector to be thereupon entered in the poll lists for governor, lieutenant governor and senators, by all the clerks, and shall cause the *ballot*, without suffering the same to be inspected, to be put into a *box*, to be provided for the purpose of receiving the ballots for governor, lieutenant-governor and senators, or such of them as are then to be chosen, with a sufficient *lock* thereto; and which box shall be locked, and the *key* thereof kept during the election by one of the inspectors attending such election, to be appointed for that purpose by the major part thereof; and a small *hole* shall be made in the *lid* or *cover* of the box, sufficient only to receive each ballot, and through which all the ballots shall be put into the box.

The ballot for governor, lieutenant-governor and senators. Such ballot shall be a paper ticket, containing the name of a person for governor, and the name of a person for lieutenant-governor and names of so many persons for senators, as shall then be chosen in that district wherein the elector shall reside, written or printed, and distinguishing who is voted for as governor or lieutenant-governor, and who for senators, and the said paper ticket shall be so folded or closed as to conceal the contents thereof.

How to conduct election for assembly. Every lawful elector for assembly, shall openly deliver his ballot for members of assembly, to one of the inspectors, who shall receive the same in the presence of the other inspectors, and thereupon cause the name of the elector to be written in the poll-lists for members of assembly, by all the clerks, and shall cause the ballot, without suffering the same to be inspected, to be put into a box to be provided for the purpose of receiving the ballots for members of assembly, with a sufficient lock thereto, which shall be locked, kept and disposed of, in the same manner as the box for receiving the ballots for governor, lieutenant-governor and senators abovementioned.

The ballot for assembly. Such ballot shall be a paper ticket, containing the names of as many persons for members of assembly, as are then to be chosen for the county wherein such elector shall then reside, or so many of them as such elector shall think proper to vote for, severally written or printed, on the same paper ticket, and the said paper ticket shall be so folded or closed as to conceal the contents thereof.

Adjournment. On every adjournment of the poll, all the clerks' poll-lists shall be carefully compared in the presence of the inspectors, and any mistakes in either of them shall be corrected according to the judgment of the major part of the inspectors; whereupon the boxes shall be opened, the poll-lists put into them respectively, and the boxes then locked with the poll-lists therein, and the keys delivered to such one of the inspectors as the majority of them shall appoint, and the seal or seals of one or more of the inspectors shall be put upon the said boxes, so as to cover the holes in the lids thereof—the boxes shall then be delivered to such other of the inspectors attending such election, as a majority of them shall direct, who shall carefully keep the same, and shall, without suffering the same to be opened, or the said seal or seals to be broken or removed, deliver the same boxes in at the election table at the next opening of the poll, in the presence of all the inspectors attending on the said election, when and where the said seals shall be broken and the boxes opened, and the poll-lists taken out, and the boxes a-

gain locked, in order to proceed in the said election, which course shall be observed and pursued until the poll be closed.

On challenge of a ballot for governor, lieutenant-governor and senators Whenever any person shall offer to give his ballot at any such election, for governor, lieutenant-governor and senators, or either of them, and either of the inspectors shall suspect, or any lawful elector of any such officer in such town or ward, shall challenge him to be unqualified for the purpose, the inspectors shall administer to him the following oath, to wit: "I do solemnly and sincerely swear and declare, in the presence of Almighty God, that I am a natural born or naturalized citizen of the state of New-York, (or of the United States) of the age of twenty-one years, according to the best of my knowledge and belief, and am a freeholder, possessed of a freehold in my own right, (or in the right of my wife) of the value of 250 dollars, within this state, over and above all debts charged thereon; and that I have not become such freeholder fraudulently, for the purpose of giving my vote at this election, nor upon any trust or understanding, express or implied, to re-convey such freehold during or after this election; and that I am an actual resident of the town of in the county of and have not been before polled in any part of this state at this election: *And further*, That I will true answers make to any interrogatories which shall be put to me by the inspectors of this election, touching the situation and boundaries of such freehold, from whom, and by what conveyance I derive title to the same."

On challenge of a ballot for assembly. Whenever any person shall offer to give his ballot, at any such election, for assembly, and either of the inspectors shall suspect, or any lawful elector of assembly in the same town or ward, shall challenge him to be unqualified for the purpose, the inspectors shall tender and administer the following oath: "I do solemnly and sincerely swear and declare, in the presence of Almighty God, that I am a natural born, or naturalized citizen of the state of the New-York, (or of the United States) of the age of 21 years, according to the best of my knowledge and belief, and that I am and have been for six months next and immediately preceding this election, a freeholder, and possessed of a freehold in my own right, (or in my wife's right) of the value of 50 dollars, in the county of or have for six months next and immediately preceding this election, rented a tenement of the yearly value of five dollars within the county of and have rated and actually paid taxes to this state, and that I am now an actual resident of the town of and that I have not been polled before in any part of this state at this election."

Any voter may in like manner be challenged as to his allegiance, and in such case the inspectors shall tender him the oath of allegiance. See Oath, title "County Clerk."

If any elector on being challenged, refuses, during such election, to take the said oaths, it is not lawful to receive his vote. And any inspector receiving a vote challenged as to allegiance, shall forfeit 12 dollars and fifty cents, to any person who will sue for the same.

Qualifications and privileges of electors. Every one who shall have been rated and actually paid highway taxes, by commutation or by labor done on the highways, shall be considered as having paid taxes according to this act.

When any black or mulatto shall offer his vote at any such election, he shall produce to the inspectors a certificate of his freedom, under the hand and seal of one of the clerks of the counties of this state, or under the hand of a clerk of any town within this state.

Every mortgagor while he continues in the occupation of the premises mortgaged, and every mortgagee of any real estate to him and his heirs, after he obtains possession of the mortgaged premises, and every person possessed of a freehold in right of his wife, shall be deemed a freeholder in the meaning of this act.

Whoever shall, by bribery, menace or other corrupt means or device whatsoever, either directly or indirectly attempt to influence any elector, in giving his vote or ballot, or deter him from giving the same at any such election, shall forfeit 1250 dollars; one half to the use of the person that will sue for the same, and the other half to the people; and such person being convicted, shall forever thereafter be utterly disqualified to hold any office of trust or profit in this state.

It is not lawful for any officer of justice to serve any civil process, between the day preceding such election, and the day subsequent to the closing of the poll thereof; nor for any officer or other person to call out or order any of the militia to appear or exercise on any day, during any such election, or within ten days previous thereto, except in case of invasion or insurrection, on pain of forfeiting 500 dollars.

Disorderly persons. If any person shall be guilty of any disorderly conduct at any such election, or during the time of the canvas thereof, or of using indirect, sinister or corrupt means to influence any elector in giving his ballot, the major part of the inspectors are authorised and required to commit the offender to the gaol of the county, there to remain for a space not exceeding 30 days, and it is made the duty of all sheriffs, constables, and gaolers, to aid and obey the inspectors therein.

How to canvass and certify election for Governor, Lieut. Governor and Senators. After finally closing the poll of election, it shall be the duty of the inspectors, to proceed without delay, publicly to open the boxes containing the said ballots, and first count the said ballots unopened; and if the number of ballots in any of the said boxes shall exceed the number of electors contained in the several poll-lists, the said inspectors shall draw out and destroy unopened, so many of the said ballots as shall amount to the excess; and such numbers agreeing or being so made to agree, they shall proceed to *canvass and estimate* the said ballots; and if two or more ballots are found folded or rolled up together, none of the ballots so folded or rolled shall be estimated; and they shall complete the said canvass and estimate on the day subsequent to the closing the poll, or sooner, and thereupon shall set down in writing the names of the several candidates voted for at any such election, either as Governor, Lt. Governor or Senators, with the number of votes in words at full length, given for any such candidate, and shall certify and subscribe their own proper names thereto, and by one of their number to be appointed for that purpose by a majority of them, shall within *eight days* thereafter, cause such statement or certificate to be delivered to the clerk of the county, and a like certificate, so subscribed, to the clerk of the town. [See titles, *County Clerk.* and *Town Clerk.*]

How to canvass and certify election for Assembly. On closing the poll of an election for assembly, the inspectors shall proceed without delay, to *canvass* and *estimate* the ballots given for every person as member of assembly: and after making such canvass and estimate, shall set down the names of every such candidate, with the number of votes given for each candidate, in words at full length; and after certifying and subscribing their proper names thereto, shall, within *twelve days* thereafter, cause such statement or certificate of such canvass or estimate, to be delivered to the clerk of the county, and a like certificate to the clerk of the town. [See titles *County Clerk* and *Town Clerk.*]

When to destroy the poll-lists and ballots. Immediately upon the said inspectors' making and subscribing such statement or certificate as aforesaid, they shall destroy all the poll lists and ballots made and taken at any such election.

When the officers elected enter on their offices. We subjoin, that the governor and lieutenant-governor so elected, having respectively taken their oaths of office, shall enter upon the execution of their offices on the *first day of July* next after their election; and the senators and members of assembly so elected, shall give their attendance, and take their respective seats in

senate and assembly, on the *first Monday of July* after their election, or the next meeting of the legislature thereafter.

Election for Representatives for Congress. The act, entitled, "an act for regulating the election of representatives for this state, in the house of representatives of the congress of the United States," passed April 2, 1813, enacts, "that the general elections for such representatives shall be on the *last Tuesday of April* and the two next succeeding days, in every second year; and that at every such election two persons, lawfully qualified, in each of the districts numbered, *the first, second, twelfth, fifteenth,* and *twenty-first,* and one person, so qualified, in each of the other districts, shall be chosen by the inhabitants of such district, qualified to vote for members of assembly of this state; and that all such elections shall be notified, held and conducted by the same inspectors, and in the same manner, and with the like powers as the elections for the members of assembly of this state; and the ballots to be taken at such election for such representatives, shall be canvassed and estimated, certified, returned and calculated, and the result thereof determined, in the same manner and by the same persons, as is provided with respect to the ballots taken for governor, lieutenant-governor and senators, by the act, entitled, "an act for regulating elections:" *Provided,* That the result thereof shall be determined, in case of the Governor's proclamation for holding any such election, after *twenty-eight,* and within *thirty-five* days, from the day so appointed for holding such election."

Remark. Before we conclude this chapter, it may not be amiss to state, that it is the special duty of the inspectors in making their returns of such elections, to set forth in their certificates thereof, the names of all the candidates precisely as voted for; and it is particularly the duty of the county clerks, to record the same accordingly; and in estimating and giving their certificates of the election for members of assembly, to include all the abbreviated or otherwise designated names of any such candidates. For it has long been a rule in the congress of the United States, and we believe, has latterly been sanctioned by the legislature of this state, in case of a contested election, to determine that person to be the lawful member, whom the people intended to vote for, by whatever name such person may be elected.

PRECEDENTS.

NO. I.

FORM OF NOTIFICATION OF ELECTION.

TO THE ELECTORS OF THE TOWN OF KINGSTON.

Notice is hereby given, That a Governor, Lieutenant-Governor, two Senators for the middle district, one Representative for Congress for the seventh congressional district of this state, and four members for Assembly for Ulster and Sullivan, are to be elected in this state at the next ensuing general election, on the last Tuesday in April instant; and that an election for that purpose will be held in this town, at the times and places following, to wit: at the house of J. M in Pinebush, on the said last Tuesday in April instant: at the house of W. S. by continuation, on Wednesday next following, and at the court-house, in the village of Kingston, by continuation, on Thursday next thereafter; and that the poll of the said election will be opened on each of the said several days, precisely at nine o'clock in the forenoon.

A. B. }
C. D. } Inspectors of Election
E. F. } for the town of Kingston.

Kingston, April 10th, 1816.

NO. II.

POLL-LIST of an election, for a Governor, and Lieutenant-Governor, for this state, and two Senators for the Middle District, held in and for the town of Kingston, in the county of Ulster, on the last Tuesday in April, 1816, and the two succeeding days, pursuant to the act for regulating elections, as follows, to wit:

(Here insert the names of the electors as polled.)

NO. III.

POLL-LIST of an election for a Representative for the Seventh Congressional District of this state, to represent the

same in the House of Representatives of the Congress of the United States, held in and for the town of Kingston, in the county of Ulster, on the last Tuesday in April, 1816, and the two succeeding days, pursuant to the act for regulating the election of representatives for this state in the house of representatives of the congress of the United States.

(Here insert as in No. 2.)

NO. IV.

POLL-LIST of an election for five members for Assembly, to represent the county of Dutchess in the house of Assembly of this state, held in and for the town of Rhinebeck, on the last Tuesday in April, 1816, and the two succeeding days, as follows, to wit:

(Here insert as in No. 2.)

NO. V.

BALLOTS.

1
Governor.
D. T.
Lieutenant-Governor.
J. T.
Senators.
W. R.
L. E.

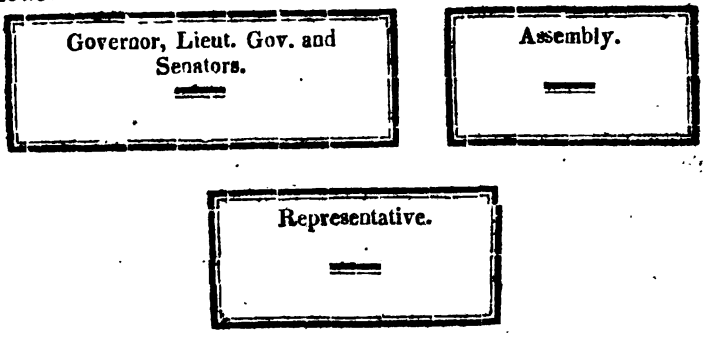
2
Assembly.
D. W.
G. M.

3
Representative.
S. B.

NO. VI.

BALLOT BOXES.

The Ballot Boxes are to be distinguished and marked as follows:



NO. VII.

INSPECTORS' CERTIFICATE ON ELECTION FOR GOVERNOR, LIEUTENANT-GOVERNOR AND SENATORS.

We the subscribers, Inspectors of Elections for the town of Kingston, in the county of Ulster, do hereby certify, that in pursuance of the act, entitled "an act for regulating elections," passed 29th March, 1813, we have carefully canvassed and truly estimated the ballots given and taken in the said town a the late general election, for governor and lieutenant-governor for this state, and two senators for the middle district, to represent the said state in the senate thereof, held on the last Tuesday in April, in the year one thousand eight hundred and fourteen, and the two succeeding days, and that the following are the names of the candidates voted for, designations of offices, and numbers of votes given for each of them respectively at the the said election, to wit:

FOR GOVERNOR.

D. T. four hundred votes.
J. P. three hundred and ten votes.

FOR LIEUTENANT-GOVERNOR.

J. T. four hundred votes.
O. E. four hundred and ten votes.

FOR SENATORS.

L. E. three hundred and six votes.
W. R. three hundred votes.
W. L. two hundred votes.
A. J. one hundred and fifty votes.

In testimony whereof we the said Inspectors have hereunto severally subscribed our proper names this day of 1814.

A. B.
C. D. } Inspectors.
E. F.

NO. VIII.

INSPECTORS' CERTIFICATE ON ELECTION FOR REPRESENTATIVE FOR CONGRESS.

We the subscribers, Inspectors of elections for the town of Kingston, in the county of Ulster, Do hereby certify, that in pursuance of the act, entitled "an act for regulating the election of representatives for this state in the house of representatives of the congress of the United States," passed April 2nd, 1813, we have carefully canvassed and truly estimated the ballots given and taken in the said town at the last general election in the Seventh Congressional District of this state, for one Representative to represent the said state in the house of representatives of the Congress of the United States, held on the last Tuesday in April, in the year one thousand eight hundred and and the two succeeding days, and that the following are the names of the candidates and the number of votes given for each of them respectively at the said election, to wit:

S. B. four hundred votes.
W. B. three hundred and twenty votes.

In testimony whereof, we the said Inspectors have hereunto severally subscribed our own proper names, this day of

A. B.
C. D. } Inspectors, &c.
E. F.

NO. IX.

INSPECTORS' CERTIFICATE ON ELECTION OF MEMBERS OF ASSEMBLY.

We the subscribers, Inspectors of elections for the town of Kingston, Do hereby certify, that in pursuance of the act, entitled "an act for regulating elections," passed the 29th March, 1813, we have carefully canvassed and truly estimated the ballots given and taken in the said town at the late general election for members of assembly for the counties of Ulster and Sullivan, to represent this state in the house of assembly thereof, held on the last Tuesday of April 1816, and the two succeeding days, and that the following are the names of the candidates and number of votes given for each of them respectively at the said election, to wit:

Dirck Westbrook, three hundred votes.
Aaron Adams, three hundred and five votes.
Green Miller, three hundred and twenty, &c.

In testimony whereof we the said Inspectors have hereunto respectively subscribed our proper names, this day of in the year of ——

A. D.
T. L. } Inspectors, &c.
K. F.

CHAP. IV.

THE COMMISSIONER OF EXCISE.

EXCISE is a tax levied upon commodities, and the commissioner thereof is a person whose duty it is made by law to collect such tax. Every commercial nation has its excise laws, and these vary according as it may be found essential to patronize political or domestic economy, or answer the purposes of government. When these laws are provided in a state as indispensable auxiliaries to the public exigencies, or as safeguards for the protection or augmentation of its mercantile concerns, or as salutory monitors to guard the public morals, they so far may be productive of the greatest advantages. But under the direction and management of tyrants and despots who do not hesitate to make, even the necessary articles of life or such as are commonly used by the people they govern, subject to an odious excise, the better to indulge their extravagant propensities, then these laws become the scourges of civilized society, and hence peculiarly obnoxious to a free people. Witness the stamp tax and tea excise, which produced the American revolution.

So far, however, as commodities may be liable to excise at a custom-house, it would not comport with the design of this work that we should inquire into. For it must be observed, that a custom-house is defined to be "a house where duties are received on imports and exports," and that it is always essentially located in some harbor, commodious for foreign commerce, and for that purpose authorised by law to be a port of entry. In the present chapter we shall confine ourselves to the inquiry into the office and duty of the commissioners of excise in the respective towns in this state, according to the existing statute on this subject.

OFFICE.

The act, entitled "an act to lay a duty on strong liquors, and for regulating Inns and Taverns," passed 7th April, 1801, pro-

mises, that the council of appointment shall, from time to time, appoint a commissioner in the city of New-York to collect the duty of excise from the several retailers of strong or spiritous liquors in the said city; and that the *Supervisor* of each town, and any *two Justices of the Peace* resident therein, or in case there shall not be two justices, or they shall be absent, then such neighboring justice or justices in the same county as the supervisor of such town shall notify and associate with him for that purpose, shall be the commissioners to collect the duty of excise in such town: *And further*, That the several commissioners of excise within this state, except in the cities of New York, Albany, Hudson and Schenectady, shall annually and immediately before they grant any license to any person to keep an inn or tavern, or sell or retail strong or spirituous liquors, take and subscribe the oath of office before one of the justices of the peace in the county in which they reside, and conduct therein according to law.

OATH AND SPECIAL DUTY.

"I Abraham Jackson, one of the commissioners of excise for the town of Rhinebeck, in the county of Dutchess, do solemnly swear in the presence of Almighty God, that I will not, on any account or pretence whatsoever, grant any license to any person within the said town of Rhinebeck, for the purpose of keeping an inn or tavern, except where it shall appear to me to be absolutely necessary for the benefit of travellers; and that I will in all things while acting as a commissioner of excise, do my duty according to the best of my judgment and ability, without fear, favor or partiality, agreeable to law."

Abraham Jackson, Supervisor and
Commissioner of Excise of Rhinebeck.

"I do certify that Abraham Jackson, supervisor and commissioner of excise for the town of Rhinebeck, in the county of Dutchess, on the first day of May, in the year one thousand eight hundred and fourteen, took and subscribed before me, James Dunn, one of the justices of the peace for the county of Dutchess, the within contained oath."

James Dunn.

Special Duty. It is the special duty of such commissioner, and of every commissioner of excise of the town, within *ten days* after taking such oath, to send or deliver the same to the clerk's office of the town for which he so acts as a commissioner of excise, to be filed among the papers in his office; and if any com-

missioner of excise shall presume to act as such, without having taken and subscribed an oath, in form aforesaid, or if any such commissioner shall neglect to return the same oath so subscribed and certified to the town clerk to be filed as aforesaid, within the said *ten days*, such commissioner for every such neglect or refusal shall forfeit the sum of *ten dollars*, to be sued for and recovered with full costs of suit, by any person who will prosecute for the same, before any justice of the peace of such county.

THE BOARD.

Annually to grant Licenses. The board of commissioners of excise in the several towns in this state, shall, annually by writing, under their respective hands and seals, and in the several cities aforesaid, annually in the manner directed by the respective charters, or by any statute prescribing such manner therein, grant to the several persons who shall reside in their respective cities or towns and apply for the same, a license to retail strong or spirituous liquors, *under five gallons*, which said respective licenses shall continue in force from the time of granting the same until the *first Tuesday of May* ensuing the date thereof, and no longer.

City License. No license shall be granted in any of the said cities to retail strong or spirituous liquors for the purpose of keeping an Inn or Tavern, unless it shall appear to the commissioners thereof, that an inn or tavern at the place at which such permit is applied for, is necessary for the accommodation of travellers, and that the person applying for such license is of good character, all of which shall be inserted in such license.

Town License. No license shall be granted in any town, unless *three* commissioners shall be present at the granting thereof, of which *three* the supervisor of the town shall always be one, nor until they or a majority of them so present have satisfactory evidence that the person who applies for such license is of good moral character, and of sufficient abilities to keep an inn or tavern, and that he has accommodations to entertain travellers and that an inn or tavern is absolutely necessary at the place where such person resides or proposes to keep such tavern, for the actual accommodation of travellers as aforesaid, all of which they or a majority of them are by the said act directed to put in writing by way of a *resolve* of the said board, and severally subscribe the same, and within *twenty days* thereafter shall return such *resolve* to the office of the town clerk of such town: *Provided*, That all licenses obtained, except the aforesaid board of commissioners are so actually present at the granting of the same, shall be considered as absolutely void.

The sum to be paid for each License. The commissioner of excise in the city of New-York shall determine the sum which each person, applying for a licence to retail strong liquors *under five gallons*, shall pay for the same, not being less than *five dollars*, nor more than *fifty dollars*, as a duty of excise, which sum shall be paid to him by the person applying, before the license shall be issued as aforesaid; and the commissioners of excise in the city of Hudson and in the several towns, shall determine the sum which each person, applying for a license, shall pay for the same, not being less than *five dollars*, nor more than *thirty dollars*, as a duty of excise, which together with the sum of seventy-five cents as a fee to the respective commissioners for granting such license, shall be paid to them by the person applying for such license, before the same be issued as aforesaid.

How and to whom to account. The said commissioners are required to keep an account of the persons to whom licenses shall be granted, and of the sums by them paid therefor, and to file the same with the clerk of the city or town on or before the first day of March in every year, and shall from time to time, without delay pay the monies so to be by them received as aforesaid, to the overseers of the poor of such city or town, to be applied to the relief of the poor thereof.

As the duties of the commissioners of excise, as far as they relate to the preservation of public morals, are materially blended with those of innkeepers and retailers of spirituous liquors, it is proper that we should here take a concise view of the duties of the latter.

INNKEEPERS AND RETAILERS.

Retailers of Spirituous Liquors to enter into a Recognizance. No person shall sell by retail any strong liquors to be drank in his or her house, out-house, yard or garden unless such person shall appear before a justice of the peace of the county in which he or she shall reside, or if in either of the said cities before the mayor, or in his sickness or absence the recorder thereof, and enter into a recognizance to the people of the state of New-York, in the sum of one hundred and twenty-five dollars, Conditioned, That such person *will not* during the time he shall keep an inn or tavern, *keep a disorderly inn or tavern, or suffer or permit any cock-fighting, gaming, or any playing with cards or dice, or keep any billiard-table, or other gaming table, or shuffle-board within the inn or tavern by him or her to be kept, or within any out-house, yard or garden belonging thereunto*; which recognizance shall be lodged by the person before whom the same shall be taken; and on

conviction of any offender against this act the general sessions shall suppress his license.

