THE LAW

OF

THE OFFICE AND DUTIES OF THE SHERIFF.

WITH THE

Writs and Forms relating to the Office.

BY

CAMERON CHURCHILL, B.A.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

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(WITH PERMISSION)

TO

THE HONOURABLE SIR LEWIS W. CAVE,

ONE OF THE JUDGES OF THE QUEEN'S BENCH DIVISION

OF HER MAJESTY'S HIGH COURT OF JUSTICE.

PREFACE TO THE SECOND EDITION.

THE general plan of this edition will be found to be very similar to that on which the former edition was based; instead, however, of subdividing each chapter, which is, perhaps, perplexing to the reader, the plan of increasing the number of chapters, and forming them into groups, according to their subject-matter, has been adopted.

Thus, passing over the first two chapters, which deal with the origin, appointment, authority, &c., of the sheriff, a group of three chapters (III. to V. inclusive) will be found to treat of the undersheriff, the sheriff's officers, and the sureties for officers, to each of which subjects a separate chapter is assigned.

The next group (Chapters VI. to X. inclusive) is devoted to the sheriff's *judicial* duties, under five heads, each in a separate chapter, viz.:—

1. At the Election of Coroners.
2. In Outlawry Proceedings.
3. In the Election of Members of Parliament.
4. On a Writ of Inquiry.
5. In the Compensation Court.

The sheriff's *ministerial* functions are similarly dealt with under five headings, viz.:—

1. At Assizes.
2. In the Summoning of Juries.
3. In the Execution of Criminals.
4. As to Interpleader.
5. In the Execution of Writs.

These form a further group of chapters (from XI. to XXIV. inclusive), a chapter being allotted to each of the first four subjects, whilst the important and comprehensive subject of the

execution of writs is divided into ten chapters, under the following heads:—

1. Execution of Writs generally.
2. Writ of *Fieri Facias* generally.
3. What may and may not be taken under a *Fi. Fa.*
4. Bills of Sale.
5. The Sheriff's Fees and Poundage.
6. The Landlord's Security for Rent.
7. The Sheriff's Return to Writ.
8. Writ of *Elegit.*
9. Writ of Extent.
10. Minor Writs.

The final group treats in three chapters (XXV. to XXVII. inclusive) of the remedies against the sheriff, thus:—

1. The Remedy by Attachment.
2. The Remedy by Action.
3. Evidence to Connect the Sheriff.

The author is aware that the above arrangement is open to certain objections, but, after careful consideration, he believes that it will be found, upon the whole, the one most convenient to the reader.

The increasing importance of bills of sale, as an impediment to the sheriff, has necessitated the introduction of a chapter on that subject.

For some of the improvements in this Edition the author is indebted to suggestions offered by reviewers and critics of the edition of 1879, for which he feels that his acknowledgments are due.

He also desires to express his grateful appreciation of the advice which he has received from time to time from his friend, Mr. T. Henry Baylis, Q.C.

In conclusion, the author ventures to express a hope that the increased pains which he has bestowed on this edition, and a considerable amplification of the work, will render it more extensively useful to the legal profession.

TEMPLE, *February*, 1882.

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AUTHORS CITED.

TABLE OF CONTRACTIONS.

Abbreviation.	Name of Author or Work.
Atk. Sh.	Atkinson's Sheriff Law.
Am. & Fer.	Amos and Ferard on Fixtures.
B. & D.	Bell and Dwelly's Laws of Excise.
Bæd. Hist. Ec.	Bæda's *Historia Ecclesiastica Gentis Anglorum.*
Bl. Com.	Sir William Blackstone's Commentaries.
Bro.	Brooke's Abridgment.
Bro. *Retorne de Briefe.*	Brooke's Abridgment, *sub tit. Retorne de Briefe.*
Buck.	Buckley's Law and Practice under the Companies' Acts.
C. L. P. A.	Common Law Procedure Act.
Chit. Arch. Prac.	Chitty's Archbold's Practice.
Co. Ent.	Coke's Entries.
Co. Litt.	Coke on Littleton (1 Inst.).
Co. M. C.	Coke's *Magna Charta* (2 Inst.).
Co. P. C.	Coke's Pleas of the Crown (3 Inst.).
Cole Eject.	Cole on Ejectment.
Com. Dig.	Comyn's Digest.
Dalt.	Dalton's Law of Sheriffs.
Day C. L. Prac.	Day's Practice under the Common Law Procedure Acts.
East P. C.	East's Pleas of the Crown.
F.	*Consuetudines Feudorum*, or Fitzherbert.
F. N. B.	Fitzherbert's *Natura Brevium.*
Fitz. Retorne.	Fitzherbert's Abridgment, *sub tit. Retorne.*
Freeman.	Freeman's History of the Norman Conquest.
Gilb. Ex.	Gilbert's Executions.
Gl. Enc.	Globe Encyclopædia.
Gn.	Gneist.