Penalty on certain Retailers. If any person shall sell by retail any strong or spirituous liquors, without having such license, or sell any such liquors to be drank in his or her house, out-house, yard or garden, without having entered into such recognisance as aforesaid, every person who shall be guilty of either of the offences aforesaid, shall for every offence forfeit the sum of twenty-five dollars: *Provided however*, That no person who shall be licensed to retail strong liquors, not to be drank in his or her house, but carried elsewhere, shall be obliged to enter into a recognizance as aforesaid: *And further*, That no person shall be subject to be prosecuted by virtue of this act for selling *metheglin, currant wine, cherry wine or cider*, to be made by such person, and which shall not be drank in his house, out-house, yard or garden.

Innkeeper's accommodations. Every innkeeper, except in the city of New-York, shall keep in his house at least two spare beds for guests, with good and sufficient sheeting and covering, and provide and keep good and sufficient stabling and provender and hay in winter, and hay or pasturage in summer, and grain for four horses or other cattle more than his own stock, for the accommodation of travellers, upon pain of forfeiting for every neglect, or default of having either of the said articles, the sum of five dollars

When a merchant may or may not be licensed as an Innkeeper. No person shall have a license to sell strong liquors to be drank in a store where merchants' goods are sold; unless such person shall also take at the same time a license to keep an inn, and the commissioners shall deem it necessary that an inn ought to be kept at such a place for the accommodation of travellers as in other cases, except in the city of New-York, and no strong liquors shall be sold by such person on any pretence, to be drank in the same room where such merchant's goods are sold.

No Innkeeper to sell strong liquor to servants or receive goods from them. If any innkeeper shall sell any strong liquor to any servant or apprentice without the consent of his master or mistress, he shall forfeit the price of such liquor and the sum of five dollars for every such offence, to be recovered with costs, by such master or mistress, and shall be incapable of receiving any other license for holding an inn for the space of three years from the time of such conviction. And if any innkeeper shall receive any goods in payment, for any such liquor, he shall, besides the payment of the penalty and forfeiture as aforesaid, within three days restore such property to the master or mistress, or forfeit and pay to such master and mistress double the value of the

same, to be recovered with costs, in any court having cognizance thereof.

Innkeeper not to trust, except to travellers, or take notes in writing for tavern debts. If any innkeeper shall trust any person, other than travellers, above the sum of one dollar and twenty-five cents, for any strong liquors or other tavern expences, he shall lose every such debt, and if he be cast in a suit thereupon, he shall pay double costs. And if he take a note or other security in writing for any sum above one dollar and twenty-five cents for any strong liquor drank in his house, every such note or writing shall be void.

Exception. Nothing in this act contained shall be construed to debar any innholder or tavern-keeper from taking or recovering any sum of money due to him from any person who may be a lodger in his house, or from travellers not residing in such city or town.

Innkeeper to put up a sign. Every innkeeper shall, within *thirty days* after obtaining his license, put up a proper sign on or adjacent to the front of his house, with his name thereon, and keep such sign up during the time he shall keep an inn, under the penalty of one dollar and twenty-five cents for every month's neglect thereof; and if any person, who shall not have a license as aforesaid, shall erect or keep up such sign, he shall forfeit the like penalty of one dollar and twenty-five cents for every week such sign shall be so kept up.

The act for suppressing immorality, passed March 5th, 1813, prohibits innkeepers from retailing strong liquors on Sunday.

POINTS ADJUDGED IN THE SUPREME COURT.

COMMISSIONERS OF EXCISE.

The supervisor may associate more than two justices with him as commissioners of excise, and the act of a majority present is valid. 1 Johns. Rep. 500.

If three of the commissioners, or a majority present, sign the license, it is sufficient, though the supervisor refuse; it is not indispensable that it should be signed by him. Ibid.

A license granted by two commissioners of excise, without the presence and consent of the supervisor, and when they are not assembled for the purpose of granting licences, is illegal and void; and such a license, though regular on the face of it, is no justification for the tavern-keeper, who is liable for the penalty. 2 Johns. Cases, 346

But a tavern-keeper who has a legal and competent license, is not liable for the penalty for retailing liquors after his license has expired, and before the time of the next meeting of the commissioners of excise, for the purpose of granting licences. Ibid.

In an action *qui tam*, on the 7th section of the act, for retailing liquors, &c. without a license, the plaintiff, though he states and proves several distinct offences, can only recover one penalty. 7 Johns. Rep. 134.

In an action for retailing liquors without a license, the defendant cannot justify under a parol license from the supervisor, to whom he paid the sum required. 11 Johns. Rep. 179.

PRECEDENTS.

TAVERN KEEPER'S LICENSE.

Town of Kingston, County of Ulster, ss. This is to certify, that the Commissioners of Excise for the town of Kingston, in the county of Ulster, have, on the application of Abraham Jackson, of the said town, granted, and do hereby grant unto him *A License* to keep an Inn or Tavern at his present house of residence, from the date hereof, until the *first Tuesday in May* next ensuing, according to the act, entitled "an act to lay a duty on strong liquors, and for regulating inn and taverns," passed April 7th, 1801. In testimony whereof, we the said Commissioners have hereunto set and affixed our respective hands and seals this second day of May, in the year one thousand eight hundred and fifteen.

A. B. Supervisor and Com'r.
C. G. Justice and Com. Resident.
E. L. Justice and Com. Associated.

RETAILER'S LICENSE, &c.

Town of Kingston, County of Ulster, ss. This is to certify, That the commissioners of excise for the town of Kingston, in the county of Ulster, have, on the application of John Stiles, of the said town, merchant, according to the act, entitled "an act to lay a duty on strong liquors, and for regulating inns and ta-

verns," passed April 7th, 1801, Licensed and permitted, and do hereby license and permit the said John Stiles, to sell by retail, any strong or spirituous liquors, *under five gallons*, (not to be drank however, in his house, out-house, yard or garden) from the date hereof, until the first Tuesday in May next. In testimony whereof, we the said Commissioners have hereunto set and affixed our respective hands and seals this second day of May, in the year one thousand eight hundred and fifteen.

A. B. Supervisor and Com.
C. G. Justice and Com. Resident.
E. L. Justice and Com. Associated.

COMMISSIONERS' RESOLVE TOUCHING TAVERN-KEEPERS' LICENSES.

At a board of the Commissioners of Excise for the town of Kingston, in the county of Ulster, convened at the house of Levi Jansen, innkeeper in the said town, on the second day of May, in the year one thousand eight hundred and fifteen.

Present, A. B. Town Supervisor and Commissioner.
C. G. Town Justice of the Peace and Com. Resident.
E. L. Justice of the Peace and Com. Associated from the town of ——

Abraham Jackson having made application to the said commissioners, now here convened, for a license to keep an inn or tavern at his present dwelling house and stand in Pine-Bush, in the said town, and the said commissioners having satisfactory evidence that the said Abraham Jackson is of good moral character, and of sufficient abilities to keep an inn or tavern, and that he has accommodations to entertain travellers—And the said commissioners being of opinion that an inn or tavern is absolutely necessary at the said house and stand for the actual accommodation of travellers: *Therefore*, the said commissioners have, in pursuance of the act, entitled "an act to lay a duty on strong liquors, and for regulating inns and taverns," passed 7th April, 1801. Resolved, and do hereby resolve, that a *License*, according to the application aforesaid, be granted to the said Abraham Jackson, from the date hereof until the first Tuesday in May next. In testimony whereof, we the said commissioners have respectively subscribed this Resolve the day and year aforesaid.

A. B.
C. G. } Commiss'rs of Excise for Kingston.
E. L.

RECOGNIZANCE.

Ulster County, ss. Be it remembered, that on the second day of May, in the year one thousand eight hundred and fifteen, Abraham Jackson, of the town of Kingston, in the county of Ulster, and state of New-York, personally appeared before me, A. M. a justice of the peace for the said county (or mayor or recorder) and acknowledged himself to be indebted to the people of the said state in the sum of one hundred and twenty-five dollars of lawful money of the said state, to be made and levied of his goods and chattles, lands and tenements, to the use of the said people, if default shall be made in the condition underwritten.

Whereas the abovenamed Abraham Jackson, on the day and year aforesaid, produced to me the said A. M. a license from the commissioners of excise of the town of Kingston, in the county aforesaid, whereby he appears to be licensed to keep an inn or tavern at his present dwelling-house and stand in Pine Bush in the said town, from the second day of May instant, until the first Tuesday in May next. Now, therefore, the condition of this recognizance is such, that if the said Abraham Jackson shall not during the time he shall keep an inn or tavern, keep a disorderly inn or tavern, or suffer or permit any *cock-fighting*, *gaming* or *playing with cards* or *dice*, or *keep any billiard table* or *other gaming table* or *shuffle-board*, within the inn or tavern by him to be kept, or within any out-house, yard or garden belonging thereto; and shall in all things conform himself according to the true intent and meaning of the act, entitled "an act to lay a duty on strong liquors, and for regulating inns and taverns," passed April 7th, 1801, then this recognizance shall be void, otherwise the same shall remain in full force and virtue.

Abraham Jackson.

Taken and acknowledged the day and year above written, before me,

J. M. Justice of the Peace of Ulster.

CHAP. V.

THE COLLECTOR OF TAXES.

EXIGENCY OF THE OFFICE.

THE office of collector of taxes is of great antiquity, and there is reason to believe, is coeval with the organization of civil societies. For we can have no idea that any civilized community ever existed for any length of time, without receiving occasional aid from public taxes, however beneficent might have been its laws, well regulated its police, or prosperous its people. As early as the days of the Evangelist Luke, we are told, that "there went out a decree from Cæsar Augustus that all the world should be taxed, and every one went into his own city for that purpose." It was from a sense of their wants and weakness, that mankind have exchanged the forlorn and helpless condition connected with a state of nature for the numerous advantages and conveniencies, incident to a state of sociality and civilization. And in this improved situation there is perhaps no occurrence more sensibly and universally experienced, than that in proportion as the community to which a citizen belongs, declines or prospers, so will his circumstances be depressed or ameliorated. Hence it is not only the duty, but the interest of every citizen, to afford all possible assistance to the constituted authorities of his country on every emergency. And it must always be remembered, that as taxes become essential in time of war to sustain an army for the general safety, so in peace they are indispensable for the purposes of alleviating individual necessities, or advancing public improvements and common benefits. If these taxes form such material ingredients in the policies of all human governments, it will readily be perceived, that certain persons must in all ages have been, and yet continue to be, selected in every administration, as collectors of the public taxes. We shall only add, that whatever powerful engines tax-laws may be under the control of despotic power to paralyze the efforts of the industrious subject, by causing a wanton seizure of his substance and

contraction of the sphere of his domestic comforts, yet in free America every citizen is consoled with the pleasing reflection, that no tax-law can be here enacted, unless the voice of the people, through their immediate representatives, first declares it to be necessary.

With this preliminary view of the subject before us, we shall proceed to detail the office and duties of the collector of taxes in this state.

COLLECTOR'S OFFICE.

Sureties. Every collector chosen or appointed in any town or ward, shall before he enters upon the duties of his office, and within eight days after he shall have received notice from the supervisor of such town of the amount of the tax-list, execute to such supervisor a bond with one or more sureties for the faithful execution of his office. See title Supervisor and Law N. Y. Duties and Towns, March 19, 1813.

Refusal of Office and Penalty. If any collector shall not give such security as is by law required, within the time for that purpose limited, then and in every such case, such neglect shall be deemed a refusal to serve in such office, and the city or town in which such officer was chosen may thereupon proceed to a new choice according to law. And if any collector shall proceed in the execution of his office before he shall have given such security, then and in every such case, every person so neglecting or refusing, or doing, shall forfeit to the people of this state the sum of sixty-two dollars and fifty cents, to be recovered by the attorney general for the use of the people. Ibid.

DUTIES.

His Payments. It is the duty of the collector out of the first monies he shall collect, to pay to the overseers of the poor such money as shall be raised for the maintenance of the poor of such town, and the residue of the money by him collected, to pay to the treasurer of the county, on or before the first day of February next thereafter; and if he shall not pay to the supervisor and overseers of the poor of his town the monies directed to be paid to him by his collection warrant, within the time therein mentioned, and produce to the county treasurer receipts for the same, from one or more of the said overseers and supervisor, or satisfactory evidence of such payments, within one week after the expiration of the time mentioned in such warrant, the same shall be deemed to be unpaid. and thereupon it becomes the duty of such treasurer to collect the same, together

with the other monies that may be due from such collector, according to law. See title Co Treasurer, and Law N. Y. "County Charges," April 2, 1813.

If there shall be no commissioners of common schools in his town at the time of his collections, it shall be the duty of the collector to pay the common school monies by him collected into the hands of the county treasurer, to be by him added to and distributed with the monies next thereafter to be received and distributed by him according to law.

Taxes not Collectable. "Every collector shall, within one week after the expiration of the time mentioned in his warrant for paying the amount of the tax to the county treasurer, settle his account of the same tax with the county treasurer; and in case any of the taxes mentioned in the assessment roll annexed to his warrant, or any part of them, shall remain unpaid, and he shall not have been able to levy the same, he shall deliver to the county treasurer an account of the taxes so remaining due; and if such collector shall make oath before the county treasurer, or in case of his absence, before a justice of the peace of such county, that the sums mentioned in such account remain unpaid, and that he has not been able upon diligent enquiry to discover any goods or chattels belonging to or in possession of either of the persons charged with or liable to pay the respective sums whereon he could levy the same, and that such account is a true transcript from the original assessment roll, then and in every such case the county treasurer shall credit the account of such collector with the amount thereof; and if the said collector shall at any time receive the tax on part of any lot, piece or parcel of land, charged with taxes in his assessment roll, he shall require of the person paying such tax, a particular specification of such part, and shall enter in his return of arrears to the county treasurer such specification, in order that the part on which the taxes remain unpaid may be clearly known." See title. Assessor, & Law N. Y. Ass'n't & collection of Taxes, April, 1813.

His Warrant. The warrant directs and requires the collector to collect from the several persons named in the assessment roll, the several sums mentioned in the last column thereof, or in the last column of each page thereof, if any shall consist of more than one page, opposite their respective names; and authorises him in case any of them shall neglect or refuse to pay such sum or sums, to levy the same by distress and sale of his or her goods and chattels, together with the costs and charges of such distress and sale, and directs him to pay such part of the money so collected as shall have been directed to be raised for the support of the poor, to the overseers of the poor, and such part of the money as shall have been directed to be raised to de-

pay any other expences of the town, to the supervisor of such town, and the residue to the treasurer of the county on or before the first day of February next, retaining in his hands out of the same for his services, five cents upon every dollar he shall collect or levy.

Distress and Sale. Although it is evident from our tax-laws, that the collector is authorized to proceed in a summary manner to collect by distress and sale (according to the tenor of his warrant) of the goods and chattels of any person neglecting or refusing to pay his tax, the amount of such tax, together with the costs of distress, yet those laws are altogether silent, so far as they have come under our observation, in respect to the mode in which the collector is authorized to conduct such distress and sale. So that he may perhaps be led to conceive himself to be authorized after one hour or less notice, and even partial notice, of such distress and sale, to sell for a very inferior price the most valuable chattels of some honest and industrious citizen, who though willing to pay his tax has hitherto been unable to procure the money, while at the same time he may have no objection that the amount should be raised out of his property at a fair valuation. It therefore, in our opinion, would comport with the liberal spirit of our legislature, that they should make competent provision for cases of this description. We find that on the sale of real property for taxes, the owner is allowed two years for the redemption of it. And is it consistent with that benign policy, that some rigid tax-gatherer should have power to seize the personal property of any citizen and dispose of the same, beyond all possibility of legal redemption, after perhaps only a few minutes notice? Certainly not.

POINTS ADJUDGED IN THE SUPREME COURT.

COLLECTOR OF TAXES.

Taxes mean a contribution in money, not labor or personal service. 6 Johns. Rep. 92.

In a suit, brought by a collector of taxes, to recover the tax of the defendant, the production of the assessment roll in which the defendant was rated, and the warrant to the plaintiff, as collector, are not sufficient evidence to support the action. 10 Johns. Rep. 404.

The plaintiff ought to shew, at least, a previous demand of the tax, and default of payment. Ibid.

But whether a collector of taxes can, even after a demand of the tax and default, bring an action for the tax. Quere. Ibid.

For other matters relating to the collector's office and duty, see title "Supervisor."

FORM OF OATH OF TAXES NOT COLLECTABLE.

I collector of the town of do solemnly swear, that the sums mentioned in the preceding account remain due and unpaid, and that I have not, upon diligent enquiry, been able to discover any goods or chattels belonging to or in the possession of either of the persons charged with or liable to pay the said respective sums, whereon I could levy the same, so help me God.

L. G. Collector.

Sworn this day of
before me, C. D. Treasurer.

CHAP. VI.

THE COMMISSIONER OF HIGHWAYS.

DEFINITION OF OFFICE AND ANALOGY TO THAT OF THE SURVEYOR OF HIGHWAYS IN ENGLAND.

The commissioner of highways is a town officer to whom it appertains to superintend the regulation and repair of highways.

It is the province of the surveyors of highways in England to exercise the powers and duties solely, which in this state are conjointly invested in the commissioners of highways and the overseers of highways, as appears from the following passage of Blackstone's Commentaries on the Laws of England. "Every parish is bound of common right to keep the high roads that go through it in good repair; unless by reason of the tenure of lands, or otherwise, this care is consigned to some particular person. From this burthen no man was exempt by our antient laws, whatever other immunities he might enjoy: This being part of the law of necessity, to which every man's estate was subject, *viz.*: *that to favor the approach of strangers, he should with all possible expedition construct and repair the necessary arches and bridges.* And indeed now, for the most part, the care of the roads only seems to be left to the parishes; that of bridges being in a great measure devolved upon the county at large. If the parish neglected these repairs, they might formerly, as they may still, be indicted for their neglect; but it was not then incumbent on any particular officer to call the parish together, and set them upon this work; for which reason, by the statute of Philip and Mary, surveyors of the highways were ordered to be chosen in every parish. Their office and duty consists in putting in execution a variety of statutes for the repairs of the highways; that is, of all ways leading from one town to another: by which it is enacted: 1. That they may remove all annoyances in the highways, or give notice to the owner to remove them, who is liable to penalties on noncompliance. 2. They are to call together all the inhabitants of the parish, six days every year, to labor in

repairing the highways; all persons keeping draughts, or occupying lands, being obliged to send a team for every draught and for every 50 pounds a year, which they keep or occupy; and all other persons to work or find a laborer. The work must be completed before harvest; as well for providing a good road for carrying in the corn, as also because all hands are then supposed to be employed in harvest work And every cartway must be eight feet wide at least; and may be increased by the quarter sessions to the breadth of four and twenty feet. 3. The surveyors may lay out their own money in purchasing materials for repairs, where there is not sufficient within the parish and shall be reimbursed by a rate, to be allowed at special sessions. 4. In case the personal labor of the parish be not sufficient, the surveyors with the consent of the quarter sessions, may levy a rate, not exceeding 6d in the pound, on the parish, in aid of the personal duty; for the due application of which they are to account on oath." And it is added: "As for turnpikes, which are now universally introduced in aid of such rates, and the law relating to them, these depend entirely on the particular powers granted in the several road acts, & therefore have nothing to do with this subject."

That the reader may have a more perfect idea of the objects embraced in the office and duty of the commissioners of highways, we shall lay before him the doctrine as explained by common law writers touching the nature and variety of the highways recognized by the common law of England.

HIGHWAYS IN ENGLAND.

There are three kinds of ways: 1. A foot way. 2. A foot and horse way, which is also a pack or draft way. 3. A foot, horse, and cart-way. 1 Inst. 56.

It seemeth that any one of the said ways, which is common to all the king's people, whether it leads directly to a market town, or from town to town, and does not terminate there, but is also a thorough fare to other towns, may properly be called a highway. 1 Haw. 201.

Every way from town to town may be properly called a highway, because it is common to all the king's subjects; and consequently that a nuisance therein is a common nuisance, and punishable by indictment, but the way to a parish church, or the common fields of a town, or to a private house, or perhaps to a village which terminates there, and is for the particular benefit of such parish, house or village only, may be called a private way, but not a highway, because it belongeth not to all the king's subjects, but only to particular persons, each of which, as it seems, may have an action on the case for a nuisance. Ibid.

In books of the best authority, a river common to all men is called an highway. Ibid.

A highway may be changed by the act of God; and therefore it hath been holden, that if a water which has been an antient highway, by degrees change its course, and goes over different ground from that whereon it used to run, yet the highway continues in the new channel, in the same manner as in the old.—Ibid.

The freehold of the highway is in him that hath the freehold of the soil but the free passage is for all the king's subjects. 2 Inst. 705.

Upon the trial of an action of trespass, a case was made; that the place where the supposed tresspass was committed, was formerly the property of the plaintiff, who had some years before built a street upon it that had ever since been used as a highway; that the defendant had lands contiguous, parted only by a ditch, the end whereof rested on the highway. And it was insisted for the defendant, that by the plaintiff's making it a street, it was a dedication of it to the public; and therefore however the defendant might be liable to an indictment for a nuisance, yet that the plaintiff could not sue him as for a trespass on his own private property. But the court decided:—It is certainly a dedication to the public, so far as the public have occasion for it, which is only for a right of passage; but it never was understood to be a transfer of the absolute property in the soil. So the plaintiff had judgment. Stra. 1004.

Having premised the above, we shall next enquire what provisions the legislature of this state have made concerning the regulation of highways and therein of the office and duty of the commissioners of Highways.

The act entitled, "an act to regulate highways" passed March 19, 1813, repeals all public acts relative to the highways in this state, except such acts as relate to the highways in the city and county of New-York, the city of Albany, and the counties of Suffolk, Queens, Kings and Richmond, comprehends, in respect of all other counties in this state, the provisions which our legislature have made touching highways, and details the substance of the following digest.

HIGHWAYS IN NEW-YORK.

All public roads to be laid out in the state by the commissioners of any town, shall not be less than four rods wide, and all private roads shall not be more than three rods wide: *Provided however*, that the commissioners of the different town within the counties of Westchester, Rockland, Dutchess, Orange, Ulster

and Sullivan, may lawfully lay out any roads not more than four, nor less than two rods wide.

If any public highway, already laid out, or hereafter to be laid out, shall not be opened and within six years after the passing of this act, or from the time of its being laid out, the same shall cease to be a public highway or road for any use, intent or purpose whatsoever.

All public highways hereafter laid out and allowed by any law of this state, and now in use within the counties subject to this act, and of which a record shall have been in the office of the clerk of the county or town, shall be taken and deemed as public highways, and continue such, unless altered in conformity to this act: *Provided always*, That where any roads have been used as public highways, for twenty years or more, next preceeding the twenty-first day of March, one thousand seven hundred and ninety-seven, the same shall be taken and deemed as public highways, although no record thereof has been made, unless they shall be altered in manner aforesaid; and that it shall be the duty of the commissioners to order the overseers of highways to open all roads to the width of two rods at least, which they shall judge to have been used as public highways for twenty years preceding the twenty-first day of March, one thousand seven hundred and ninety seven.

OFFICE OF COMMISSIONER OF HIGHWAYS.

It is incumbent on the commissioner of highways to give directions relative to the repairing of the roads and bridges of his town—to regulate the roads already laid out—and to alter such as a majority of the commissioners shall conceive inconvenient—to cause such of the roads as are not already described and recorded, to be ascertained, described and entered of record in the town clerk's office—to cause to be kept in repair the highways and bridges erected, or which may be erected over streams intersecting highways—to require the overseers of highways from time to time, and as often as they shall deem necessary, to warn the people assessed to work on the highways, to come and work thereon with such implements, carriages, cattle and sleds, as such commissioner or such town commissioners shall direct—and they shall have full power and lawful authority under the restrictions hereafter mentioned, to lay out, on actual survey, such new road in such town as they may deem necessary and proper—and to discontinue such old roads and highways as shall appear to them on the oath of twelve freeholders of the same town to have become useless and unnecessary.

OATH.

I do solemnly and sincerely promise and swear (or affirm) that I will in all things to the best of my knowledge and understanding, well and faithfully execute the trust reposed in me as a commissioner of highways of the town of in the county of without favor or partiality, and that I am a citizen of the United States, and that I am a freeholder and actual resident of the said town of in the said county of

See title town officers.

GENERAL DUTIES.

To divide a town into road districts. The commissioners or the major part of them, shall annually, at least ten days before the annual town meeting, if they shall judge the same necessary, by writing under their hands, to be lodged with the town clerk and by him to be entered in the town book, divide their town into as many road districts as they shall judge convenient, and to assign to each of the said road districts, such of the inhabitants to work on highways, as they shall think proper, having regard to the nearness of residence as much as possible.

First annual meeting to make assessments. The commissioners shall meet within eighteen days after they are chosen, at the place of town meeting, on such day as they shall agree upon, and as often afterwards as need shall be, and at such time and place as they shall think meet, and the said commissioners having received from the town clerk the lists subscribed by the overseers of the road districts containing the names of all inhabitants in such road district as are liable to work on the highways, they or a majority of them shall at their next meeting, or as soon as may be thereafter, affix to the names of each person mentioned in such lists respectively the number of days which such person shall be liable to work on the highways in the same year, to be determined by the commissioners in proportion to the estate and ability of each person; and the commissioners shall thereupon after causing the clerk of the town to make a copy of such list, and after they or a majority of them shall have subscribed the copies of such list, cause the same respectively to be delivered to the overseers of highways of the town, who returned the same, or their successors in office: *Provided*, That no person shall be assessed more than thirty days, nor less than one day, in one year: *And Provided*, That the whole number of days assessed in any town, shall be at least three times the number of the persons subject to work on the highways in such town.

And further, That not less than one half of the days so asses-

sed, shall be worked out in each road district before the first day of July in every year.

The commissioners are authorised to assess an equitable proportion of highway work on the farms or parts of farms of non-resident proprietors and in possession of any occupant whomsoever, and if after three days notice in writing subscribed by the overseers of such road district has been delivered to such occupant or possessor, or left at his or her dwelling house he shall refuse or neglect to work or commute for the said assessment, then it is lawful for any justice of the peace of the county on complaint of any such overseer, to issue his warrant under his hand and seal, directed to any constable of the town where such lands shall lie, commanding him to levy the fine prescribed by this act, on the goods and chattels of such delinquent, and the justice and constable shall be entitled to the same fees as are allowed by the ninth section of this act, and the said fine when collected shall be paid and applied in the manner thereby directed.

All freeholders and every free male inhabitant, being above the age of twenty-one years, shall be assessed to work on the public roadsand highways, ministers of the gospel and priests of every denomination excepted.

The commissioners are authorised to allow such persons as live on private roads, so much of their assessment on the highway as they may deem necessary to work such private road, or annex such private road to some of the highway districts.

May direct a scraper for each road district. It is lawful for the commissoners, whenever they think it necessary, to direct and empower any overseer of highways in their town, to procure a good and sufficient iron or steel shod Scraper, for the use of his road district; and in case such monies should be insufficient for the purpose, such deficiency shall, by the said overseers, be assessed upon the inhabitants of the said district, in the proportion they are respectively assessed to work on the said road; and if any one so assessed, shall neglect or refuse to pay such assessment, the same may be sued for and recovered by the said overseer, with costs of suit, before any justice of the peace of the same county.

To put up mile stones and guide posts. It is the duty of the commissioners, to cause mile boards or stones to be erected on the post roads and such other public county road in the town, as they may think proper, at the distance of one mile from each other, with such fair and legible inscriptions or directions as they may think proper; and if any person shall destroy injure or deface such mile boards or stones, he shall be liable to pay ten dollars for each such mile board or stone, to be recovered before a justice of the peace with costs, and paid to such commissioner

ers who shall with such money repair the same; and such person shall be deemed guilty of a misdemeanor, and punishable on indictment and conviction, by fine not to exceed fifty dollars, and imprisonment not to exceed three months.

It is also the duty of the commissioners, to cause guide-posts, with proper descriptions and devices, to be erected at the intersection of all the post-roads, and such by-roads as they may deem necessary, leading to or from any town, village or landing; and every person who shall injure or destroy the same, shall, besides being liable to the fine and imprisonment aforesaid, for every offence forfeit ten dollars, to be recovered by a commissioner or overseer of highways of the town, before any justice of the peace of the county, in the same manner as penalties for obstructing roads; a part of which shall be applied in repairing such injury, and the remainder be paid as penalties for obstructing roads.

Bridges. It is incumbent on the commissioners to cause the necessary bridges in their town to be erected or repaired, but if such town will be unreasonably burthened by erecting or repairing any such bridge, the board of supervisors are required to raise a sum of money from the whole county for the purpose, not however to exceed one thousand dollars; and if the commissioners are dissatisfied with the sum allowed by such board, they may appeal to the court of common pleas, whose order in the premises shall be observed by such board.

Second Annual Meeting to receive returns from overseers. The commissioners or any two of them, shall annually on the *second Tuesday* next preceding the time of holding the annual town meeting, meet together for the purpose of receiving the returns of the overseers of highways, of all persons assessed to work on the highways in their several road-districts of such town, of all those who have actually worked on the road, or highways. with the number of days they have so worked, of all those who have been fined, and the sums in which they have been fined, of all those who have commuted, of the manner in which the monies arising from fines and commutation have been expended, and having received all such unexpended monies they shall apply the same in making and improving the roads and bridges in said town; and if any such overseer shall neglect to render such account, or pay any balance which may be then payable to them, he shall forfeit *five dollars*, to be recovered by the commissioners or the survivor or survivors of them, in their or his name, by action of debt with costs and be applied in making and improving the roads and bridges in such town. And if it shall appear to the commissioners, that any such overseers has neglected to warn the people assessed to work on the highways, to come to

work with such implements, carriages and cattle as may be necessary, when required so to do by the commissioners or either of them, or to collect the monies arising from fines or commutation, or to perform any of the duties and services required by this act, or which may be enjoined on him by the commissioners or a majority of them, such overseer shall for every such neglect, forfeit the sum of *ten dollars*, to be recovered with costs by any one of the commissioners in his own name, before a justice of the peace, and be applied in manner as last aforesaid.

On vacancy of Overseers. If any vacancy of overseers shall happen, by death or otherwise, the commissioners of the town, shall appoint other or others in his or their stead, who shall have the same powers and be liable to the same duties, as overseers chosen by this act.

How and when to settle road disputes and fix road-districts with other towns or counties. When the commissioners of any town shall disagree with the commissioners of any other town in the same or in any other county, relative to laying out a new road, or altering an old one, which extends into both towns or counties, they shall *meet together* and determine the subject of disagreement

And whenever it shall become necessary to have a highway upon the line between towns, it shall be laid out by two or more of the commissioners of each of the said towns, so that such line shall be in the centre or middle thereof and they shall divide it into road districts, equalizing the labor and expense of opening and keeping such road in repair between the said respective towns, and cause the partition and allotment thereof to be recorded in the office of the town clerk in each of the respective towns.

When and how to lay out roads through improved lands. "It shall not be lawful for any commissioners of highways to lay out any road through *improved or cultivated land*, without the consent of the occupant or owner thereof, unless upon the application of twelve reputable freeholders of the town in which such road shall be laid out, certifying upon oath, that such road is necessary and proper; nor through any *orchard or garden*, without the consent of the owner or owners thereof, if such orchard be of the growth of four years at least, or such garden shall have been cultivated as such, four years at least, before such highway or road shall be laid out

"And if any road shall be laid out through enclosed or improved lands, the owner shall be paid such damages as he may sustain by reason thereof; which damages shall be determined and assessed by two justices of the peace, and by the oath of twelve reputable freeholders, not having an interest in the land

so to be laid out into a road or highway, or by three commissioners to be appointed by a judge of the court of common pleas of the county in which such land may be situated; and if the occupant shall elect to have his damages assessed by two justices of the peace and a jury, the said freeholders shall be summoned by virtue of a warrant to be issued by the said two justices to some constable of the town or county not interested or of kin to such owner.

And when any road shall be laid out at the request of twelve reputable freeholders of the town, as a common public highway, the whole of the said damages, together with the charges of the commissioners, justices and freeholders, and summoning the jury, shall be presented to the board of supervisors of the county, who shall cause the same to be raised, levied and collected in said town, in the same manner as other town charges are by law directed to be raised, levied and collected, and order the same to be paid to the commissioners of the said town, who shall pay the owner the sum assessed to him, and appropriate the residue to satisfy the costs."

How to lay out Private Roads. "Upon application to the commissioners of any town for a Private Road, they shall cause the overseers of highways of the district, to summon twelve freeholders of the town, to meet on a day certain, of which notice shall be given by the overseer to the owner or occupant, and being so met, they shall view the lands through which such road is applied for; and if they shall certify under oath that such road is necessary, the commissioners shall lay out the same, and cause a record thereof to be made in the town clerk's office, and shall cause the damage to be assessed in like manner as if the same was a public highway, which shall be paid by the applicant for such road; and such road when so laid out shall be for the use of such applicant or applicants, his or their heirs and assigns, but not to be converted to any other use or purpose than that of a road: *Provided always*, That the occupant or owner of the land through which such road shall be laid out, shall not be prevented making use thereof as a road, if he shall signify his intention of making use of the same, at the time when the jury or commissioners are to ascertain the damages sustained by laying out such road."

Discontinued Roads. The jurors or commissioners are authorised in making their assessment, to calculate the value to the owner, of a discontinued road, and assess the balance and no more to be paid for a new road through such owner's land; and, thereupon such owner may enclose the road so discontinued.

In all cases where a public or private road is laid out, and the constables are of kin, or in any manner interested, the justices of

the peace may issue their warrant to a constable, not interested, of any other town in the county, to summon 12 reputable freeholders, not interested, to determine and assess on oath the damages sustained by the owner.

A penalty of five dollars is imposed on every person who shall obstruct any road or ditch for draining water from the same; to be recovered before a justice of the peace and paid to the commissioners for improving roads and bridges in the town.

A penalty of fifty cents, for every day's neglect, will be forfeited by a person whose fences encroach on a highway, after the expiration of sixty days notice from the commissioners; to be recovered and applied as last aforesaid.

When encroachment on a highway is disputed. When a highway is supposed to be encroached upon, and it is denied by the occupant of the land, the commissioners shall apply to a justice of the peace of the county for a precept, directed to an overseer of highways of the same town, to summon 12 freeholders thereof, to meet on a day certain, of which day notice shall be given by the overseer to one of the commissioners and to the occupant, on which day the jury so summoned, after being duly sworn, shall enquire whether any encroachment hath been made, and by whom, and if they find that such encroachment hath been made, they shall certify the same and by whom, and the occupant shall remove his fences in 60 days, under the penalty last aforesaid and pay the costs of such enquiry, but if they shall find that no encroachment hath been made, they shall certify and ascertain the damages the occupant hath sustained by such suit, which together with costs of suit shall be paid by the commissioner or commissioners, out of any monies in his or their hands appropriated to the making and repairing highways: *Provided*, That no person shall be obliged to remove any fence, except between the first day of April and the first day of November in any year.

A penalty of fifty cents per day will be forfeited by every person from whose enclosed land any tree or trees shall fall or be fallen by his agent or servant into any highway, or river used as such, if after two days notice from any person whomsoever, he does not remove the same; to be recovered and applied in manner as penalties for obstructing roads. And if any tree or trees be cut and so fallen on the land of another without his order, the person so offending shall forfeit to the occupant the sum of *one dollar* for every tree so fallen, and the like sum for every day the same shall remain therein, to be recovered as aforesaid with costs.

Swing Gates. No swinging or other gates, shall be allowed on a public highway, except on lands liable to be so overflowed

with water as to remove the fences thereon; and in such cases the whole charge of erecting and keeping the same in repair, shall be borne by all the occupants benefited thereby in due proportion, and may be levied in manner as fines for neglecting to work on the highway; and the commissioners shall file an account in the town clerk's office of all such gates: and if any person shall open any such gate, and shall not immediately after having passed the same, close it, or shall wilfully and unnecessarily ride over any of the grounds adjoining such road on which such gates shall be permitted, to the damage of the occupant or occupants thereof, each offender shall forfeit for every such offence, the sum of one dollar, to be recovered by any one of the commissioners of the same town, in manner as fines for neglecting to work on the highways: *Provided*, That such penalty shall not be deemed a satisfaction for such damage, but the occupant will yet be entitled to a private action of damages.

Appeal against Commissioners to Judges. When a person shall conceive himself aggrieved by the commissioners, either in laying out, altering, or discontinuing any road, or refusing so to do, it shall be lawful for such person within *forty days* thereafter to *appeal* to any three of the judges of the court of common pleas for the county in which such road is situated, whose duty it shall be to convene as soon as may be convenient, and decide such appeal, and their decision, or that of any two of them, shall be conclusive in the premises; so that such road shall not be taken up or altered, but by order of the same judges if they continue in commission, or such of them as do continue in commission, joined with such other judge or judges as will make three; and any person may, with the approbation of the commissioners, call upon the same judges to review the same, and decide upon his or her petition, he or she paying the judges their lawful fees.

In case the commissioners have laid a highway through enclosed or improved lands, the owner may in 30 days thereafter, or after the same on appeal has been confirmed by the judges, elect the manner in which he will have his damages assessed, and if he elect to have his damages assessed by commissioners to be appointed by a judge of the court of common pleas, it shall be the duty of such owner to give notice to the supervisor of the town, of the time of meeting of such commissioners to make such assessment, and any assessment made without such notice, shall be void.

When and how to open a new Highway. After a highway has been lawfully laid through enclosed land, the commissioners of highways may direct the same to be opened and worked, after giving the owner or occupant sixty days notice to remove his

fences: *Provided*, That the determination of the said commissione s in the premises shall not have been appealed from, and if it has, then the sixty days notice shall be given after the decision of such appeal.

When and to whom to account The commissioners of highways, shall render to the supervisor, town clerk and justices of peace of the town, or a majority of them, at their annual meeting for auditing the accounts of the overseers of the poor of such town, an account of the labor assessed and performed—of the sums by them received for fines and commutation—and of all monies received under this act—and the improvements which have been made on the roads and bridges of the town during the year immediately preceding such report—together with an account of the state of such roads and bridges—with a statement of the improvements necessary to be made thereon—and an estimate of the probable expense of making such improvements, beyond what the labor to be assessed in that year will accomplish: And the said supervisor, town clerk and justices shall examine the said account at their meeting as aforesaid, and make out a certificate concerning the substance thereof, and deliver the same certificate to the clerk of such town, to be by him kept on file for the inspection of any of the inhabitants of said town: *And further*, the said commissioners shall, under their hands, deliver to the supervisor of such town a like statement of the improvements necessary to be made on the roads and bridges aforesaid, together with the probable expence thereof as aforesaid, which supervisor shall lay the same before the board of supervisors at their next meeting

All monies that have been paid to any collector or other town officer for repairing highways and bridges, must be paid to such commissioners of the town; to be applied to the several objects for which the same were raised and collected.

COMPENSATION.

A commissioner of highways shall be allowed the sum of one dollar per day, for every day he shall be employed in executing the duties enjoined on him by this act, and his accounts shall be audited and paid as other town officers are paid.

DUTIES OF TRAVELLERS ON PUBLIC HIGHWAYS.

We shall here only add on the subject of this act, that it is thereby made the duty of persons meeting each other on any turnpike road, or public highway in this state, travelling with carriages, sleighs, waggons or carts, seasonably to turn, drive and

convey the same or any of them to the right of the centre of the road, so as to pass each other without interference or interruption, under the penalty of five dollars for every neglect or offence, to be recovered by the party aggrieved in an action of debt, in any court having cognizance thereof, with costs of suit. *And further* that by an act relative to turnpike companies, passed March 13, 1807, it is provided, "That nothing in the said act shall be construed to entitle the said corporation to receive toll at any gate, of or from any person passing to or from public worship, or any funeral, to or from a grist mill for the grinding of grain for his family's use, or to or from a blacksmith's shop to which he usually resorts, or from any person residing within one mile of the said gate, or from any person or persons who are entitled to vote, when going to or returning from town meeting or election, for the purpose of giving a vote, or from any person going for a physician or mid-wife or returning, or from a juror or witness going to or returning from court, having been legally summoned or subpœnaed, or from any troops in the service of this state or of the United States, or from any person going to or returning from any training, where by the laws of this state they are required to attend."

POINTS ADJUDGED IN THE SUPREME COURT.

COMMISSIONERS OF HIGHWAYS.

The grant, or laying out of a highway, gives only a right of way to the public, but the fee. or right of soil, remains in the original owner, and an action of trespass will lie for any exclusive appropriation of the soil 2 Johns. Rep 357

A road used as a public highway for twenty years next preceding the 21st March, 1787, (sess. 24 c. 186 318) becomes a a public highway, though not recorded; and it does not cease to be a public highway, though some part of the way has been appropriated and built upon, if the passage continues open. 7 Johns. Rep. 106.

That a road has been used as a public highway for 12 years, is evidence that it was opened by authority and is to be deemed a public highway, within the cases contemplated by the first section of the act for regulating highways (Sess. 24. c. 186). 2 Johns. Rep. 424.

A road laid out previously to the passing of this act, but not conformably to the law then existing, and afterwards ascertained and recorded by the commissioners of highways, according

to the provisions of the act, becomes a public highway, and is a justification in an action of trespass for passing over it. Ibid.

An alternative mandamus had been directed to a town clerk, commanding him to record the survey of a road, or shew cause, &c. the clerk returned among other things, that he did not record the survey, because the commissioners had not taken the oath of office, and filed a certificate of the oath with the clerk, according to the act; it was held, that the return was insufficient, and a peremptory mandamus was awarded. 7 Johns. Rep 549.

The penalty for obstructing highways, given by the 19th section of the act, relates only to obstructions of highways or public roads, and not of a private road. 9 Johns. Rep. 349.

To bring a person in default for not obeying the order of the commissioners of highways, and render him liable for the penalties for an encroachment on the highway, it is necessary that the commissioners should meet, deliberate and decide on the alledged encroachment, and give notice to the party to remove his fence in sixty days, which notice ought to state precisely the breadth of the road originally entered, the extent of the encroachment, and the place or places where, so that the party may know to obey the order for removing his fence. 8 Johns. Rep. 359.

An action to recover a penalty for encroaching on the highway, must be brought in the name of the person making the complaint, and be prosecuted according to the twenty-five dollar act, and not in a summary way. 3 Caines Rep. 259.

Public Rivers. It seems that the Hudson, even above tide water, is a public river Ibid. 307.

If a river, not a public highway, has been used for more than twenty-six years by the public, for the purpose of rafting down boards and timber, a public right is thereby created, and an action will lie against the owner of a mill-dam, for so obstructing the navigation as to injure the raft of the plaintiff in passing over. 10 Johns. Rep. 236.

PRECEDENTS.

DIVISION OF ROAD-DISTRICTS.

We the subscribers, commissioners of highways of the town of Kingston in the county of Ulster, hereby certify, that in pursuance of the act, entitled, "an act to regulate highways," pas-

ned March 19th, 1816, we have divided the said town into the following road-districts, to wit: The road leading from the village of Kingston to Twaalfskill, to be No 1: The road leading from the said village to Kingston landing, to be No. 2: The road leading from John Kendals to Swart's Ferry, No. 3: The road leading from the said village to Joseph Davis's in Flatbush, No. 4: The road from said village to De Myer's Ford, No. 5; And the road leading from the said village to Hurly, No 6.—In witness whereof we have hereunto set our hands this 20th day of February, 1816.

A. B.
F. G. } Commissioners, &c.
C. D.

FORM OF ASSESSMENT LIST.

We the subscribers, commissioners of highways of the town of Kingston in the county of Ulster, in pursuance of the act entitled, "an act to regulate highways," passed March 19th, 1813, have assessed, and do hereby assess the following persons to work the number of days, in district No. 1, affixed to their respective names, to wit:

	Days.
A. L.	20
C. F.	12
M. O.	5
K. M &c. &c.	2

Given under our hands this 10th day of March 1816.

A. M.
C. D. } Commissioners.
K. O.

ORDER TO WORK.

County of town of , to wit: To Overseer of road-district No. 1, in the town of in the county of You are hereby commanded and required to cause the several persons whose names are hereunto annexed to work on the highway in your district the number of days affixed to their respective names, or commute for the same: the one half to be so worked, or commuted for, before the first day of July next: And thereof you are to make due returns to the commissioners of highways of the said town on the second Tuesday next preced-

ing the time of holding the annual town meeting of the said town pursuant to the act entitled, "an act to regulate highways," passed March 19, 1813.

A. L. }
G. F. } Commissioners
K. O. } of Highways.

Dated, 1816.

FORM OF RECORD OF A ROAD LAID OUT IN THE DISCRETION OF THE COMMISSIONERS.

We the subscribers, commissioners of highways of the town of Kingston in the county of Ulster, deeming it necessary and proper, have caused actual survey to be made of the premises hereafter particularly described, and have accordingly laid out the same as and for a publi highway, in pursuance of the act entitled, "an act to regulate highways," passed March 19th 1813: which said premises are in and by the said survey described as follows, to wit: Beginning (take in survey as made) And we the said commissioners do hereby authorise the town-clerk of the said town to make a record hereof according to law. In witness whereof we have hereunto set our hands this day of 1816.

A. B. }
G. K. } Commissioners, &c.
L. D. }

RECORD ON APPLICATION BY JURY FOR A PUBLIC OR PRIVATE ROAD.

We the subscribers, commissioners of highways of the town of Kingston in the county of Ulster, have upon the application of A. B. C. D. E F. &c. &c. twelve respectable freeholders of the said town, for a road through the premises hereafter described, caused actual survey to be made of the same premises, and have accordingly laid out the same as and for a public highway (or private road as the case may be) in pursuance of the act, &c. (as before.)

RECORD ON APPLICATION BY AN INDIVIDUAL FOR A PRIVATE ROAD.

We the subscribers, commissioners of highways of the town of Kingston in the county of Ulster, having upon the application of James Jackson for a private road in the said town, caused John Stiles, overseer of highways district No 1, to summon twelve freeholders of the said town to meet at the premises hereafter described, situated in the said district No. 1, on the 10th day of April instant, at ten o'clock in the forenoon; and it appearing to us the said commissioners that due notice of the said application had been given by the said John Stiles, overseer as aforesaid, to Richard Roe occupant of the said premises; and we the said commissioners, together with the parties and reputable freeholders aforesaid, being then and there so met, viewed the lands through which such road was applied for; and the freeholders aforesaid, to wit: A M. A. G. A. F. &c. &c. having certified under oath that a road according to the said application is necessary. Thereupon we the said commissioners, in pursuance of the act entitled, an act to regulate highways, passed March 19. 1813, caused actual survey to be made of the said premises, which are described as follows, to wit: Beginning (take in survey): And we the said commissioners have accordingly laid out the same as and for a private road, for the use of the said James Jackson, his heirs and assigns: not however to be converted to any other use or purpose than that of a road; and we do authorise the town clerk of the said town to enter the same of record according to law

In witness whereof we have hereunto set our hands this 10th day of April 1816.

A. M.
F. J.
G. L. } Commissioners, &c.

CHAP. VII.

THE OVERSEER OF HIGHWAYS.

OFFICE.

The office of overseer of highways, according to the law of this state, may be defined to consist in the personal exercise of powers and duties subservient to repairing the highways in his town & road district, in obedience to the orders of the commissioners of highways. Although the overseer in the general acts in a capacity subordinate to the commissioner, yet it will be seen that he is in some instances invested by statute with similar powers, so far as the same are called into exercise within his district only; for it must be remembered, that the office and duty of the commissioner extends throughout his whole town, while that of the overseer is limited to his district.

It is expressly enjoined on the overseer, that he shall repair and keep in order the highways in the district for which he shall be elected; to warn all persons assessed to work on the highways in his district, to come and work when required so to do by the commissioners, or any of them, to collect all fines and commutation money; and to execute all such orders of the commissioners of the town, as shall be given in conformity to law: And if any overseer shall be employed more days in executing the several duties enjoined on him by the act than he is assessed to work on the highway, he shall be paid for the excess at the rate of one dollar per day, and be allowed to retain the same out of the monies which may come into his hands for fines in conformity to the act, but shall not be permitted to commute for the days he is assessed. And he is to take special care that not less than one half of the days assessed in his road-district shall be worked out before the first day of July in every year.

OATH.

I do solemnly and sincerely promise and swear (or affirm) that I will in all things to the best of my knowledge and a-

bility, well, faithfully and impartially, execute and perform the trust reposed in me as an overseer of highways in the town of in the county of

DUTIES.

How and when to make lists of names of, &c. in his road district. It is the duty of the overseer of highways, to deliver to the clerk of his town within sixteen days after the day of election, a list containing the names of all the inhabitants in his road-district who are by law made liable to work on the highways, to the intent that such clerk shall deliver such list to the commissioners of highways to enable them to make out their assessments. And if the name of any person shall be left out of such list, the same with that of such person as shall move into such town, shall from time to time be added to such list, and the persons be assessed by the commissioners accordingly.

To assess deficiency for a scraper. If after the commissioners of highways have empowered an overseer to procure a good and sufficient iron or steel shod scraper for the use of his road-district according to law, the monies arising from commutations and fines within such district, should be insufficient for the purpose, such deficiency shall by such overseer be assessed upon the inhabitants of such district, in the proportion they are respectively assessed to work on the said road; and if any one so assessed, shall neglect or refuse to pay such assessment, the same may be sued for and recovered by the said overseer, with costs of suit, before a justice of the peace of the same county.

When authorized to make a re-assessment. When it shall happen in any county, that a greater quantity of work is required to keep in repair the roads than has been rated on the inhabitants of any of the road-districts in a town by the commissioners at their first annual meeting, then and in such case it shall be lawful for any overseer of any such district, and he is required by law, to make out another assessment in the same proportion as near as may be, not to exceed one third of the number of days assessed before in the same year.

How to allow for a Team. If an overseer shall require any team, cart, waggon or plough, with a pair of horses or oxen, and a man to manage the same, from any person assessed on the road in his district, and having the same, and who shall not commute for the days he may be assessed, the person furnishing the same, when warned so to do by such overseer, shall be entitled to a credit of three days work for one man, and the fine for neglect or refusal shall be proportionable, that is to say, three times the fine to be imposed for neglect of one person for one day.

Rate of Commutation. Every person assessed on the highway, other than an overseer, shall work the whole number of days he shall be so assessed, or commute for the same at and after the rate of sixty two and a half cents for each day, which money shall be paid to the overseer of the district in which the person paying the same shall reside, to be by the said overseer applied and expended in the improvement of the roads and bridges in the same district.

To clear road from loose stones and erect monuments. It is the duty of the overseer, once in every month, after he is elected, from the first day of April until the first day of December, to cause all loose stones lying on the beaten tract of the road within his district, to be removed, and cause the monuments erected or to be erected, as the boundary of highways, to be kept up and renewed, so that the extent of such roads may be publicly known.

Swing-Gates. It is his duty to keep in good repair all such swinging or other gates on the highway in his district, as the commissioners have, according to law, authorized to be erected, at the proper costs and charges, however, of the occupant of the land for whose benefit the same were erected.

His duty in respect to the negligent and idle It shall be the duty of the overseer, to give at least 24 hours notice to all persons assessed to work on the highway in his district, of the time and place when and where they are to appear for that purpose; and if any person so assessed and duly notified as aforesaid, shall neglect or refuse to appear in person or by an able bodied man as a substitute, or to bring with him such implements, carriages or cattle as required, or shall remain idle or not work faithfully, or hinder others from working, or neglect or refuse to pay the commutation money in lieu of such attendance, such offender shall for every such offence forfeit the sum of one dollar: And it shall be the duty of such overseer, and he is by law required, within 6 days thereafter, in every case in which he shall deem the excuse for such neglect or refusal insufficient, to make complaint thereof in writing under his hand to one of the justices of the peace of the town, or if there be no justice in such town, to a next one of an adjoining town, and the justice to whom such complaint is made shall forthwith issue a warrant, under his hand and seal, directed to the constable of such town, commanding him to levy such fine on the goods and chattels of such offender, for which warrant such justice shall be entitled to receive twenty five cents, and the constable the like fees as by the twenty-five dollar act, and shall forthwith pay the same fines to the justice who issued the said warrant, who is by law required to pay the same to the overseer who entered the complaint,

to be by him expended in repairing the roads and bridges in his town: *Provided*, That no such warrant shall be issued until the party so offending shall have been duly summoned* forthwith to appear before the said justice to shew cause why the said fine should not be imposed, and provided that the whole costs shall not exceed the sum of three dollars.

To account of the Commissioners at their second annual Meeting. It is incumbent on the overseer annually on the second Tuesday next preceding the annual town meeting in his town, to render an account in writing to the commissioners, according to law. See title "Commissioner of Highways," second annual meeting.

Penalty. If an overseer shall neglect or refuse to warn the people assessed to work on the highway, to come to work with such implements, carriages and cattle as may be necessary, when required so to by the commissioners or either of them, or to collect the monies that may arise from fines and commutation, or to perform any of the duties and services required by law, or which may be enjoined on him by the commissioners of his town, or a majority of them, he shall forfeit for every such neglect or refusal the sum of ten dollars, to be recovered by any one of the commissioners of the same town, in his own name, before any justice of the peace in the same county with costs of suit.

INDIVIDUAL LIABILITIES.

Every person assessed to work on the highways and who shall be warned to work, and shall appear in person, or by an able bodied man, as a substitute, shall actually work eight hours in each day, and shall be liable to be fined in the sum of twelve and a half cents for every hour such person or substitute shall be in default, to be recovered and expended as the penalty for refusing or neglecting to work when warned. No excuse for refusal or neglect, on any occasion, shall exempt the person excused from working the whole number of days he may be assessed, or paying the commutation in lieu of it during the year for which he shall be assessed: *Provided*, That no such person shall be required to work on any highway, other than in the district in which such person resides. Law N. Y. Highways, 1813.

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* The supreme court have decided that the justice is not bound to give notice of the complaint or to summon the delinquent. See. "points adjudged," &c. hereafter. But it must be remembered that these points were adjudged under the former Highway act, and that by the above proviso a justice now has judicial cognizance in the premises, and must in the first instance issue a summons therein.

POINTS ADJUDGED IN THE SUPREME COURT.

OVERSEER OF HIGHWAYS.

The proceedings, on a complaint in writing by an overseer, against a person who had been assessed, but neglected to work on the highway, are summary. 3 Johns. 474.

The overseer is sole judge of the delinquency of the party, and the justice in issuing his warrant, acts ministerially, and is not bound to give the party notice of the complaint, or to summon him to appear, and shew cause against the charge. Ibid.

So, the justice issuing the warrant, and the constable executing it being merely ministerial officers, and having no discretion, are not responsible to the injured party. 9 Johns. Rep. 229.

But his remedy is either by an action against the overseer, or by removing the proceedings, by certiorari into the supreme court, where they may be quashed. Ibid.

Whether a female, though a freeholder, is liable to be assessed to work on the public highway. Quere. Ibid.

An overseer of the highways is not liable, in a private action for any error of judgment in the execution of his trust. 10 Johns. Rep. 470.

He is only responsible for any neglect or refusal, under the 11th section of the act, which subjects him in such case to a penalty. Ibid.

Perhaps his proceedings may be reviewed on certiorari, and set aside, if not well founded. Ibid.

An overseer of highways can only incur one penalty, for neglecting or refusing to serve. 11 Johns. Rep. 432.

For other matters, see title, "The Commissioner of Highways."

PRECEDENTS.

OVERSEER'S COMPLAINT FOR NEGLECT TO WORK ON THE HIGHWAYS.

County of Ulster. Town of Kingston, to wit: I, L. O. of the town of Kingston in the county of Ulster, do hereby make complaint of A. B. of the said town: For that the said A. B. being assessed to work on the highway in Road district No. 3,

whereof I the said L. O. am overseer, I the said L. O. accordingly on the day of instant, gave him at least twenty-four hours notice, to appear with a hoe at eight o'clock in the morning on the day of instant at the house of near the said highway, to work on the same, and that the said A. B. neglected to appear in person or by an able bodied man as a substitute, and refuses to commute for the said neglect, in disobedience of the act, entitled "an act to regulate highways," passed March 19, 1813. Given under my hand this day of 1816.

L. O. Overseer of Highways.

WARRANT OF A JUSTICE OF THE PEACE ON THE ABOVE.

Ulster County, ss. To any Constable of the town of Kingston in the county of Ulster. Whereas complaint in writing has been made to me R. T. one of the justices of the peace of the said county by L. O. of the said town, against A. B. of the said town, setting forth, that the said A. B. being assessed to work on the highway in road district No. 3, whereof he the said L. O. is overseer, and that he the said overseer on the day of instant, gave him at least twenty-four hours notice to appear with a hoe, at eight o'clock in the morning on the day of instant at the house of near the said highway, to work on the same, and that the said A. B. neglected to appear in person or by an able bodied man as a substitute, and refuses to commute for the said neglect, in disobedience of the act, entitled, "an act to regulate highways," passed March 19, 1813: These are therefore, in the name of the people of the state of New-York, to command you to levy the sum of one dollar (being the fine imposed by the act aforesaid in case of such refusal and neglect to work or commute for one day) together with twenty-five cents for this warrant, on the goods and chattels of the said A. B. and that you forthwith have that money before me, to be disposed of as the law directs. Hereof fail not at your peril. Given under my hand and seal, this day of 1816.

R. T. Justice of the peace. (L. S.)

Fine	$1 00
Warrant	0 25
Constable's fees	
	$

OVERSEER'S ACCOUNT TO COMMISSIONERS.

ACCOUNT OF ROAD-DISTRICT NO. 3, FOR 1816.

County of Ulster. Town of Kingston, to wit: I, A. B. overseer of road-district No 3, do hereby, in obedience to the act of the legislature in such case provided, Account as follows, that is to say: That the following persons were assessed to work the number of days affixed to their respective names for the year 1816, in the said district No. 3, to wit:

	Days.
A. L.	10
B. F.	6
L. K.	5
P. O.	3
G. L.	2
Total	26

That the said A. L. and B. F. actually worked the whole number of days affixed to their respective names, making the total number of days worked, 16:

That the said L. K. and P. O respectively commuted for the whole number of days they were severally assessed, and paid the same, making the whole commutation money, $5

That the said G L. was fined for the said two days neglect, and paid the same accordingly, amounting to $2

Total paid, $7

That the sum of six dollars, part of the said commutation and fine, was expended by me in repairing a bridge on the highway in the said district; and

That the sum of one dollar, the residue of the said commutation and fine, is herewith returned. Given under my hand, this 25th day of February, 1816.

A. B. Overseer of Highways.

To the Commissioners of Highways of the town of Kingston.

CHAP. VIII.

THE OVERSEER OF THE POOR.

ORIGIN OF THE OFFICE.

WE come next, in the order of arrangement of our proposed subject, to consider the office and duty of Overseer of the Poor. When reflecting on the many calamities to which mankind are liable, and which often the greatest prudence and circumspection cannot prevent: that he who is rich to-day, may be poor to-morrow, and above all that it is now already eighteen hundred years since that blessed gospel has been preached which breathes throughout a spirit of christian charity and benevolence, one would suppose that an office like that we are about to consider, which contemplates the best dispositions of the human heart, must have originated with the dawn of civilization. Yet we find, that not even in the common law of Great Britain was any provision made for the relief of the poor, and that until the time of Henry VIII. the poor of that nation subsisted entirely upon private bounty, and the charity of well disposed christians. Until then the monasteries were, in particular, their principal resource, which, we are told, supported and fed a numerous, and often, very idle poor who depended upon what was daily distributed in alms at the gates of the religious houses. But upon the dissolution of these, says Blackstone, "the inconvenience of encouraging the poor in habits of indolence and beggary, was quickly felt throughout the kingdom," and in the reign of Henry the eighth, provision was made by statute for the poor and impotent. These poor were principally of two sorts: *sick and impotent*, and therefore unable to work; *idle and sturdy*, and therefore able, but not willing to exercise any honest employment. To provide in some measure for both these, in and about the metropolis, his son, Edward VI. founded three royal hospitals: Christ's and St. Thomas's for the relief of the impotent through infancy or sickness; and Bridewell for the punishment and employment of the vigorous and idle. But these were far from being sufficient for the care of the poor throughout the kingdom;

and therefore in the reign of Queen Elizabeth, overseers of the poor were appointed by statute in every parish.

Such was the origin of the office of overseer of the poor in England, from whence, it is presumed, that this country hath derived its elements

It will readily be perceived, that the immense crowded population, controlled in all the relations of life by lords and nabobs, in that comparatively small island, must require more numerous and various regulations for the relief of the poor, than in free America, identified in the possession of a vast and fertile continent.

OFFICE OF OVERSEER OF THE POOR IN THIS STATE.

The design and utility of this office is, however, the same here as in the mother country. We have before seen, that two overseers of the poor are annually to be chosen in each town. It is their province to superintend the relief of the poor of their town: to make prudent use of the means which the town has provided for that purpose: to see that their town be not unnecessarily burthened with the support of either foreign or domestic poor, but yet to extend relief to all such poor, pursuant to law; and to render an account of the administration of their office accordingly, before the term for which they were elected shall have expired.

OATH.

I do solemnly and sincerely promise and swear (or affirm) that I will in all things to the best of my knowledge understanding and ability, well and faithfully execute and perform the trust reposed in me as an overseer of the poor of the town of in the county of and that I am a citizen of the United States, and that I am a freeholder and actual resident in the said town of in the county of .

ORDINARY POWERS AND DUTIES OF THE OVERSEERS OF THE POOR.

A correct knowledge of the ordinary powers and duties of the overseers of the poor is only to be obtained from two principal sources, to wit: the act, entitled, "an act for the relief and settlement of the poor," passed April 8, 1813, and the adjudications of the supreme court predicated on that act. To promote the object of our present enquiry we shall first take a digested view of the former.

How and when to relieve the Poor of their own town. When any poor person belonging to any town in this state, shall apply for relief to any overseer of the poor of such town, the said overseer shall make application to a justice of the peace of the county, and the said justice and overseer shall enquire in the state and circumstances of the person so applying, and if it shall thereupon appear that such person is in such indigent circumstances as to require relief, then the said justice shall give an order in writing to the said overseer, to make such allowance weekly or otherwise, as in their discretion the necessities of such poor person shall require; and the overseers of the poor shall make no other or further allowance to such poor person than what by the said order shall be directed, and the said order shall be a sufficient voucher for the payment of so much money by the said overseers, and shall be allowed in adjusting their accounts.

How and when to relieve poor having no settlement in the state. If any poor person not having gained a settlement in any town in this state, shall apply for relief as aforesaid, the said overseer shall proceed in manner above directed, and if the overseer and justice shall find that such poor person is not able to maintain himself, and that he is so sick or otherwise debilitated, that it would be improper to remove him immediately, or when it shall be found impossible to make any order of removal, the said justice shall give an order in writing to the said overseer for the support of such poor person, in like manner as if such poor person belonged to such town, and the said order shall be a voucher as aforesaid, for the payment of so much money by the said overseer.

Accounts. It is made the special duty of the overseers of the poor to keep the accounts of money expended as above directed (for town and foreign poor) separate and distinct from other expenditures; and the said accounts adjusted and allowed as aforesaid, shall be considered, and by this act are declared to be a public and necessary county charge, and shall be levied, collected and paid, as other county charges are.

And further, the overseers of the poor of each town, shall procure at the public charge, a book wherein shall be registered the names of all poor persons applying for relief and being by law ordered to be relieved, the day and year when they were first admitted to have relief, the weekly or other sum or sums of money allowed by the order for their relief, and the cause of such necessity; And no person shall be entered in the poor books, or receive relief from the overseers of the poor, or any of them, without such order; and in case any overseer shall enter in the poor books and relieve any poor person without such order, he shall forfeit and loose all such money and goods paid and distri-

buted to such poor person, nor shall any allowance be made to him for the same in passing his account. And the said overseers of the poor are by law required to enter in the said poor-books all monies received, laid out and disbursed by them for the use of the poor, and also all matters which shall be transacted by them relating to their said office: And the overseers of the poor for the cities of Albany and Hudson, shall yearly lay such books of account before the common council of the said cities, at such times as the said common councils shall direct; and the overseers of the poor of every town shall yearly, on the last Tuesday next preceding the annual town meeting in such town, lay their said books of account before the town-clerk and supervisor of such town and such justice or justices of the peace resident in such town, or the major part of them, for their examination, who shall examine and audit the same, and make report thereof to the freeholders and inhabitants of such town, at their next annual town-meeting, that such further provision for the maintenance and support of the poor may be made as may be found necessary.

Their duty to poor lawfully removed in their town. If any poor person be lawfully removed, from one city or town to another, the overseers of the poor of the city or town to which such person shall be removed, are by law required to receive such person, and if they or any of them shall refuse or neglect so to do, the overseer so refusing or neglecting shall, if thereof convicted by the oath of two witnesses, forfeit and pay for each offence the sum of twenty-five dollars, to the use of the poor of the city or town from which such person was so removed; to be recovered with costs of suit in any court having cognizance thereof, by the overseers of the poor of the city or town from which such person was removed. *Provided always,* That no person nor any child belonging to such person shall gain a settlement in the city or town to which he or they shall be so removed, but his or their settlement shall remain as before such removal.

What shall be deemed a legal settlement. The act premises, that every city and town shall support and maintain their own poor and then declares, that every person who shall have come to inhabit in any city or town and actually rented and occupied a tenement, of the yearly value of thirty dollars or upwards, for two years, and actually paid such rent, or shall for himself or on his own account have executed any public annual office or charge in such city or town during one year, or who shall have been charged with and paid his or her share towards the public taxes of such city or town, for the space of two years; and every person who shall have been bound an apprentice or servant by indenture, or by any deed, contract or writing not indented, and

shall in consequence of such binding have served a term not less than two years in such city or town, shall be deemed to have obtained a legal settlement in such city or town, and that all mariners, coming into this state and having no settlement in this state, or in any other of the United States of America, and every other healthy able bodied person, coming directly from some foreign port or place into this state, shall be deemed to be legally settled in the city or town in which he or she have first resided for the space of one year. *Provided*, That the assessment and performance of labor on any highway in any city or town, shall not be considered as a tax within the meaning of this act.

No person shall be deemed to gain a legal settlement in any town by purchase of any estate or interest in the same, whereof the consideration shall not amount to seventy-five dollars *bona fide* paid, for any longer or further time than such person shall inhabit in such estate and shall thereafter be liable to be removed to the town where such person was last legally settled before the said purchase and inhabitancy therein.

If any person, other than those under the title last aforesaid named, come in any town to reside shall, within forty days thereafter, deliver a notice in writing to any two of the overseers of the poor of such town, of the house or place of abode, and the number and names of his family, if he have any, it shall be the duty of the overseers of the poor to register such notice within forty-eight hours after the receipt thereof, in the town book for accounts of the poor; and in case the said overseers shall not in twelve months after such notice, cause such person and family, if he have any, to be removed out of such town in manner hereinafter mentioned, then and in such case the person so giving notice, shall be deemed to be legally settled in such town: And if any overseer of the poor shall refuse or neglect to register such notice in writing, in such time and manner as aforesaid, he shall for every such refusal or neglect, forfeit the sum of five dollars to the use of the party aggrieved, to be recovered with costs of suit in any court having cognizance thereof.

How and when the overseers may cause strangers to be examined. If any overseer of the poor shall have reason to believe that any stranger who shall have come to reside in the town of such overseer, and who shall not have obtained a legal settlement therein, is likely to come chargeable to such town, such overseer shall apply to any two justices of the peace of the county, and inform them thereof, who shall issue their warrant to any constable of such town, commanding him to bring such stranger before them, at such time and place as they shall in their said warrant appoint, and they shall examine such stranger and any other person they

may think necessary upon oath, relating to his abilities and last place of legal settlement; and if upon such examination, the said justices find such stranger likely to become a charge to such town, they shall order and direct such stranger by a certain day to remove to the place of his former settlement, and on neglect or refusal to comply with the said order, the said justices shall issue a warrant under their hands and seals, directed to any constable of such town, who is by law required to execute the same, thereby commanding him to convey or transport such stranger to the first town in the adjoining county, or if in the same county, to the town where the pauper was last legally settled, through which he, or she, had been suffered to wander unapprehended, and so from constable to constable, or in such other manner, by the nearest and most convenient route as the said justices shall think fit to direct to the place of legal settlement of such stranger, if the same be within this state; or in case it shall appear that the said pauper first came into this state through the city of New-York, and it shall not appear that the said pauper has acquired a settlement in this state, then, and in such case, it shall be lawful for the said justices to direct by the said warrant that the said pauper be transmitted from constable to constable, or otherwise, to the city of New-York.

When and how any Inhabitant must notify Overseers of a Stranger. If any inhabitant of this state shall receive or entertain in his dwelling-house, out-house or family, for the space of fifteen days, any person who hath not gained a settlement in some city or town within this state, and within the time aforesaid, give notice in writing to one of the overseers of the poor of such city or town, of the name, quality, condition and circumstances of the person so entertained, according to the best knowledge of such inhabitant, every such inhabitant shall, for every such offence, forfeit the sum of five dollars, to be recovered with costs of suit, before any court having cognizance thereof, by any person who shall sue for the same; the one half of which forfeiture to be paid to the overseers of the poor of such town, and the other half to to the person who shall sue for the same. *And further.* If the person so entertained as aforesaid, shall have remained in any town longer than forty days, then it shall be lawful for any two justices of the peace of the county, to cause such of the inhabitants of such town who have so entertained such stranger during the term of 15 days, without giving information thereof as aforesaid, to be brought before them, and such inhabitants shall enter into a bond to the overseers of the poor of such town and their successors, in the sum of 250 dollars, conditioned that such stranger shall not become a charge to such town; and in case any of the said persons who shall have entertained

such stranger as aforesaid, being in the opinion of such justices of sufficient ability, shall refuse to become bound as aforesaid, it shall be lawful for the said justices, by warrant under their hands and seals, directed to any constable of such town, to cause such person to be committed to the common gaol of such county, there to remain until such person shall become bound as aforesaid; but if such person shall not, in the opinion of such justices, be of sufficient ability to become bound as aforesaid, or if the said justices shall not think fit to take such bond, then they shall cause such stranger to be conveyed from constable to constable, in manner aforesaid, until he shall be transported to the place of his or her last settlement, if within this state.

Duty of Overseers on Division of their town. In case of the division of a town, the overseers of the poor, together with the supervisors of the several towns erected by such division, shall, without delay, divide and apportion the money appropriated for the support of the poor and the poor belonging to such town so divided, in proportion to the last tax list; and the poor so apportioned, shall be deemed to belong to the town to which they may be thus apportioned; and in case any poor person who shall have been an inhabitant of any town so divided and legally settled therein, shall return into either of the said towns, such poor person shall be sustained by the town, including the part so divided, in which such poor person was last legally settled or had resided.

Of Certificate Poor and herein of the duty of Overseers. If any person shall remove from one town to another, there to reside, and shall at the same time procure and deliver to the overseers of the poor of the town where such person shall so come to reside, or any one of them, a certificate under the hands and seals of the overseers of the poor, or any two of them, of such person's last legal settlement, attested by two or more credible witnesses, thereby owning the person mentioned in such certificate to be an inhabitant legally settled in the town mentioned in such certificate, and having caused such certificate to be either acknowledged by the overseers of the poor giving the same, or to be duly proved by the witnesses who attested the execution thereof, or one of them, before any justice of the peace of the county from whence any such certificate shall come and shall be approved and subscribed by such justice, then it shall be lawful for every such person, with his family, if any, upon the delivery of such certificate as aforesaid, to remain in such town to which such person shall remove as aforesaid, and to follow any employment within the same; and the overseers of the poor shall deliver every such certificate to the town clerk of the town in which any such person shall come to reside as aforesaid, who

is required by law to file and record the same; and the same shall be evidence in all courts without further proof. And whenever any such person shall become chargeable to such town, it shall be lawful for two justices of the peace of the county into which such person was received by virtue of such certificate to remove him with his family and children, though born in such town, and servants and apprentices, not having otherwise acquired a legal settlement there, to the town from which such certificate was brought as aforesaid, and the overseers of the poor of such town are by law required to receive and provide for such person and family. *Further*, no such certificate poor shall be deemed by any act to have gained a legal settlement by virtue thereof, unless he purchase in such town of his removal, a freehold of the value of 75 dollars or upwards, or have rented and occupied a tenement of the yearly value of 30 dollars or upwards, for two whole years, or shall have executed a public annual office or charge in such town for one whole year as aforesaid. *Lastly*, when any person or his family residing in any city or town, or sent thither by certificate, and becoming chargeable, shall be removed back to the city or town to which such person shall belong, the overseers of the poor shall be reimbursed such reasonable charges as he or they may have been put unto, in maintaining and removing such poor person, by the overseers of the city or town to which such person shall have been removed, and the said charges having been first ascertained and allowed by two or more of the justices of the peace of the county from which such removal shall be made, the same shall, in case of refusal of payment, be levied by distress and sale of the goods and chattels of the overseers of the poor of the city or town to which such certificated persons shall be removed as aforesaid, by warrant under the hands and seals of any two justices of the peace of the city or county where such overseers shall reside, directed to some constable of such town, who shall return the overplus, if any, after deducting all lawful costs and charges of such sale.

How to provide for Poor of another town too sick or lame to be removed. If any poor person shall remove out of a town where he is legally settled into any other town, and be taken sick or lame, so that he cannot be conveniently removed back to the place of his last legal settlement, then the overseers of the poor of the town into which such person shall come, or one of them, shall give notice in writing to the overseers of the poor of the town from which such person shall have come, of the name, condition and circumstances of such poor person, and request them or one of them to take care of, relieve and maintain such sick or lame person, during his illness, and also provide for his funeral, if he should die there; and if any such overseer, having notice

aforesaid shall neglect or refuse so to do, then it shall be lawful for any two justices of the peace, where such poor person had his last legal place of settlement, upon complaint made to them, to cause all such sums of money as shall be necessarily expended in the maintenance of such poor person in his sickness or lameness, or his funeral, to be levied by distress and sale of the goods and chattels of such overseer so neglecting or refusing to take care of and provide for such poor person, after notice as aforesaid, by warrant under the hands and seals of such justices, to be directed to and levied by a constable in form aforesaid, and the money so recovered to be paid to the overseers of the poor, or one of them, of the town where such person shall be sick, lame, or die, as aforesaid.

Of Appeals to the Sessions, and herein of the duty of Overseers of the Poor. Every person who shall think himself aggrieved by any judgment or order of any justice or justices of the peace, or by warrant of removal of any poor person, may appeal to the next general sessions of the peace, to be holden in and for such city, or in and for the county in which such city or town shall be, where such judgment or order shall be made, or from which such person shall be removed as aforesaid, who are by law authorised to hear and determine such appeals, and to do justice therein according to the merits of the respective cases. *Provided* that no justice of the peace who shall reside in any city or town where any dispute shall happen, except in the city and county of New-York, shall sit in court upon such appeal.

In the city and county of New-York, the justices in general session, shall, upon request, state the case specially and at large, that every person who shall think himself aggrieved by their determination on such appeal, may have a remedy thereupon to the supreme court.

No appeal from any judgment or order whatsoever of any justice or justices of the peace, or from any order of removal of any poor person from one city or town to another, shall be proceeded upon in any court of general sessions, unless reasonable notice be given by the overseers of the poor of the city or town, or person making such appeal, unto the overseers of the poor, or one of them, of such city or town as shall be affected by such judgment or order, or from which such poor person shall be removed, the reasonableness of which notice to be determined by the justices of such session to which the appeal is made; and if it shall appear to them that reasonable notice was not given, then they shall adjourn such appeal to their next session, and then finally hear and determine the same: And if they shall determine in favor of the appellant, that such poor person was unduly removed, then they shall at the same session, award to

such appellant so much money, besides his costs and charges, as shall appear to the said justices to have been reasonably paid and expended by the overseers of the poor of the city or town on whose behalf such appeal was made, for or towards the relief of such poor person, between the time of such undue removal, and the determination of such appeal. *And further*, upon every such appeal or notice thereof, though the party do not afterwards prosecute the same, the sessions shall award to the party in whose favor the same shall be determined, or to whom such notice was given, reasonable costs and charges, to be paid by the overseers of the town, or person against whom such appeal shall be determined, or who gave notice of the same as aforesaid, and did not prosecute the same. *And further*, If in any of the cases aforesaid, the person ordered to pay such monies, costs and charges, shall reside out of the jurisdiction of such sessions, it shall be lawful for the overseers of the poor, to whom such monies were directed to be paid, to sue for and recover the same of the person against whom such award was made, with costs of suit, in an action for monies had and received to the plaintiff's use, in any court having cognizance thereof, in which action a true copy of the award of the sessions, signed by the clerk, and sealed with the seal of the same court, when produced, shall be sufficient evidence for the recovery of such monies so awarded.

How and when to sue certain Relatives of a Pauper for his support. The father and grand father, mother and grand mother,* being of sufficient ability, of any poor, blind, lame, or decrepid person whatsoever, not being able to maintain himself, and becoming chargeable to any city or town, and the children and grand children, being of sufficient ability, of every poor, old, blind, lame, or impotent person, not being able to maintain himself, and becoming chargeable as aforesaid, shall respectively, at their own charge and expence, relieve and maintain every such poor person, in such manner as the justices of the peace of the city or county where such sufficient person shall dwell, at the general sessions of the peace, shall order and direct, on pain of forfeiting and paying one dollar and twenty-five cents for each person so ordered to be relieved, for every week such order shall not be obeyed; to be sued for and recovered with costs of suit, by the overseers of the poor of the city or town to

* By an act to amend the act concerning apprentices and servants, passed April 5, 1816, the grand father or grand mother of any poor child or children, are authorised to bind him, her or them, to be apprentices or servants, according to their degree and ability, when they shall see convenient, though the father or mother of such child or children should be alive.

which such poor person shall be chargeable, for the use of the poor of such city or town, in manner herein before directed, with respect to costs and charges upon an appeal.

When to seize the estate of a runaway for the support of his children. It shall be lawful for the overseers of the poor of any city or town, where any father or husband shall run away, or absent himself from his wife or children, or where any widow shall run away, or absent herself from her child or children, and leave any of them a charge to such city or town, to apply to any two justices of the peace of the city or county where any estate real or personal, of any such father, husband or widow, or any part thereof may be, and by warrant under the hands and seals of the said justices, to take and seize the goods and chattels, and to let out and receive the annual rents and profits of the lands and tenements of such father, husband or mother, so absconding as aforesaid, for and towards the maintaining, bringing up and providing for such wife, child, or children, so left as aforesaid; and as soon as the said seizure shall be confirmed by the sessions, it shall be lawful for the said overseers, to sell and dispose of so much of the said goods and chattels, at public vendue, to the highest bidder, and to receive the rents and profits, or so much thereof as shall be ordered by the said sessions, and apply to the money arising thereof towards the maintenance of such poor family, or person, so left as aforesaid: *And further*, That the said overseers shall be accountable to the said sessions, for all such monies as shall arise from such sale, and from the rents of such lands and tenements.

The overseers of the poor of any city or town, may by and with the consent of the common council of such city, or of two justices of the peace of the county in which such town shall be, contract with the governors of the New-York hospital, in the city of New York for the maintenance and care of any lunatic, legally settled in such city or town: *Provided*, That the settlement of such lunatic, so removed to the said hospital, shall remain the same as before his or her removal; and that it shall not be lawful for the overseers of the poor of any city or town, to remove to the said hospital ideots or other poor persons who are not lunatic or insane.

Overseers may loan out poor funds. The overseers are authorised and directed by law, to loan out, on lawful interest, the money that now hath or hereafter shall come into their hands, as overseers of the poor, over and above the sum which the overseers, supervisor and town-clerk, for the time being, or a majority of them shall deem necessary for the support of the poor of such town, during the time such overseers shall continue in office, to any person or persons who are inhabitants of the

said town, as may apply and offer good and sufficient security for the payment of the same, which security shall be approved of by the supervisor and town-clerk; and the obligations so taken for securing the payment of the said money loaned, shall be drawn payable to them or their successors in office, and at the time or on the day next succeeding the day on which their then office of overseers of the poor will expire; and on settling their accounts with the persons who are by law appointed to audit the same, the said obligations so taken, and then remaining unpaid, shall be audited and allowed as so much money in their hands, to be paid over to their successors in office, and by them delivered over to their successors accordingly. And the said overseers who shall receive the said obligations and their successors in office shall have full power and authority by law to sue for and recover the monies so secured by said obligations, and all other obligations heretofore taken by the overseers of the poor, with the interest then due on the same, in any court having cognizance thereof, to the amount of the sum due in their own names, and that without any assignment or order, or power of attorney thereon. Or if the said then overseers of the poor, with the approbation of the supervisor or town clerk, shall think it safe and expedient, they may re-loan the said money due on such obligations together with the interest, to the borrower, and take a new obligation for the amount, payable with interest as is before directed.

Power to sue their Predecessors. It shall and may be lawful for the overseers of the poor of each city and town, to recover against their predecessors in office, and each of them, their executors or administrators, all such sums of money as shall appear upon such audit as hereafter mentioned, to be due from them respectively, to such city or town, in an action for money had and received to the use of such town, with costs of suit in any court having cognizance thereof, or to have actions of account against any former overseer of the poor of such city or town, his executors or administrators, and no such action shall be abated or discontinued by death or expiration of office of any such plaintiffs, but shall be continued and prosecuted to effect by the survivor or survivors of them and their successors in office, and such suit shall always be brought by and prosecuted in the name of the overseers of the poor of such city or town for the time being.

How authorised to erect Poor Houses. It is lawful for the overseers of the poor of any town and two or more justices of the peace of the county, with the consent of the major part of the freeholders and inhabitants, to be signified at the annual town meeting, to be ascertained, assessed and levied as afore-

said, at the proper charge of such town, to build, purchase, or hire some fit or convenient dwelling house or houses in such town, for the lodging and accommodation of the poor thereof, and also to purchase necessary materials for setting such poor persons to work, and there to maintain every such poor person, and to take the benefit of the labor and services of such poor person, and to appoint such keepers thereof, from time to time, as they shall think proper; and in case such poor refuse to be so maintained, they shall be put out of the poor book, and not entitled to any relief from the overseers of the poor of that town. So, two or more towns, may in like manner lawfully unite to erect a poor house or houses under the same regulations.

Overseers annually to account. The overseers of the poor of each city and town in this state, shall annually, within 15 days after the termination of their respective offices, exhibit to the succeeding overseers of the poor of such city or town, a just and true account of all the monies by them respectively received and expended for the use of the poor, and in what manner, together with the earnings of the poor persons by them employed; which accounts the said overseers, together with the supervisor of such city or town, and justices of the peace residing in such city or town, or the major part of them, shall, as soon as conveniently may be, examine and audit: And the said overseers so going out of office, shall respectively on auditing such account, pay all the balance which shall appear to be in their hands, to their successors in office, and shall at the time of exhibiting their accounts, deliver to their said successors, all books of accounts, registers and other papers relating to the poor: And if any such overseer shall refuse or neglect to exhibit such account, and to pay to his successors in office such monies as shall remain in his hands as aforesaid, or to deliver up all such books of accounts, registers and other papers as aforesaid, he shall forfeit and pay the sum of two hundred and fifty dollars over and above the said balance remaining in his hands, to be recovered with costs of suit, in any court of record, by the overseers of the poor of such city or town, and when recovered to be applied to the use of the poor of such city or town: And if upon auditing such account there shall appear to be a balance due such overseers going out of office, or either of them, the same shall be paid to him or them by their successors in office, out of the first monies which come into their hands as overseers of the poor of such city or town.

EXTRAORDINARY DUTIES.

Relative to Bastard Children. By the second section of the

act, entitled "an act for the relief of cities and towns from the maintenance of bastard children," it is enacted, "That if a woman shall be delivered of a bastard child, which shall be chargeable, or likely to become chargeable to any city or town, or shall declare herself to be with child, and that such child is likely to be born a bastard, and to be chargeable as aforesaid, and shall in either case, in an examination to be taken in writing upon oath, before any justice of the peace of any city or of any county wherein such town shall be, charge any person with having got her with child, it shall be lawful for such justice, upon application made to him by the overseers of the poor of such city or town, or persons acting as such, or by any one of them, to issue his warrant for the apprehending of such person so charged as aforesaid, and for bringing him before such justice, or before any other justice of the peace for such city or county, to be thereupon dealt with according to law.

Relative to Servants and Apprentices. The act concerning apprentices and servants, passed 20th February, 1801, authorises the overseers of the poor of any town within this state, by and with the consent of the justices of the peace of the county, to bind out any child who is or shall be chargeable, or whose parents are or shall become chargeable to the town wherein they inhabit, or who shall beg for alms, to be apprentices or servants according to their degree or ability, where they shall see convenient, until such child or children, if male, shall respectively arrive or come to the age of 21 years, and if female to the age of 18 years: And the counterpart of such indenture or articles for the benefit of the person so bound, shall be deposited with the clerk of the town in which such binding shall take place, for safe keeping. *And further*, That in all indentures and contracts to be made by any overseers of the poor of any town, by and with the consent of the justices of the peace of the county, or any two of them, for binding or putting out any child as an apprentice or servant, shall, among the covenants in such indentures or contracts to be made and agreed upon between the parties, always be inserted a clause to the following effect; that every master or mistress to whom such child shall be bound as aforesaid, *shall cause such child to be taught and instructed to read and write, and shall give unto such child a new bible* at the expiration of his or her term of service. *And further*, That the overseers of the poor of each town, shall be guardians of every such child so put and bound out as aforesaid, to take care that the terms of the indentures or contract, and the agreements therein contained, be fulfilled, and that such child be not ill-used; and the said overseers of the poor are hereby directed to inquire into the same,

and to redress any grievance in such manner as is prescribed by law.

The following points, selected from the reports of the adjudications of the supreme court of judicature of this state, will further illustrate the duties of the overseers of the poor.

POINTS ADJUDGED IN SUPREME COURT.

THE POOR.

Two justices may order the removal of a pauper likely to become chargeable, if they cannot discover the place of legal settlement. 1 Johns. Rep. 54.

The order of removal must contain some evidence or adjudication touching the pauper's settlement or last place of residence, or it will be quashed; and the sessions may allow costs on such orders. 1 Johns. Rep. 330.

The question of settlement cannot be tried on a bond to indemnify a town against a charge of a bastard child. 1 Johns. Rep. 486.

The surety in such bond is holden after the child has attained the age of 21 years, and as long as it shall continue chargeable. Ibid.

Where security by bond is given for the support of a bastard child or helpless pauper, a previous order of a justice is not necessary, but only on the voluntary application of the pauper himself. Ibid.

A person liable to be rated for the support of the poor, is not deemed an incompetent witness in a cause in which the town are interested for the maintenance of a pauper. 1 Johns. Rep. 498.

The mother of a bastard child is entitled to its custody; but if it appears that the child is abused, the court will interfere in behalf of the child, and direct it to be placed elsewhere. 2 Johns. Rep. 375.

Where the mother of a bastard child had no legal settlement, it was held that her child acquired a settlement by birth, in the place where it was born; and the overseers of that town may apply for, and the justices may make an order of filiation. 3 Johns Rep. 15.

Where a town was divided by statute, the poor, having become such after the division, were held to be settled in the town where they were born, and not where they resided at the time of the division. 3 Johns. Rep. 193.

The law declaring that every bastard child follows the settlement of the mother, applies only in cases where the mother has a legal settlement within the state. 3 Johns. Rep. 15.

A settlement is not gained by purchase, if no estate known or valid in law passes by the conveyance. 11 Johns. Rep. 7.

An action lies by the overseers of the poor on an order of bastardy to recover from the putative father the weekly sum directed to be paid by such order, for the maintenance of the child. 9 Johns. Rep 367.

Such order, unless appealed from, is conclusive against the defendant. Ibid.

A warrant against the putative father can only be issued on the application of the overseers of the poor. 10 Johns. Rep. 93.

Overseers of the poor who have expended money under an order of two justices for the maintenance of a pauper, cannot maintain an action on the case against a person who brought the pauper into town, having no legal settlement in the state, for the amount so expended, but their remedy is under the statute (sess. 36. c. 78. sec. 8. N. R. L.) to recover the penalty given in such case. 11 Johns. Rep. 167.

Where the overseers of the poor of the town of O. give a certificate in writing, that the bearer, J. the slave of H. was under the age of 50 years, and of sufficient ability to get his living, at the bottom of which was written, "We do hereby manumit the same," and the whole signed by the overseers, but not by the executors of H. to whom the slave belonged; and the certificate was recorded in the clerk's office of the town; it was held that this certificate, registered at the request of H. was conclusive evidence to charge the town with the future maintenance of such slave, as a pauper. 9 Johns. Rep. 225.

APPRENTICE.

An infant cannot be bound an apprentice, unless he is a party to, and executes the deed or indenture. 8 Johns. Rep. 328.

If in an indenture of apprenticeship, it is stated, that the apprentice binds himself with the consent of his father, and his father actually signs and seals the indenture as a party, yet he is bound for his son, and is responsible to the master, in case the apprentice leaves his service before the expiration of the term fixed by the indenture. 10 Johns. Rep. 99.

PRECEDENTS.

NO. I.

ORDER FOR RELIEF OF A POOR PERSON BY HIS OWN TOWN.

Ulster County, ss. To the overseers of the poor of the town of Kingston, in the county of Ulster, and to each of them.

Whereas application hath been made to me A. B. one of the justices of the peace in and for the said county, by K. O. one of the overseers of the poor of the town of Kingston, in the same county, alledging, that L. A. a poor person belonging to the said town, hath applied to him for relief: And we, the said justice and the said overseer, having inquired into the state and circumstances of the said poor person so applying, and it thereupon appearing that the said poor person is in such indigent circumstances as to require relief; I the said justice do, therefore, hereby, in pursuance of the statute in such case made and provided, *Order*, that the overseers of the poor of the said town of Kingston, or any one of them, allow and pay to the said L. A. weekly, and on Monday in every week, the sum of for his support and the relief of his necessities, until such time as this order shall be lawfully annulled. Given under my hand and seal at Kingston, in the county aforesaid the day of

A. B. Justice of the peace, &c. (L. s.)

NO. II.

ORDER FOR RELIEF OF A POOR PERSON HAVING NO SETTLEMENT IN THE STATE.

Ulster County, ss. To the overseers of the poor of the town of Kingston, in the county of Ulster, and to each of them.

Whereas application hath been made to me A. B. one of the justices of the peace in and for the said county of Ulster, by K. O. one of the overseers of the poor of the said town, alledging, that G. F. a poor person, having come into the said town, and not having a settlement in the same, or in any town in this state, and that the said G. F. hath applied to him the said overseer for

relief: And we the said justice and the said overseer finding that the said G. F. is not able to maintain himself, and that he is so debilitated that it would be improper to remove him immediately, (or finding that it is impossible to make an order for his removal.) I the said justice, do therefore, hereby, in pursuance of the statute in such case made and provided, *Order*, that (the like as if such poor person belonged to such town, as above.)

NO. III.

OVERSEER'S ACCOUNT.

The freeholders and inhabitants of the town of Kingston.
To K. O. and C. D. overseers of the poor of the said town, Dr.

1815 April 10. To cash paid weekly, one dollar, from and after the 10th day of June last, to L. A. a poor person of the said town, per order of A. B. Esq. justice of the peace, $ 40

To do. weekly, one dollar, from and after the 10th day of October last, to G. F. a poor person having no settlement in this state, per order of the said A. B. Esq. 25

$ 65

Contra, Cr.

1815. Feb. 20th. By cash received from G. L. collector of taxes of the said town 100

Balance due the town, $ 35

County of Ulster, town of Kingston, ss. In pursuance of the act of the legislature in such case made and provided, we the undersigned, do hereby certify, that we have examined the above contained account and audited the same according to the balance above struck. In witness whereof we have hereunto respectively subscribed our names this day of

L. I. Supervisor.
G. M. Town Clerk.

A. B.
C. D. } Justices of the Peace, &c.

NO. IV.

REPORT ON THE ABOVE TO ANNUAL TOWN-MEETING.

County of Ulster, town of Kingston, ss. We, the undersigned, do hereby, in pursuance of the act of the legislature in such case made and provided, *Make Report*, that we have, on the day of last past, examined the accounts of K. O. and C. D. overseers of the poor of the said town, and have audited the same upon a balance due the said town of 35 dollars. All which is submitted to the freeholders and inhabitants of the said town at their present annual meeting, to the intent that such further provision for the maintenance and support of the poor of the said town may be made, as may be found necessary.

L. I. Supervisor.
G. M. Town Clerk.

A. B. }
C. D. } Justices of the Peace, &c.

NO. V.

WARRANT OF TWO JUSTICES FOR A STRANGER TO BE EXAMINED RELATIVE TO HIS SETTLEMENT.

Ulster County, ss. To any constable of the town of Kingston, in said county.

Whereas complaint has been made before us, A. B. and C. D. two of the justices of the peace for the said county, by K. O. one of the overseers of the poor of the said town, that J. T. hath come to inhabit in the said town, not having gained any legal settlement in the said town, nor producing any certificate owning him elsewhere, and that he the said J. T. is likely to become chargeable to the said town. These are therefore to require you to bring the said J. T. before us at the house of in Kingston, in the said county, on the day of at the hour of in the afternoon of the same day, to be examined concerning the place of his last legal settlement, and to be further dealt with according to law. Given under our hands and seals the day of in the year

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

NO. VI.

GENERAL ORDER OF REMOVAL.

Ulster County, ss To any Constable of the town of Kingston. Upon complaint of K O. one of the overseers of the poor of the town of Kingston in the county of Ulster, unto us whose names are hereunto set and seals affixed, being two of the justices of the peace of the said county, that J. T., M. his wife, T their son aged eight years, and A. their daughter aged four years, have come to inhabit in the said town of Kingston, not having gained a legal settlement there, nor produced any certificate owning them or any of them to be settled elsewhere, and that the said J. T. M. his wife, and T. and A. their children, are likely to be chargeable to the said town of Kingston; We the said justices, upon due proof thereof made, as well upon the examination of the said J. T. upon oath, as otherwise, and likewise upon due consideration had of the premises, do adjudge the same to be true; and we do likewise adjudge that the lawful settlement of the said J. T., M. his wife, and T. and A their children, is in the town of Marlborough, in the said county of Ulster. And we the said justices upon due information of the premises, having heretofore ordered and directed the said J. T, M. his wife, and T. and A. their children, to remove to the said town of Marlborough, and they having neglected to comply with the said order: These are therefore, to command, and we the said justices do hereby command any constable of the said town of Kingston, upon sight hereof, to convey the said J. T., M. his wife and T. and A. their said children, from and out of the said town of Kingston to the town of Hurley, and from thence to the town of New-Paltz, by the main post road (or direct, the nearest and most convenient route, or from constable to constable, thus: to convey them with this warrant to any constable of the town of Hurley, being the next town through which they have been suffered to wander unapprehended, and the said constable is also commanded to convey them with this warrant, to the next constable, and so from constable to constable.) and them to deliver to the overseers of the poor of the said town of Marlborough, there, or to some one of them, together with our order, or a true copy thereof, at the same time shewing them the original: And we the said justices do also hereby require you the said overseers of the poor of the town of Marlborough, to receive and provide for them as inhabitants of your town. Given under our hands and seals the day of in the year

A. B. (L. S.) } Justices of the
C. D. (L. S.) } Peace, &c.

NO. VII.

NOTICE OF APPEAL.

To the Overseers of the Poor of the town of Kingston, in the county of Ulster. This is to give notice to you and every of you, that we the overseers of the poor of the town of Marlborough, in the county of Ulster, do intend at the next general sessions of the peace, to be holden in and for the said county of Ulster, to commence and prosecute an appeal against an order of A. B. and C. D. Esquires, two justices of the peace of the said county, for and concerning the removal of J. T., M. his wife, and T. and A. their children, to our said town of Marlborough. Witness our hands this day of in the year, &c.

M. N. } Overseers of the
R. C. } Poor of, &c.

NO. VIII.

BOND TO INDEMNIFY THE TOWN AGAINST THE CHARGE OF A BASTARD CHILD.

Know all men by these presents, that we A. L. of Kingston in the county of Ulster, merchant, and A. G. of Hurley, in the county aforesaid, yeoman, are held and firmly bound unto K. O. and C. D. overseers of the poor of the said town of Kingston, in trust for the freeholders and inhabitants of the said town of Kingston, in five hundred dollars of lawful money of the state of New-York, to be paid to the said K. O. and C. D. or their certain attorney, their executors, administrators or assigns: to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each and every of our heirs, executors. and administrators, firmly by these presents. Sealed with our seals, and dated the day of in the year, &c.

The Condition of this obligation is such, that whereas A. M. of the said town of Kingston, single woman, hath in and by her voluntary examination, taken in writing and upon oath, before A. B. one of the justices of the peace in and for the said county of Ulster, declared that she is with child, and that the said child is likely to be born a bastard, and to be chargeable to the said town of Kingston, and that the above bounden A L. is the father of the said child. (If after the birth, then say: that whereas A. M. of the said town of Kingston, single woman, is

her examination taken in writing upon oath, before A. B. one of the justices of the peace in and for the said county, hath declared that on the day of now last past, at Kingston, in the county aforesaid, she the said A. M. was delivered of a [male] bastard child, and that the said bastard child is likely to become chargeable to the said town of Kingston, & hath charged the above bound A L. with having gotten her with child of the said bastard child.) If therefore the said A. L. and A. G or either of them, their or either of their heirs, executors or administrators, do and shall from time to time, and at all times hereafter, fully and clearly save harmless and indemnify, as well the above named overseers of the poor of the said town of Kingston and their successors for the time being, as also all and singular the other freeholders and inhabitants of the said town of Kingston, which now are, or hereafter shall be for the time being, of and from all manner of costs, taxes, rates, assessments, and charges whatsoever, for or by reason of the birth, education, or maintenance of the said child, and of and from all actions, suits, troubles and other charges and demands whatsoever, touching or concerning the same, then this present obligation to be void, otherwise of force.

A. L. [L. s.]
A. G. [L. s.]

Sealed and delivered, }
in the presence of }
N. O.
P. I.

NO. IX.

INDENTURE OF APPRENTICESHIP BY OVERSEERS OF THE POOR.

This Indenture, made the day of in the year Witnesseth, That K. O. and C. D overseers of the poor of the town of Kingston, in the county of Ulster and state of New-York, in pursuance of the statute in such case made and provided, by and with the consent of A. M. and A. G. two justices of the peace of the said county, have bound out, and by these presents do bind out N. O. a poor child of the said town and likely to become chargeable to the same, being of the age of twelve years, as an apprentice to A. D. of the said town, hatter, him to serve until the said apprentice shall attain to the age of twenty-one years. During all which time, the said apprentice his said master faithfully shall serve, his secrets keep and his

lawful commands obey; he shall do no damage to his master nor see it done by others without giving him notice thereof: he shall not waste his master's goods, or lend them unlawfully away: he shall not contract matrimony in the said term: at cards, dice or any unlawful game he shall not play: nor absent himself night or day from his master's service during the said term, without his leave, but in all things behave himself as a faithful apprentice ought to do, during the time aforesaid. And the said A. D doth hereby for himself, his executors and administrators, covenant and agree to and with the said overseers and their successors, that he will teach and instruct the said apprentice in the art and trade of a hatter, according to the best of his ability; and during the time aforesaid provide and allow the said apprentice sufficient meat, drink, apparel, lodging, washing, and all necessary accommodations for an apprentice. That he will cause him to be instructed to read and write, and at the expiration of the said term give the said apprentice one new bible. That the said apprentice shall not during the term aforesaid, be chargeable to the said town; and at the end of the said term will deliver to the said apprentice double apparel of ordinary dress, one suit of which to be new. In witness whereof, the parties to these presents have hereunto set their hands and seals the day and year first above written.

Sealed and delivered in the presence of } K. O. [L. S.] C. D [L. S.] A. D. [L. S.] } Overseers, &c.

We the undersigned, Justices of the Peace of the county of Ulster, do hereby consent to the binding out as in the above indenture is expressed. In witness whereof we have hereunto subscribed our names this day of

A. M.
A. G.

CHAP. IX.

COMMISSIONERS OF SCHOOLS.

COMMON SCHOOL ACTS.

THERE are perhaps no acts of our legislature so imperfectly understood among our citizens at large, as the common school acts; owing probably to the various emendatory statutes which have, from time to time, been enacted respecting them and the infancy or immaturity of the institutions which have been predicated on them. For amidst the diversity of pursuits and occupations, in which the individuals that constitute the community are essentially engaged, a competent knowledge of laws of that character, can only be derived from experience, which as it hath, in relation to the objects before us, furnished but few practical lessons evincive of their value, they have hitherto not been popular, nor are the public yet fully sensible of their utility and importance. We cannot, however, forbear to remark, that one feature of an existing law on this subject, has been considered peculiarly exceptionable: that freeholders not having any children to be educated, are yet by this law compelled to contribute pecuniary aid, towards the education of such of their neighbours' children who by a compliance with the said act, have made such freeholders liable to its provisions. In a local point of view, this objection may, in some instances, merit regard; but it remains to be inquired, whether in a scheme of national education, proper for the youth of our republic, the broad principles ought not to be recognised, that every citizen is interested in the common stock of learning and intellectual endowments of our inhabitants in general, and the rising generation in particular? And if it be found that the system of common school education, adopted by this state, will tend to improve and ameliorate the public mind and morals, it must, surely, conduce to the general happiness and prosperity, and render it the duty of every good citizen to give it his countenance and support. With such an impression of the subject before us, we pass on to delineate the office and duty of commissioner of schools.

OFFICE OF COMMISSIONER.

The office of commissioner of schools is created, or rather sanctioned by the act, entitled "an act for the better establishment of common schools," passed April 15, 1814; for it must be remembered, that that act repealed all our former common school laws, and contains all our legislative provisions which then existed on the subject. This act enjoins it on the freeholders and inhabitants of each town, who are qualified by law to vote at town meetings, annually, at their annual town meeting, or at a special town meeting for that purpose, to choose three of the inhabitants of their town, being freeholders, to be commissioners of common schools in such town; also a suitable number of persons, not exceeding six, being inhabitants of such town, who, together with the said commissioners, shall be the inspectors of common schools in such town, that the said commissioners and inspectors shall be chosen by ballot, and shall hold their respective offices for one year, and until others shall be chosen in their places.

It is proper that we should stop here, to remind the reader that the said commissioners and inspectors are the only *town officers* (other than those whose offices and duties we have before examined) that are required to execute the provisions of the said common school act—that it is connected with the design of the *County and Town Officer*, that we should consider the offices and duties of the said commissioners and inspectors, under specific titles, and that as an adequate understanding of this topic is only to be obtained from a cotemporaneous view of the duties of the subordinate offices contemplated by this act, and designated by the names of trustees, district clerk, and district collector, we shall, as we progress in our present inquiries, give a digest of each of them in this chapter, reserving our treatment of the office and duty of the said inspectors of common schools, for a distinct consideration. We resume our subject, and first of the

COMMISSIONER'S OATH.

Within fifteen days after the commissioner is chosen or appointed, he shall take and subscribe an oath before some justice of the peace, in the following form, "I do solemnly and sincerely promise and swear, (or affirm,) that I will in all things, to the best of my knowledge and ability, well and truly execute the trust reposed in me as commissioner of common schools, for the town of in the county of without favor

or partiality." And the said commissioner shall within eight days after his qualification, deliver the certificate of the said oath to the town clerk, or be deemed to have refused to serve in the said office.

VACANCY OR REFUSAL OF THE OFFICE.

In case of the refusal to serve, death, removal out of town, or incapacity of any such commissioner, before the next annual town meeting, such vacancy shall be supplied in the manner as is provided by the act, entitled "an act relative to the duties and privileges of towns; and if any such commissioner shall refuse to serve in such office, or shall serve therein before he shall have taken and subscribed such oath, he shall forfeit the sum of ten dollars, to be recovered with costs of suit, before any justice having jurisdiction thereof, by action of debt.

DUTIES.

TO FORM SCHOOL DISTRICTS.

It shall be the duty of the commissioners of common schools, or the major part of them, to divide their town into a convenient number of school districts, and to alter and regulate the same as hereafter mentioned; and whenever it may be convenient to form a district out of two or more adjoining towns, it shall be lawful for the commissioners, or the major part of them, from each of such adjoining towns, to form such district, and to alter and regulate the same as aforesaid.

TO DESCRIBE AND NUMBER SCHOOL DISTRICTS.

It shall be the duty of the commissioners, immediately after the formation or alteration of any school district, to describe and number the same, and deliver the description and number thereof in writing, to the clerk of the town, who is required to receive, and record the same in the town records, without fee or reward; and where a district shall be formed out of two or more adjoining towns, or the same shall be altered as aforesaid, a description and number thereof shall be made and delivered by the commissioners for the town in which the school house of such district shall be situated: *Provided*, That no district shall be so altered, before the tenth day of April, or after the tenth day of June, in each year, except in cases where the trustees of the district shall assent to such alteration.

ON FORMATION OF SCHOOL DISTRICTS.

When a school district shall be formed, it shall be the duty of one of the commissioners, within twenty days thereafter, to make a notice in writing, describing such district and appointing a time and place for the first district meeting; and to deliver such notice to some one of the freeholders or inhabitants liable to pay taxes in such district, whose duty it shall be, on pain of forfeiture of five dollars, to notify each freeholder or inhabitant residing in such district, liable to pay taxes, by reading such notice in the hearing of such freeholder or inhabitant, or in case of his absence from home, by leaving a copy thereof at the place of his abode, at least six days before the time of such meeting; and in case such freeholders and inhabitants, having been so notified, shall neglect or refuse to assemble or form a district meeting, or having been formed or organized, shall, in the opinion of the commissioners, be dissolved by adjournment without day, or from any cause whatever, it shall be lawful for the commissioners to renew the said notice in manner and form aforesaid.

District Meeting. As soon as such freeholders or inhabitants are so assembled in district meeting, it shall be lawful for them, or a majority of them present, to adjourn to any other time or place, and at such first time, or any future legal district meeting, to appoint a moderator for the time being; to adjourn from time to time, as occasion may require, to fix on a time and place for holding their future annual meetings, which annual meetings they are by this act required to hold, to choose one district clerk to keep the records and proceedings of such meeting, who shall be qualified by oath or affirmation in the same manner as town clerks by law are qualified, which oath or affirmation shall be kept on file in the office of the said district clerk —Also, to choose three trustees to manage the concerns of such district, and one district collector; Also, to designate a site for their school-house, to vote a tax on the resident inhabitants of such district, as they or a majority of such of them as shall be present as aforesaid, shall deem sufficient to purchase a suitable site for their school-house, and to build, keep in repair and furnish such school-house with necessary fuel and appendages:— Also, to empower and instruct their trustees as to the collection of monies due for instruction, and the exoneration of poor and indigent persons from the payment thereof according to this act, and to repeal, alter, regulate and modify all such proceedings or any part of them, from time to time, as occasion may require: *Provided however*, That no alteration as to the site of a school-house shall take place, but by consent of at least two commissioners of the town: And it shall and may be lawful for the trus-

tees of such district, or a majority of them, whenever they shall deem it necessary, to call a special meeting of the said freeholders and inhabitants of such district, giving due notice thereof; and no district meeting held as aforesaid shall be deemed illegal for defect or want of due notice, if the omission to give the same be not wilful and designed: *And provided further*, That if any person not liable to pay taxes, shall vote in any district meeting, and be thereof convicted before any court having cognizance thereof, he shall be fined in a sum not exceeding ten dollars, nor less than five dollars, at the discretion of the court, with costs, and the said fine when collected, shall be paid to the trustees for the use of such school district.

Duration and liability of the district offices. The clerk, trustees and collector of each school district, shall hold their respective offices until the annual meeting of such district, next following the time of their appointment, and until others shall be appointed in their place. And every person who shall have been duly chosen or appointed, and refuses to serve in such office, shall forfeit the sum of five dollars with costs, to be recovered by the commissioners, in an action of debt for the use of the common school of the district: And every person so chosen or appointed and having accepted the office, or not declared his refusal to accept it, who shall neglect the performance of the duties thereof, shall forfeit the sum of ten dollars, to be recovered with costs and applied as aforesaid.

COMMISSIONERS WHEN TO FILL VACANT OFFICES.

In case the office of trustee, or district clerk, or collector, shall be vacated by death, refusal to serve, removal out of the district, or incapacity of any such officer, and such vacancy be not supplied by the district at a special or other district meeting, within one month thereafter, it shall and may be lawful for the commissioner of the town in which such district shall be situated, to supply such vacancy by the appointment of any person residing in such district, and such appointment shall have the same effect as if the same had been made by the district.

Duty of District Clerk. It shall be the duty of a clerk of a school district, to keep the records and proceedings of his district, in a book to be provided for that purpose, and whenever any special district meeting shall be called by the trustees of such district, it shall be the duty of such clerk to give notice of the time and place of such special district meeting to each of the freeholders and inhabitants of such district liable to pay taxes as aforesaid, at least five days before such meeting shall [illegible]. And in case any such freeholder or inhabitant shall be

absent from home, such notice to him shall be left in writing at the place of his abode: And when any district meeting shall be adjourned for a longer time than one month, it shall be the duty of the clerk of such district to put up a notice in writing, of the time and place of such adjourned meeting, in at least four of the most public places of such district, at least five days before the time appointed for such meeting: And it shall be the further duty of such clerk to give notice in like manner of every annual meeting to be held in such district: And it shall be the further duty of such district clerk to keep and preserve all the records, books, writings and papers belonging to his office, and on the expiration of his time of service, to deliver the same to his successor in office, in the same manner as the clerk is required by law to deliver all records, books and papers, belonging to his office, to his successor in office.

Power and Duty of District Collector. The collector in a school district, shall have the same power and authority, and have the same fees for collecting, and be subject to the same rules, regulations and duties, as respects the business of the district, which by law appertaineth to the collectors of towns in this state.

Duty of Trustees. Whenever a district meeting shall have voted a district tax, it shall be the duty of the trustees, to make a rate bill or tax list, to raise the sum voted for, with five cents on a dollar of said sum for collector's fees, from all the taxable inhabitants residing in the district at the time of making the said bill or list, according and in proportion to the valuations of their taxable property then in the town of such district; and such valuations shall be ascertained and taken from the then last assessment roll of the town, so far as the same can be ascertained and taken therefrom; and none of the inhabitants shall be entitled to any reduction in such valuations according to such roll, unless they give notice to their claim of such reduction, to the trustees, before the rate bill or tax list shall be made out by them; and in all cases in which such reduction shall be claimed on notice as aforesaid, and such valuations cannot be ascertained from the town roll, it shall be lawful for the trustees to ascertain the same from the best evidence in their power, giving notice to the person or persons effected thereby; and if any such person shall within five days after such notice received, make and deliver to the trustees an affidavit before any justice of the peace, that the value of his or her taxable property does not exceed a certain sum, specifying the same, the sum mentioned in such affidavit shall be taken and considered by the said trustees as the true valuation of such property. See this act & Law N. Y. amend. School act, 1815.

When such rate bill or tax list shall be completed, the trustees shall annex a warrant to the same (see precedent No. 3) and deliver the same to the collector of such district, for collection: And if the sum or sums of money payable by any person named in such tax list, shall not be paid within the time therein limited, it shall be lawful for the trustees to renew such warrant in respect to such delinquent person.

Further Duty of Trustees. When any district meeting shall have voted a tax for the purpose, it becomes the duty of the trustees to purchase a suitable site for their school-house, to build, keep in repair, and furnish such school house with necessary fuel and appendages: to agree with and employ all teachers in such district: *Provided,* That no teachers shall be employed by them, who shall not have received a certificate of approbation from the inspectors of schools. And it is the further duty of the trustees, to pay the wages of such teachers, out of the monies which shall come into their hands from the commissioners, so far as such monies extend, and to collect the residue of the wages of such teachers in the district, unless the teachers shall agree to collect the same. And it shall and may be lawful for the trustees, when thereunto authorised and empowered by a legal district meeting, to ascertain from the returns or school lists kept and certified on oath by the teacher to be just and true before any justice of the peace, the number of days for which each person in the district shall be liable to pay for instruction, and the amount payable by each such person according to such liability; and to make out a rate bill containing the name of each such person liable to pay for instruction with the amount payable by such person according to his liability; and to annex to such rate bill a warrant, in the same manner as for collecting a tax for the site of a school, &c. before mentioned; and to deliver such rate bill with such warrant thereunto annexed, to the collector of such district, to be by him executed as other warrants delivered to him: *Provided,* That the trustees when thereunto authorised by a legal district meeting, may exonerate from the payment of such rates for wages of teachers, all such poor persons within their district as they shall think proper: *Provided further,* That when they shall so exonerate any person or persons, they shall certify their proceedings therein, and deliver such certificate to the clerk of the district, to be kept on file in his office.

Further duties of Trustees. It shall be the duty of the trustees, annually, on or before the first day of April, in each year, to make and transmit to the commissioners of their district, a report, specifying the length of time a school has been in such district, the amount of monies received by them, the manner in

which the same have been expended by them, and as nearly as may be the number of children taught in such district, and the number of children residing in such district, between the ages of five and fifteen years inclusive, excepting Indian children otherwise provided for by law. And where a school shall be formed out of two or more adjoining towns, the trustees shall make report thereof as aforesaid to the commissioners: And an additional report of the number of children between the ages aforesaid, for every part of such district which shall lie in a different town from any other part of such district, and transmit the same to the commissioners for the town in which such part of such district shall lie.

Further Duty of Trustees. The trustees shall, on the expiration of their respective offices, exhibit to their successors in office, if required by them or any of them, a just and true account of all the monies received by them respectively, for the use of their district, and in what manner they shall have been expended by them; and if it shall appear from any such account, that a balance of the monies received as aforesaid, shall remain in the hands of the said trustees, or any of them, at the time such account shall be exhibited as aforesaid, the same shall be paid immediately by the trustees in whose hands the same shall be found as aforesaid to be, to the said successors in office or some or one of them; and if any trustee shall refuse or neglect to exhibit his account as aforesaid, or pay over as aforesaid any balance which shall be found in his hands as aforesaid, he shall forfeit the sum of twenty-five dollars, to be recovered with costs by an action of debt in the name of the said successors, for the use of the said district; and the said successors are also authorised to bring an action for money had and received to recover the amount of any such balance, with interest, in any court having cognizance thereof, to and for the use of the said district. See this act and Law N. Y. Amend School Act, 1815.

Any act required to be done by the trustees, may be done by any two of them. Ibid.

COMMISSIONERS TO RECEIVE AND DISTRIBUTE MONIES.

It shall be the duty of the commissioners to apply for and receive from the treasurer of the county, all monies which shall be apportioned and payable to their town, as soon as may be after the same shall be so apportioned and payable; and to apportion all monies which come into their hands for the use of common schools, as soon as may be after such money is received by them, among the several school districts and parts of

school districts lying within their town, which shall have substantially complied with the provisions of this act, according to the number of children between the ages of five and fifteen years, living in such district and each part of such district, as the same shall appear from the last report of the trustees. And all monies so to be apportioned by the commissioners, shall be paid by them according to such apportionment, to the trustees or some or one of them of the district to which such monies shall be apportioned, whose receipt therefor shall be good and sufficient evidence of such payment; which monies so to be received by the trustees, shall be applied and expended by them in the paying the wages of the teachers to be employed by them, and for no other purpose: *Provided*, That no monies shall be paid by the commissioners until the trustees of the district, or at least two of them, shall have certified a writing under their hands, and delivered such certificate to the commissioners, or some one of them, substantially in the words following, viz.

"We, the trustees of school district, within the town of do certify that a school hath been kept in said district, for at least three months during the year last past from the date hereof, by an instructor duly appointed and approved in all respects according to law, and that all the monies received during the said year from the commissioners of common schools, have been faithfully applied in paying the wages of such instructor. Dated, &c.

} Trustees.

And all the monies which shall be apportioned by the commissioners as aforesaid, and shall remain in their hands unpaid, for the space of one year thereafter, either from the omission or neglect of the trustees to apply for and make the necessary certificate to entitle them to the same, or from any defect in such certificate, shall, after the expiration of such year, be added to the monies next thereafter to be apportioned by them, and shall be apportioned and paid together with such monies as aforesaid. And in case any monies which shall come into the hands of the commissioners for the use of common schools for their town, shall not be apportioned by them as aforesaid, for the space of two years thereafter, by reason of the non-compliance of all the school districts in their town with the provisions of this act, all such monies so remaining, not apportioned for the space of two years, shall be returned and paid by the commissioners, to the treasurer of the county, and be apportioned and distributed by him, together with the other monies next thereafter to be apportioned and distributed by him in pursuance of this act.

Penalty for false Certificate. If any trustee shall make a false

certificate or report, whereby any monies shall be fraudulently obtained from the commissioners, or unjustly apportioned by them, each trustee signing such certificate or report, shall forfeit the sum of twenty five dollars, to be recovered by the commissioners, before a justice of the peace, for the use of the common schools of such town.

COMPENSATION OF COMMISSIONERS.

The commissioners shall be allowed the same compensation for each day employed by them in forming, altering, or regulating school districts as aforesaid, as is by law allowed to the commissioners of highways, in and by the act to regulate highways; and such compensation shall be paid, and the accounts therefor audited and settled, in the same manner as is provided by law for or in respect to the compensation of other town officers.

HOW AND WHEN TO ACCOUNT.

The commissioners shall, after the termination of their respective offices, exhibit and lay before the board appointed by law to examine and audit the accounts of the overseers of the poor of the town, and at the next meeting of the said board after the termination of their respective offices aforesaid, a just and true account of all the monies by them received for the use of common schools in their town, and how the same shall have been expended by them; and all such accounts shall be audited by the said board, in the same manner as the accounts of the overseers of the poor are by law to be examined and audited; and if on such auditing, any balance shall be found due from the said commissioners or any of them, the same shall immediately be paid to the successors in that office, or some or one of them; and if the said balance, or any part thereof, shall have been appropriated by the said commissioners to any particular school district in their town, a statement of such appropriation shall be delivered over with such balance, to their successors in office, or some one of them as aforesaid; and if any commissioner shall neglect to exhibit any such account as aforesaid, or to pay any such balance as aforesaid, he shall in the former case forfeit one hundred dollars with costs, in an action of debt, to be prosecuted by such successors, for the use of common schools of the town, and in the latter case be liable to an action for money had and received to such use, to be prosecuted and applied, when recovered as aforesaid. Law N. Y. Amend. School Act, 1815.

The commissioners and trustees, are severally declared to be

capable to hold to them and their successors, any property which has or shall be granted for the use and benefit of the common schools of the town and district, in the same manner as if they were bodies politic and corporate. Ibid.

HOW AND WHEN TO REPORT.

The commissioners shall, on or before the first day of July in each year, make and transmit a town report to the clerk of their county, embracing the same matters as shall be contained in the report made to them by the trustees; and the county clerk shall, on or before the first day of November, annually, make a county report, embracing all the matters contained in the several town reports, and transmit the same to the superintendent of common schools, whose duty it shall be, annually, on or before the first day of February, to make a report to the legislature, embracing all the matters contemplated by this act.

For other matters, see title *Town Officers.*

PRECEDENTS.

NO. I.

CERTIFICATE DESCRIPTION OF SCHOOL DISTRICT.

We do certify that in pursuance of the act, entitled "an act for the better establishment of common schools," passed 15th April, 1814, we have formed for a common school district, all that certain part of the town of in the county situated (take in description) and have numbered the same: *School District, Number Three.* Given under our hands at this day of 1816.

} Commissioners, &c.

NO. II.

NOTICE OF FORMATION OF SCHOOL DISTRICT.

To the freeholders and inhabitants liable to pay taxes, resident in School District *Number Three*, some one, each and eve-

ry of you. Whereas we the subscribers have lately, in pursuance of the act, entitled "an act for the establishment of common schools," passed 15th April, 1814, formed for a school district, all that certain part of the town of in the county of situated (take in description) and numbered the same: School District, *Number Three. You are, therefore, hereby notified*, that according to the said act, we have appointed, and do hereby appoint the day of at the house of in the said town, at ten o'clock in the forenoon of that day, as the time and place for holding the first district meeting in the said district. Given under our hands at the day of 1816.

} Commissioners, &c.

NO. III.

DISTRICT COLLECTOR'S WARRANT.

County of Ulster, ss. To A. B collector of the third district, in the town of Kingston in the county of Ulster, Greeting: In the name of the people of the state of New-York, you are hereby required and commanded to collect from each of the inhabitants of the said district, the several sums of money written opposite to the name of each of said inhabitants in the annexed tax list, and within thirty days after receiving this warrant, to pay the amount of the monies by you collected, into the hands of the trustees of said district, or some one of them, and take their or his receipt therefor. And if any one or more of said inhabitants shall neglect or refuse to pay the sum, you are hereby further commanded to levy on the goods and chattels of each delinquent, and make sale thereof according to law. Given under our hands and seals at this day of 1816.

(L. S.)
(L. S.)
(L. S.)
} Trustees.

NO. IV.

TRUSTEES' ANNUAL REPORT TO COMMISSIONERS.

In obedience to the act, entitled "an act for the better estab-

lishment of common schools," passed April 15, 1814, we the subscribers, trustees of school district No. 3, *do hereby report*, that a school has been kept in the said district for the space of two years, that during the last year lately ending our term of office, we have received from the commissioners of common schools, one hundred dollars, and from the collector of the said district, eighty dollars: that we have paid the same as and for the wages of A. B. for teaching the school in the said district (or as the case may be) that thirty children are at present taught in the said school, and that there are fifty children residing in the said district, between the ages of five and fifteen years inclusive. Given under our hands at this day of 1816.

} Trustees.

APPENDIX.

We have copied the following judicious article on the subject of common schools, as organized by this state, from the *Long-Island Star* of May 8, 1816:

"The state of New York has a great and increasing fund for the support of Common Schools, which at this time enables it to appropriate sixty thousand dollars annually to this purpose. This sum is given to the several towns throughout this state, *on condition:*

1st. That they raise by tax on the property of the town, a sum equal to the amount given by the state to that town.

2d. That this united sum shall go to the payment of teachers only.

3d. That commissioners be appointed by whom the town shall be divided into convenient districts.

4th. That each district raise by tax on the property, agreeably to the last assessment, a sum to purchase a situation, and build a school house.

5th. That inspectors be appointed in every town to examine the qualifications of masters—to visit the schools and to superintend the management of them.

These are the terms on which alone the state will give their money to the towns. It appears also, that if one district in a town shall comply with the law, and other districts refuse or neglect to comply, all the money given by the state and raised by the town will go to such district as shall comply.

The system for regulating schools is in itself good, and worthy of adoption, even if no money was given by the state.

The tax is scarcely felt by the public except the first year, in which it is usual to purchase a lot, and build a house.

The fund is rapidly increasing, and from time to time receives extra aid from the legislature. It will in all probability eventually be sufficient to educate all the children in the state.

As there are few persons liable to be taxed who have not children or grand children to receive the benefits of the school —as every person is interested in improving the state of society around him—as the law provides for the education of indigent children free of expense—as the tax is only considerable the first year, and decreases from year to year thereafter, no person, possessing the least intelligence, charity, or good sense, can object to it.

It is possible a case may exist where the tax would be a burden—"there is no rule without exceptions." Am I to deprecate the genial rain which diffuses its benefits to millions, *because by chance my skin is wet ?*"

EXTRACT FROM THE COMPTROLLER'S ANNUAL REPORT OF 22D FEBRUARY, 1816.

SCHOOL FUND.

This Fund is composed of the following items.

Bonds and mortgages for part of the consideration money of lands sold by the surveyor general,			291,424	91
Bonds and mortgages taken for loans made,			328,107	30
3600	shares of the capital stock of the	Merchant's bank,	180,000	
300	do.	bank of Hudson,	15,000	
50	do.	bank of Columbia,	20,000	
500	do.	Mohawk bank,	5,000	
600	do.	New-York State bank,	30,000	
30	do.	bank of New-York,	15,000	
12 1-2	do.	bank of Albany,	5,000	
Arrears of interest due on the bonds and mortgages of the fund,			44,482	92
		Dolls.	934,015	13

This fund has been augmented during the year 1815, 45,510 dollars, by bonds for part of the consideration money of lands sold by the surveyor general; 87,908 dollars by bonds and mort-

gages taken to secure the payment of loans made of the monies belonging to that fund; 600 dollars by a mortgage taken to secure the payment of part of the principal due on a mortgage given by Wm. M'Carty, foreclosed in 1813, and the land sold by the attorney general; and 11,232 dollars 8 cents by the increase of interest due on the bonds and mortgages of the fund, making in all an augmentation of dolls. 145,250 8.

During the same period, this fund has been diminished dolls. 1,312 50, by correcting an erroneous credit given in 1813, for a mortgage, supposed to have been taken to secure the payment of part of the principal due on an old mortgage foreclosed by the attorney general; dolls. 25,119 32 by payments on account of principal due on the bonds and mortgages taken for lands sold and loans made; 213 dollars by the operation of the act, entitled "an act for the relief of Isaac Hanson, Jacob Mancius, James Rivington, Charles Van Valkenburgh and John Mancius," passed 19th June, 1812; dolls. 2,500 by the payment of the fifth and last instalment of the bond of the Mechanics' bank in the city of New-York; and lastly, dolls. 42,548 02 stated in the last annual report to be in the treasury, over and above the 50,000 dollars to be distributed for the use of schools, loaned during the year 1815, with the other monies subject to be loaned, and consequently omitted in this statement, making in all a diminution of 72,692 dollars 84 cents.

REVENUE.

The revenue of the school fund may, for the present, be estimated at dolls. 64,053 01, arising from the following sources:

Annual interest on bonds and mortgages,	40,453 01
Dividends on bank stock,	21,600
Probable proceeds of fees of the clerk's offices of the supreme court, over and above the charges payable out of them,	2,000
Dolls.	94,053 01

It will be seen from this statement of the revenue derived from the school fund, that sixty thousand dollars may now be annually distributed for the encouragement of common schools.

Of the 500,000 acres of land which are now directed to be sold for the benefit of the school fund, the surveyor general has sold 396,947 acres.

ARCH'D M'INTYRE, *Comptroller.*

DISTRIBUTION OF SCHOOL MONIES.

The third section of the common school act of 1814, reviewed in the present chapter, enacts that "Out of the monies arising from the interest of the fund for the support of common schools, the sum of fifty thousand dollars shall continue to be annually distributed among the several counties of this state, for the support and encouragement of common schools therein, until the interest of the fund shall amount to ten thousand dollars, over and above the sum of fifty thousand dollars; and whenever, and as often as the interest of the said fund shall hereafter amount to ten thousand dollars, over and above the sum then last before distributed, the sum of ten thousand dollars shall be added to the sum then last before distributed, and the whole amount be thereafter distributed as aforesaid; which said sum or sums of money so to be distributed as aforesaid, shall be apportioned by the superintendent of common schools in the manner thereinafter directed, and be paid on the warrant of the comptroller, on the first day of February in each and every year thereafter, to the treasurers of the several counties aforesaid, entitled thereto, according to the apportionment thereof, to be made as aforesaid, and certified to the comptroller by the superintendent of common schools aforesaid."

CHAP. X.

INSPECTORS OF SCHOOLS.

OFFICE.

The common school act of 1814, provides, that a suitable number of persons, not exceeding six, being actual residents, shall, at every annual town meeting of a town, be chosen according to law, who together with the commissioners, whose office and duties we have before explained, shall be the inspectors of common schools in such town.

OATH.

Each of the said officers shall, before he enters upon the execution of his office, and within fifteen days after his election, take and subscribe an oath before some justice of the peace, in the following form, that is to say, "I do solemnly and sincerely promise and swear, (or affirm, as the case may be,) that I will, in all things, to the best of my knowledge and ability, well and truly execute the trust reposed in me as a commissioner (or inspector, as the case may be) of common schools for the town of in the county of without favor or partiality :" And such justice shall, without fee, certify under such oath, the day and year when the same shall be taken, and deliver the certificate to the person taking the same, who shall within eight days thereafter, transmit or deliver the same to the clerk of the town, for which such officer so taking such oath was elected or appointed.

VACANCY OR REFUSAL OF OFFICE.

If any inspector, chosen as aforesaid, shall refuse to serve, or die, or remove out of the town, or become incapable of serving, before the next annual town meeting, the vacancy consequent thereon shall be supplied in the same manner as is provided for supplying similar vacancies in other town offices, in and by the act, entitled "an act relative to the duties and privileges of

towns: And if such inspector, so chosen or appointed, shall not take and subscribe such oath as aforesaid, within the time for that purpose limited as aforesaid, such neglect shall be deemed a refusal to serve in such office: And if any such person shall refuse to serve in such office, or shall serve therein before he shall have taken and subscribed such oath as aforesaid, then and in every such case, such person shall forfeit and pay the sum of ten dollars, to be recovered with costs of suit, before any justice of the peace having jurisdiction thereof, by action of debt, the one moiety thereof to the use of the common schools of the town for which such officer was chosen or appointed as aforesaid, and the other moiety thereof with costs of suit, to the use of any person who shall prosecute for the same to effect.

DUTIES.

It shall be the duty of the inspectors to examine all persons who shall offer themselves as candidates for teaching common schools, in the town for which such inspectors shall be chosen or appointed; and in such examination it shall be the duty of such inspectors to inquire, and so far as they shall be enabled thereto, to ascertain and inform themselves as to all the qualifications mentioned and contained in the certificate hereinafter specified and given in form: and if they shall be satisfied as to the sufficiency of such qualifications, they shall certify in writing, under their hands, and deliver such certificate in writing to the person so examined by them as aforesaid, in form or substance following, viz.

"We, the undersigned inspectors of common schools for the town of in the county of Do certify, that we have examined and do believe he or she (as the case may be) is of a good moral character, and of sufficient learning and ability, and in all other respects well qualified to teach a common school. Given under our hands at the day of in the year of our Lord one thousand eight hundred and "

} Inspectors of Common Schools.

And it shall and may be lawful for the inspectors to annul any such certificate given by them or their predecessors in office as aforesaid, to any such person aforesaid: *Provided*, That notice thereof in writing be given to the trustees of the school district, or some or one of them, in which such person shall be employed as a teacher, at least three days before such certificate shall be annulled as aforesaid: *And further*, If any person shall be employed as a teacher, by the trustees of any school district, who

shall not have obtained such certificate as aforesaid from the inspectors of common schools of the town in which such district shall be situated, or whose certificate, so having been obtained, shall have been annulled as aforesaid, such district shall forfeit, for the time such person shall have been employed as aforesaid, all right and claim to any share of the monies which shall come into the hands of the commissioners of common schools, during such time.

Further Duty. It shall be the duty of the inspectors to visit the common schools in their district, quarterly or oftener, if they shall deem it necessary; and to examine into the state and condition of such schools, both as respects the proficiency of the scholars, and the good order and regularity of the schools; and from time to time to give their advice and direction to the trustees as to the government thereof, and the course of studies to be pursued therein.

A majority of the inspectors are declared competent by law to perform any duties enjoined on them as aforesaid: *Provided*, That in the examination of teachers, and in certifying their qualifications as aforesaid, or in annulling any certificate as aforesaid, not less than three of the inspectors shall be present; and in all other cases not less than two of the inspectors shall be present. For other matters, see title *Town Officers*.

PRECEDENT.

NOTICE ANNULLING CERTIFICATE.

To the trustees of school district, or some or one of them. Whereas we the undersigned, inspectors of common schools for the town of in the county of have heretofore given our certificate concerning the moral character, learning, ability and qualifications to teach a common school, of A. B., and we now deem it fit to annul the said certificate; We do, therefore, in pursuance of the act in such case made and provided, Notify you that we have annulled, and hereby do annul our former certificate aforesaid. Given under our hands at the day of in the year of our Lord one thousand eight hundred and

} Inspectors
} Common Schools.

CHAP. XI.

THE CONSTABLE.

ORIGIN AND NATURE OF THE OFFICE IN ENGLAND.

The office of constable is of very remote antiquity. We find its origin in the reign of Alfred, king of Great Britain, commonly called "Alfred the Great," who ascended the throne in the year eight hundred and seventy-three. He divided the territory of England into *Tithings*, *Hundreds* and *Counties*. The Tithing he made to consist of ten families of freeholders, the Hundred of one hundred families of freeholders, and the Counties of an indefinite number of Hundreds. The civil divisions of that kingdom have continued on that judicious plan, varying only in their enlargement, until the present time.

By the laws of Alfred, every ten freeholders choose an officer, annually, whom they called a *Constable*, as the head of the Ten or Tithing. His office and duties appear to have been similar in his Tithing to those of the sheriff in his county. The constable in England has great original and inherent authority with regard to arrests. He may, without warrant, arrest any one for a breach of the peace and carry him before a justice of the peace. And in case of felony actually committed, or a dangerous wounding whereby felony is likely to ensue, he may upon probable suspicion arrest the felon; and for that purpose is authorised, as upon a justice's warrant, to break open doors, and if he be killed in such duty, it is murder.

Every constable is by common law a conservator of the peace in his district, for which purpose he is armed, as well by common as statute law, with the power of arresting and imprisoning his fellow subjects, and forcibly to enter their dwelling houses, and with other extensive authorities.

The constable is the proper officer to the justices of the peace, and bound to execute their warrants. Hence it has been resolved, that where a statute authorises a justice of the peace to convict a man of a crime, and to levy the penalty by warrant of distress, without saying to whom the warrant shall be directed, or by whom it shall be executed, the constable is the pro-

per officer to serve such warrant, and indictable for disobeying it. 2 Haw. 262.

But as the office of constable is by no means judicial (that is deliberative) but wholly ministerial, (that is executive) he may execute such warrants, &c. directed to him by deputy, if on account of indisposition, absence or other special cause, he cannot conveniently do it in person. 2 Burns. 1259.

Constables should be very careful to keep in their custody whatever things they take upon felons; the same caution is to be observed in respect of such stolen goods as they take in the execution of such warrants. The law strictly requires this, that they may be produced in evidence upon the trial of the prisoner; for the identity of such things is to be proved upon the constable's oath, as well as the time when taken, and place where: if, therefore, he suffers such goods to go even out of his sight, he weakens his evidence, if he do not destroy it; and should the goods be by accident, or otherwise lost, he is not only answerable to the court for acting wrong, which may defeat the prosecution, but also to the prosecutor for the value of the goods; nor will it be a sufficient plea to the court that he left them in the hands of justice, even by his command; for as they were taken by him, the law requires them at his hands. And as the goods taken on persons charged with felony, or by search warrants, are in judgment of law in *abeyance* (in expectancy, or until a legal determination) after the jury have returned their verdict, if the prisoner be convicted, the constable is to deliver such goods to the prosecutor; on the contrary, if the prisoner be acquitted, the goods revert to him, the cause of seizure being discharged. But if any difficulty should arise, the safest way is to pray the direction of the court. The duty of the constable, indeed, absolutely obliges him to produce such goods at the trial; but after this is over, he should be careful how he brings them out of court, lest he should suffer by actions at law, from both parties.

It is the duty of a constable that he be careful not to suffer an escape of his prisoner.

A person found guilty, upon an indictment or presentment of a negligent escape of a criminal, actually in his custody, is punishable by fine and imprisonment, according to the quality of the offence. 2 Haw. 134.

THE OFFICE IN THIS STATE.

Having thus seen the origin and nature of the constable's office in England, we shall proceed to examine it according to the law of this state. It appears from the view we have just now

taken, that it is analogous here to the office in that country. The sheriff with us is essentially clothed with more extensive powers in his county, than the constable in his town; in as much as the former is a judicial as well as an executive officer, while the latter is an executive officer only. Yet as far as respects their executive duties their offices are materially similar. For as it is incumbent on the sheriff, although only appointed for his county, to serve and execute all processes and executions to him directed for service and execution in his bailiwick, not only from the common pleas and general sessions of the peace of his county, but also from the other superior courts of record of the state, so it is the province of the constable, though only elected or appointed for his town, to serve and execute, not only in his town, but throughout his county, all precepts and executions to him directed from any justice of the peace of his county.

It will be observed, that all the penal statutes of this state, whereby the amount to be forfeited is twenty five dollars or under, are in the general cognisable before a justice of the peace, and hence that their enforcement is alone to be effected by means of the constable's office. So in all civil suits, wherein the sum or thing demanded does not exceed twenty-five dollars, the plaintiff's rights are only to be obtained, or his wrongs redressed, through the agency of a justice of the peace, as the proper judicial, and the constable, as the competent ministerial officer. It is provided by the first section of the act relative to the duties and privileges of towns, that every constable, chosen or appointed, before he enters upon the duties of his office, and within ten days after his election or appointment to be approved by the town clerk and supervisor, shall execute under his hand and seal before such supervisor or town clerk, and cause to be filed in the clerk's office of such town, an instrument in writing, by which such constable and his sureties shall jointly and severally agree to pay each and every person such sum of money as the said constable shall become liable to pay for on account of any execution, which shall be delivered to such constable for collection. A refusal to give security or take the oath, shall vacate the office; but no person to be elected or appointed a constable or collector, shall incur any penalty by such refusal to serve as in the said act specified. And if any constable or collector, shall proceed in the execution of his office before he shall have given such security, he shall forfeit to the people of this state the sum of sixty-two dollars and fifty cents, to be recovered by an action of debt, or information in any court of record, in a prosecution by the attorney general.

All suits or actions on any bond, executed by any constable and his sureties for the faithful performance of the duty of his

office, shall be prosecuted within two years after the expiration of the year for which such constable shall be elected. Law N. Y. April 13, 1813.

OATH.

I, A. B. do solemnly and sincerely promise and swear, that I will in all things to the best of my knowledge, understanding and ability, well and faithfully execute and perform the trust reposed in me as a constable for the town of in the county of

A. B.

DUTIES UNDER THE 25 DOLLAR ACT.

The 25 dollar act, which we have before considered, contains a general detail of the duties of the constable in civil cases. It is therefore to our purpose that we should take a review of that act so far as respects the duties of his office.

How to serve a Summons. The act premises, that the first process under the same against freeholders and inhabitants having families, except as therein after directed, shall be by *summons*; and then enacts that such process shall be by summons, directed to any constable in the county where the defendant dwells, commanding him to summon the defendant to appear before the justice, at the time and place to be expressed in such summons, not less than 6, nor more than 12 days from the time of issuing such summons; and shall be served at least six days before the time of appearance mentioned therein, by reading the same to the defendant, and delivering a copy thereof (if required) if such defendant shall be found, and if not, by leaving a copy thereof at his or her house or place of abode, in the presence of some one of the family, of suitable age and discretion, who shall be informed of its contents; and the constable serving such summons shall, upon the oath of his office, return thereupon the time and manner he executed the same, and sign his name thereto.

How to serve a Warrant. In all cases where a warrant shall issue, the constable shall be commanded to take the defendant and bring him forthwith before the justice, to answer the plaintiff of the plea in the same warrant mentioned.

How to serve a Venire or Jury Process. On the return of the summons or warrant, and after the plaintiff has exhibited his demand in court before the justice, and the defendant has denied it by his plea, the matter in difference between the parties is said to be at issue, or that issue is then joined between them; and if they, or either of them, do not wish to have the said issue determined by the justice holding such court, but to have the

same tried by a jury, a venire will thereupon be awarded by such justice, directed to any constable of the town, commanding him to summon twelve good and lawful men, being freeholders or freemen of such town, in no wise of kin to the plaintiff or defendant, nor interested in such suit, to appear before such justice at a certain time and place, as a jury for the trial of the said cause: And the constable shall at the return of the said venire, return a panel of the names of the jurors he shall so summon by virtue thereof; and the name of each person so empannelled, shall be written on separate and distinct pieces of paper as nearly of one size as may be, and shall be delivered to such justice by the constable returning the panel, and shall by the said constable be rolled up, all as nearly as may be in one and nearly the same manner, and put together in a box or some convenient thing, to the intent that such justice, or some indifferent person appointed by him on the trial, shall draw out six of the said papers, one after another, as and for the jury aforesaid.

How to Execute Process of Execution. Whenever judgment is given in the justice's court, either against plaintiff or defendant, the said court shall grant execution thereupon, directed to any constable within the same county, commanding him to levy the debt or damages and costs, of the goods and chattels of the person against whom such execution shall be granted, his arms and accoutrements excepted, and to bring the money, at the time and place therein mentioned, before the justice who issued the same; and if no goods or chattles can be found, or not sufficient to satisfy such execution, the party recovering judgment may, from time to time, renew such execution, or have further execution against the goods and chattels of the party, and the said constable shall be further commanded, to take the body of the defendant, and convey him to the keeper of the common gaol of the county: And it shall be the duty of every such constable to endorse on every execution the time of levying the same. If, however, the justice shall have made an endorsement on the execution to exempt the defendant from imprisonment, and such defendant shall, according to this act, within one month after judgment, pay such constable one dollar and fifty cents, if so much be due thereon, and the like sum in each and every month thereafter, until the execution and constable's fees are fully paid, then such defendant shall not be imprisoned by any such execution; but if he neglect to make such monthly payment, it shall be the duty of such constable to proceed in such manner as if no such endorsement had been made on such execution. *And further*, The constable, after taking such goods and chattels into his custody, by virtue of such execution, shall immediately give public notice, by advertisement signed by

himself, and put at three public places in the town, of the time and place when and where they will be exposed to sale, at least five days before the day appointed for selling them, and therein describe the goods and chattels so taken; and at the time and place so appointed, and the said goods and chattels being present, shall expose them to sale at public vendue to the highest bidder, and pay the debt, or damages and costs levied, to the justice who issued the execution, returning the overplus, if any, to the owner; and for want of goods and chattels whereon to levy, the said constable shall, according to the tenor of the said execution, take the body of the person against whom the execution shall be granted, and convey him to the keeper of the common gaol of the county. And in case any constable, to whom any execution shall be delivered, shall not, within twenty days after receiving such execution, levy the same on the goods and chattels of the person against whom such execution shall be granted, and in Ten Days thereafter pay the debt and costs so levied, into the hands of the justice who issued the same; or in case of his death or removal from office, to the person in whose favor the execution was granted; or if no goods and chattels can be found whereon to levy, then if such constable shall not, if such execution require it, take the body of the person against whom such execution was granted, if to be found, and deliver him or her to the keeper of the common gaol of the county, within thirty days from the receipt of such execution as aforesaid; then, and in every such case, the said constable shall be holden to pay the amount of such execution, to be recovered by an action of debt, with costs, by the person in whose favor such execution was granted, in which case execution shall issue forthwith against such constable: *Provided*, That no constable shall be liable under this clause, for not returning an execution on which the defendant's exemption is endorsed, if he collects and returns the money payable by instalments, or returns the execution as to person and property not found. Lastly; No constable shall levy or collect the amount of any executions issued by virtue of this act, unless the same be collected within the time specified by the preceding sections, or unless the said executions shall be renewed, except in the cases mentioned in the proviso in the preceding section.

His duty on Attachment. Where a justice of the peace shall, in virtue of this act, issue an attachment, it shall be the duty of the constable, on the receipt of such attachment, to attach, take and safely keep, the goods and chattels of the person against whom the same may be issued, to satisfy such judgment as may be rendered in favor of the applicant, and also to leave a copy of such attachment at the dwelling house or other

last place of abode of the defendant: *Provided*, That such constable shall not remove or convey away any such property, if on attaching the same, a bond, with good and sufficient security, be given to the plaintiff, in the penalty of fifty dollars, conditioned that such goods and chattels shall be produced to satisfy any execution which may be issued on any judgment to be recovered on such judgment, by such applicant; and such constable shall, on the return day of such attachment, return the same to the justice who issued the same, and the manner of executing the same, together with such bond, whenever he may have taken one. See Bond, Precedents for Justices.

HIS DUTIES UNDER CERTAIN OTHER STATUTES.

Distresses. The act concerning distresses, rents, &c. passed April 5, 1813, requires, That where any goods or chattels shall be distrained, for any rent reserved and due upon any demise, lease or contract whatsoever, and the tenant or owner of the goods so distrained, shall not, within five days next after such distress taken, and notice thereof (with the cause of taking) left at the chief mansion house, or other most notorious place on the premises charged with the rent distrained for, replevy the same, with sufficient surety to be given to the sheriff according to law, that then, after such distress and notice as aforesaid, and expiration of the said five days, the person distraining shall and may, with the sheriff or under-sheriff of the county, or with the constable of the town, cause the goods and chattels so distrained, to be appraised by two sworn appraisers, whom such sheriff, under-sheriff or constable are empowered to summon for that service, and to swear well and truly to appraise the same, according to the best of their understanding; and after such appraisement, shall and may lawfully sell at public vendue, the goods and chattels so distrained, for the best price that can be gotten for the same (giving three days public notice thereof) towards satisfaction of the rent for which the said goods and chattels shall be distrained, and of the charges of such distress, appraisement and sale, leaving the overplus, if any, in the hands of the said sheriff, under-sheriff or constable, for the owner's use.

Felons. The act of March 20th, 1801, enjoins it on sheriffs, coroners, constables, marshals, and all other persons (who shall be by them commanded or summoned for the purpose) that when any felony shall be committed, they shall give immediate public notice thereof in all the public places near where the same was committed, and shall make fresh pursuit forthwith after every such felon; and every competent person so commanded or summoned, who shall not do so, and be thereof con-

victed, shall be punished by fine according to the discretion of the court having cognizance of the offence; and every such officer who shall conceal or procure to be concealed any felony, or who shall not do his duty in the premises, and be thereof convicted, shall be punished by fine and imprisonment, in the like discretion of any court having cognizance of the offence.

Juries. The 18th section of the act, entitled "an act for regulating trials of issues, and for returning able and sufficient jurors," passed February 25th, 1813, makes a constable, whose duty it shall be to attend any of the courts of record of this state, and who shall refuse or neglect to attend accordingly liable to be fined by such court in a sum not exceeding twenty five dollars.

Special Sessions. It is the duty of the constable to execute the sentence of special sessions of the peace. See title Sheriff.

For other matters, see titles Justices of the Peace, Town Officers, Commissioner of Highways, Overseers of Highways and Overseers of the Poor.

POINTS ADJUDGED IN THE SUPREME COURT.

CONSTABLE.

A promise by a constable to a defendant against whose goods he had an execution from a justice, that if defendant will deliver property, &c. is void. 2 Johns. Rep. 193.

A promise by a constable not to sell goods within 30 days, is void. Ibid.

Any constable of the county may serve all process issuing out of a justices court, in any part of the county. 1 Johns. Rep. 502.

A constable cannot maintain an action against a defendant for the amount paid the plaintiff on an execution which he has suffered to sleep in his hands. 3 Johns. Rep. 434.

An action lies against a sheriff, constable or other officer, for executing process in an unreasonable manner, tending to vex, harrass and oppress the party. 5 Johns. Rep. 125.

As where a constable refused to take property tendered, but sold the horse of A. by warrant for a military fine, with the avowed intent to hurt his feelings, the constable was held liable to an action at the suit of A. Ibid.

A sale under an execution on a judgment in a justice's court, may be adjourned, at the discretion of the officer; and the completion of the sale at a different time or place, if no fraud or abuse appears, will be valid. 5 Johns. Rep. 345.

In trespass, the defendant justified as a constable, under an appointment of three justices, pursuant to the 6th section of the act (sess. 24. c. 78) relative to the duties and privileges of towns, and that he took the goods as constable, by virtue of an execution issued against the goods of the plaintiff; it was held that the appointment made by the justices, was a judicial act, and being within their jurisdiction, was conclusive and valid, until quashed or set aside on certiorari, and could not be questioned in a collateral action. 8 Johns. Rep. 69.

If a constable, having taken goods in execution, deliver them to A. on his giving a receipt promising to deliver them on demand, and the constable does not demand and sell them within 30 days, he loses by his neglect all claim and title to the possession of the goods. 9 Johns. Rep. 361.

If, after making a levy by execution, the constable take security that the goods shall be forth coming at a certain day, and in the mean time a certiorari be regularly issued and served on the justice, it is no defence for not having delivered the goods at the time. 9 Johns. Rep. 66.

Distress. Where on a lease the rent is made payable in repairs and improvements, being for a sum certain, or capable of being reduced to certainty, the landlord may distrain. 10 Johns. Rep. 91.

So if land be held by certain services, the landlord may distrain. Ibid.

The act concerning distresses, does not apply to the case of a levy on personal property, made by an officer under a warrant, in the nature of an execution. 5 Johns. Rep. 125.

Rent. Where the goods of a tenant, who had hired a house for a year, for a sum payable quarterly, are taken in execution, the landlord is not entitled to rent for the current quarter, but only to the rent due on the last quarter day. 2 Johns. Rep. 478.

The remedy by distress is for rent alone, and not for damages for the delay; and the lessor can distrain only for the amount of the rent in arrear, and not for interest. 6 Johns. Rep. 43.

PRECEDENTS.

NO. I.

CONSTABLE'S BOND.

Know all men by these presents, That we, A. B. and C. C. of Kingston, in the county of Ulster, are held and firmly bound to the people of the state of New-York, in the sum of two hundred and fifty dollars, of lawful money of the said state, to be paid to the said people; for which payment we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this day of in the year

Whereas the above bounden A. B. hath on the day of been chosen (or appointed) a constable of the said town of Kingston; and the above bounden C. C. hath, in pursuance of the act in such case provided, become his surety, and the said A. B. and C. C. have jointly and severally agreed, and do by these presents jointly and severally agree, to pay to each and every person, such sum of money as the said constable shall become liable to pay, for or on account of any execution which shall be delivered to him for collection.

Now, therefore, the Condition of the above obligation is such, that if the above bounden A. B. constable as aforesaid, shall well and faithfully pay to each and every person, such sum of money as the said constable shall become liable to pay for or account of any execution which shall be delivered to him for collection, then the above obligation to be void, otherwise of force.

A. B. (L. S.)
C. C. (L. S.)

Sealed and delivered in the presence of

Endorsement by the town Clerk or Supervisor.

I approve of the surety in the within bond named. day of

G. L. Town Clerk.

NO. II.

LANDLORD'S DISTRESS WARRANT.

To J. M. one of the Constables of Kingston in the county of Ulster.

I do hereby empower you to distrain the goods and chattels of L. O. in his present dwelling house and on the premises now in his actual possession, situated in the town of Kingston, in the county of Ulster, for fifty dollars, being for one year's rent due me for the same, on the first day of May instant: for which this shall be your sufficient warrant. Dated 3d May, 1815.

P. G.

NO. III.

NOTICE OF DISTRESS TO TENANT.

To L. O. of Kingston, in the county of Ulster.

Take notice, that I have this day by virtue of a warrant from P. G. distrained at the goods and chattels specified in the inventory hereunto annexed, for fifty dollars, being, as he alledges, for one year's rent due him on the first day of May instant. Unless therefore you pay the said rent, with the charges of distraining the same, within the space of five days from the date hereof, the said goods and chattels will be appraised and sold according to law. Dated the 3d day of May, 1815.

J. M. Constable.

NO. IV.

APPRAISERS' OATH.

We the undersigned A. N. and B. G. do swear on the holy Evangelist of Almighty God, that we will truly and impartially appraise the goods and chattels in the within contained inventory specified, according to the best of our skill and judgment.

A. N.
B. G.

Sworn the 3d day of May, 1815, before me, J. M. Constable.

NO. V.

APPRAISERS' CERTIFICATE.

We the undersigned A. N. and B. G. having been duly sworn for the purpose by J. M. Constable, do upon our oath certify, that we have appraised and do appraise the goods and chattels in the within contained inventory mentioned, having personally viewed the same, at sixty dollars. In witness whereof we have hereunto set our hands this 3d day of May, 1815.

A. N.
B. G. } Appraisers.

NO. VI.

NOTICE OF VENDUE TO TENANT.

Take notice, that I intend to sell the goods and chattels, in the inventory hereunto annexed specified, at public vendue to the highest bidder, at the court house, in the village of Kingston, on the 7th day of May instant, at 10 o'clock in the forenoon of that day. Dated 3d May, 1815.

J. M. Constable.

NO. VII.

CONSTABLE'S FEES.

For serving a warrant, nineteen cents.

Serving a summons, twelve and a half cents.

Serving a warrant of distress for rent, one dollar and fifty cents; making an inventory on such distress, and draft of notice, and as many copies as may be necessary, one dollar; travelling fees, per mile, six cents; fees for levying only, for each dollar, one cent: *Provided*, That this shall not extend to the city of New-York.

Milage for every mile, going only, six cents.

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

Taking a defendant into custody on a mittimus, 12 1-2 cents.

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

CHAP. XII.

THE FENCE VIEWER.

As there is perhaps no object better calculated to preserve peace and harmony between neighboring farmers, than to keep their several fences in good order and repair, and on the proper and correct boundaries of their respective lots or enclosures: So there is probably no subject which has more frequently disturbed the repose between such neighbors and been a more prolific source of rancorous animosities and lawsuits between them, as keeping poor or insufficient fences, or erecting them on improper boundary lines. To avoid those evils, and to nurture and encourage the pursuits of agriculture, our legislature have authorised the office, and enjoined the incidental duties, of which we propose to treat in this chapter: For all must admit the importance of good fences to advance the interests of husbandry, and that the prosperity of the state is promoted in proportion as her citizen farmers become wealthy and independent. Besides, as it is offensive to both human and divine laws to remove or shift a neighbor's land mark, and which in fact is often inadvertently done, in the act of repairing partition fences, it is material that neighboring farmers, who value the blessings of peace and friendship, should so regulate and ascertain their respective lines, and construct and repair their partition fences, as to avoid the least cause of controversy. But that is not all: it is surely requisite, that every landholder should have some knowledge of the law on this subject. Let us then enquire into it.

THE OFFICE OF FENCE VIEWER.

It is the fence viewer's office, to be conversant with all and singular the controversies which accrue in his town, concerning the just proportion of partition fences to be respectively made by and between neighboring owners or occupants of lands, and the sufficiency of the fences enclosing the several lots of the inhabitants thereof, and upon actual view of such fences as have become a subject of dispute before him, to determine the suffi-

ciency or insufficiency of the same, upon the oath of his office, and according to the town regulation and the law of the state.

OATH.

I do solemnly and sincerely promise and swear (or affirm) that I will in all things, to the best of my knowledge and ability, well, faithfully and impartially, execute and perform the trust reposed in me as a fence viewer in the town of in the county of

DUTIES.

To settle disputes about Partition Fences. It is enacted by the seventeenth section of the act relative to the duties and privileges of towns, that where the lands or meadows of any two or more persons shall join each other, each of them shall make and maintain a just proportion of the division fence between them, except such persons shall choose to let their lands or meadows lay vacant and open; and in case any disputes shall arise concerning the part or proportion of the fence to be made and maintained by either party, the same shall be settled by the fence viewers of the town where such lands or meadows shall be situated, or any two of them, whose decision shall be conclusive; and if any person shall neglect or refuse to make and maintain his or her part or proportion of such fence, or shall permit the same to be out of repair, every such person shall be liable to, and shall pay all such damages as shall accrue to his or her neighbors thereby, to be appraised and ascertained by the fence viewers of the same place, or any two of them, not interested therein, and to be recovered with costs in any court having cognizance of the same; and in case the party so neglecting and refusing shall continue such neglect or refusal for the space of one month after notice and request to make or repair such fence, then and in every such case it shall be lawful for the party injured thereby, to make and repair all the said fence at the expence of the party so neglecting or refusing, to be recovered with costs of suit in any court having cognizance of the same; and in case any person who shall have made his proportion of any such fence, shall conclude or be disposed to throw up his said lands or meadow for common feeding, or to let the same lay open, such person shall give three months notice thereof to the person or persons in possession of the lands and meadows adjoining, and if such fence shall be removed without giving such notice, or before the expiration of the said three months, then the person removing the same shall be liable to make good all such

damages as the party injured by such removal shall sustain thereby, to be recovered as aforesaid, with costs: And whereas, in some parts of this state, the fences inclosing meadow and low land are frequently injured, destroyed or carried away by floods and high tides which generally happen in the spring of the year, and the owners of such meadow or low land lose a great part of the profits thereof for the whole year, unless the said fence be speedily repaired or new made. Therefore, it is further enacted, That in all cases where such partition fence shall be so injured, destroyed or carried away, every person who ought by law to make or repair the same, shall make or repair the same, or his just proportion thereof within ten days after he shall be thereunto required by any person interested therein; and if any person shall refuse or neglect to make or repair his proportion of such fence for the space of ten days after such request as aforesaid, then it shall be lawful for the party injured thereby to make or repair all the said fence at the expence of the party so neglecting or refusing, and to recover the same with costs, in any court having cognizance thereof.

Duty on Distress of Beasts. When any distress shall be made of any beasts doing damage, the person distraining shall, as soon as conveniently may be, and within 24 hours thereafter, unless the distress be made on Saturday, in which case he shall, before Tuesday morning thereafter, make application to the two nearest fence viewers in the same town, to appraise and ascertain the damage, who shall immediately thereupon go to the place where such damage shall be committed, and view the damage done, and appraise, ascertain and certify under their hands, the amount thereof, with their fees for the same; and if any dispute shall arise concerning the sufficiency of the fence, it shall be determined by the same fence viewers, whose decision shall be conclusive, and the person making the distress shall, as soon as he shall think proper, and within 48 hours after making such distress, unless the damage shall be sooner paid, cause the beasts so distrained to be put in the nearest pound in the same county, where they shall remain until the sum so certified by the fence viewers, with the fees of the pound master shall be paid, or the beasts so empounded be replevied. See title, Pound Master.

Strays. The act concerning strays, provides, That the reasonable charges for keeping stray cattle, horses or sheep, shall be ascertained by the fence viewers or town clerk, unless the owner or person claiming such charges, can otherwise agree.

For other matters, see titles "Powers and Privileges of Towns," and "Town Officers."

POINTS ADJUDGED IN THE SUPREME COURT.

FENCE VIEWERS.

The existence of a dispute about a particular fence, is sufficient to enable the fence viewers to interpose. 4 Johns. Rep. 414.

In an action to recover the defendant's proportion of the expenses of putting up a partition fence, if no dispute had existed as to the proportion, a decision of the fence viewers need not be shown. 4 Johns. Rep. 138.

And in such case the costs and expence of repairing are not to be settled by the fence viewers. Ibid.

Parol proof of a written notice to repair, is sufficient. Ibid.

PRECEDENTS.

NO. I.

NOTICE TO REPAIR FENCE.

To Mr. A. M.

I do hereby request you to make and repair your proportion of the partition fence between the lands of the subscriber and yourself, situated at , within the limits of the town of Kingston, pursuant to the act in such case made and provided. Given under my hand this day of May, 1815.

G. M.

NO. II.

AFFIDAVIT OF SERVICE OF THE ABOVE.

Ulster County, ss. On the second day of June, 1815, personally came before me K. L., one of the justices of the peace for the county of Ulster, B. O. and made oath, that on the day of May last past, he, this deponent, served a true copy of the above notice on A. M. and further saith not. B. O.

Sworn this second day of June, 1815, before me,

K. L. Justice of the Peace.

NO. III.

NOTICE TO THROW UP FENCE.

To Mr. A. B.

Take notice, that I intend to throw up for common feeding, All that certain lot of land within the limits of the town of Kingston, in the county of Ulster, bounded north by a lot of land now owned and occupied by you, east by a lot of A. M. west by a lot of N. L. and south by a lot of B. L. pursuant to the statute in such case made and provided. Given under my hand this day of 1815. G. M.

N. B. Cause affidavit to be made as above, No. II.

NO. IV.

FENCE VIEWER'S CERTIFICATE APPRAISEMENT.

County of Ulster, town of Kingston, ss. On application to us the subscribers, by D. L. to appraise and ascertain the damage which he alledged was committed by certain beasts, on a lot of land belonging to him in the said town, we did immediately thereupon go to the place where the said damage was said to have been committed, and viewed the same, and do hereby appraise, ascertain and certify the said damage at ten dollars, and our fees in the premises at one dollar and fifty cents. Given under our hands this day of 1815.

N. O.
P. G. } Fence Viewers.
F. L.

CHAP. XIII.

THE POUND MASTER.

THE office of pound master, is more limited and circumscribed than that of any other town officer It only consists in superintending the common pound of his town, according to law. Simple, however, as is its organization, as a link in the chain of town duties and offices, it is far from being devoid of importance. In the preceding chapter we have seen, that it is the duty of the fence viewers to certify, on distress, the damage done by the beasts, together with their fees, and that unless such damage and fees be paid, or the beasts on such distress be replevied, the same shall remain in the pound. It will hence be found, that if there be no replevy in such case, and the owner of the beasts did not come forth, that unless the pound master fed them, they must inevitably perish. But why, it might be asked feed them, if there be no remedy for a remuneration, or why distrain them if no damages could be levied by the distress. The pound master is the legal agent, as we shall see in this chapter, by and through whom satisfactory redress can be obtained in cases of this description. It is proper in this place to observe, that it does not appear from any statute to be incumbent on the pound master to take an oath of office.

DUTY AND FEES.

It is enacted by the twenty first section of the act relative to the duties and privileges of towns, that there shall be one or more sufficient pounds in each city and town in this state, and that the pound master in each town may take, for all beasts that shall be put into the pound of which he is keeper or master, the following fees, to wit, for taking in and discharging every horse, gelding, mare or colt, and all neat cattle, twelve and a half cents each; and for every sheep or lamb, three cents; and for every hog, shoat or pig, six cents; which fees shall be paid to the said keeper or pound master, by the owner of the beasts empounded, or some person for him, before the said beasts shall

be released from such pound, unless the keeper or master of such pound shall otherwise agree concerning the same: And if the owner of any beasts empounded for doing damage, shall not pay the damage and the fees of the keeper or master of the pound, with reasonable charges for keeping and feeding them, not exceeding three cents for each beast for every twenty-four hours such beast shall be empounded and fed, within six days after such beast shall be empounded, or replevy the same beasts, then it shall and may be lawful for such keeper or master of such pound, to sell such beast at public vendue, giving at least 48 hours previous notice of such sale, by advertisement to be set up at the said pound, and at the nearest public place to the said pound, and out of the monies arising from such sale, to pay the said damages, and retain in his hands his fees and charges of feeding and keeping the same beast and of such sale, and return the overplus to the owner of the same beast; and if no such owner shall appear and claim such overplus within six calendar months after such sale, the same shall be paid to the overseers of the poor of the city or town where such beast was empounded, for the use of the poor of such city or town.

Cattle, damage feasant, cannot be empounded until the damage has been ascertained, and appraised by two fence viewers, according to the directions of the act. 2 Johns. Rep. 191.

For other matters, see the preceding chapter, and titles The Powers and Privileges of Towns, and Town Officers.

PRECEDENT.

POUND MASTER'S NOTICE OF SALE, &c.

Public Notice is hereby given, That I intend to sell at public vendue, to the highest bidder, at the common pound in the town of Kingston, whereof I am keeper, on the day of instant, at ten o'clock in the forenoon, one black milch cow, about seven years old, with a slit in her right ear and a left white hind foot, having been distrained and empounded in the said pound for doing damage, in order to satisfy the said damage, together with my fees and charges, pursuant to the statute in such case made and provided. Dated day of at ten o'clock in the forenoon. 1815.

G. O. Pound Master.

THE END.

ERRORS.

Page 79,	line 11, after *keeper*, read *recorder*.
81,	last line, for *acknewleged* read *acknowledged*.
82,	32, for *precept* read *receipt*.
90,	4, for *generall* read *generally*.
103,	39, for *deviseers* read *devisees*.
129,	12, for *against* an executor, read in *favor* of an executor.

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