Abbreviation.	Name of Author or Work.
Hawk. P. C.	Hawkins' Pleas of the Crown.
Imp. Sh.	Impey's Law of Sheriffs.
Inst.	Coke's Institutes. See "Reports Cited."
Journ.	Journals of the House of Commons.
Kemb.	Kemble's Saxons in England.
Lind.	Lindley's Law of Partnerships.
Mon. Angl.	Dugdale's *Monasticon Anglicanum*.
Off. Brev.	*Officina Brevium*.
Reed.	Reed's Bills of Sale Acts.
Rog. El.	Rogers on Elections.
Roll. Abr.	Rolle's Abridgment.
R. G. H. T.	*Regulæ Generales*, Hilary Term.
R. S. C.	Rules of the Supreme Court.
Selw. N. P.	Selwyn's *Nisi Prius*.
Sewell.	Sewell on the Law of Sheriff.
Stat. Law Rev. Act.	Statute Law Revision Act.
Stubbs.	Stubbs' Constitutional History of England.
Th. Br.	*Thesaurus Brevium*.
Vet. N. B.	Old *Natura Brevium*.
Vin. Abr.	Viner's Abridgment.
Vin. Supp.	Viner's Supplement.
Wat. Sh.	Watson's Law of the Sheriff.
West.	West on Extents.
Wh. L. L.	Wharton's Law Lexicon.
Wil. Jud. Act.	Wilson's Judicature Acts.
Wil. Bankruptcy.	Williams' Bankruptcy Practice.
Woodfall.	Woodfall's Landlord and Tenant.

REPORTS CITED.

TABLE OF CONTRACTIONS.

Abbreviation.	Reports or Compiler.	Period.	Court.
A. & E. or Ad. & E. or Ad. & El.	Adolphus and Ellis.	1834—1841	K. B.
Amb.	Ambler.	1760—1786	Chanc.
Andr.	Andrews.	1738—1740	K. B.
Ans. or Anst.	Anstruther.	1792—1793	Exch.
Atk.	Atkyns.	1736—1754	Chanc.
B. & Ad.	Barnewall and Adolphus.	1830—1834	K. B.
B. & Ald.	Barnewall and Alderson.	1818—1822	K. B.
B. & Aust.	Barron and Austen.	1842	Election Cases.
B. & B.	Ball and Beatty or Broderip and Bingham.	1807—1814 1819—1824	Ir. Chanc. C. P.
B. & C.	Barnewall and Cresswell.	1823—1830	K. B.
B. & I.	Bankruptcy and Insolvency Cases.	1855	All.
B. & P.	Bosanquet and Puller.	1796—1804	C. P.
B. & S.	Best and Smith.	1861—1870	Q. B.
B. C. C.	Bail Court Cases, or Lowndes and Maxwell.	1852	B. C.
Ball & B.	Ball and Beatty.	1807—1814	Ir. Chanc.
Bar. & Arn.	Barron and Arnold.	1843—1846	Election Cases.
Bar. & Aust.	Barron and Austin.	1842	Election Cases.
Barnes.	Barnes' Notes of Cases.	1733—1756	C. P.
Beav.	Beavan.	1840—1866	Rolls.
Bing.	Bingham.	1822—1834	C. P.
Bl. Rep.	Mr. Justice Blackstone.	1861—1867	All.
Black. H.	Henry Blackstone.	1788—1796	C. P.
Black. W.	Sir W. Blackstone.	1746—1780	K. B.
Bli.	Bligh.	1819—1821	H. L.
Bro.	Brown.	1778—1794	Chanc.
Brown's P. C.	Brown's Practice Cases.	1702—1800	H. L.
Brownl.	Brownlow and Gouldesborough.	1569—1624	C. P.

Abbreviation.	Reports or Compiler.	Period.	Court.
Bulst.	Bulstrode.	1609—1639	K. B.
Bunb.	Bunbury.	1713—1742	Exch.
Burr.	Burrow.	1756—1772	K. B.
C. B.	Common Bench.	1845—1857	C. L.
C. & F. or Cl. & Fin.	Clarke and Finelly.	1831—1846	H. L.
C. & J.	Crompton and Jervis.	1830—1832	Exch.
C. & K.	Carrington and Kirwan.	1843—1850	N. P.
C. & M.	Crompton and Meeson.	1832—1834	Exch.
C. M. & R.	Crompton, Meeson and Roscoe.	1834—1836	Exch.
C. & P.	Carrington and Payne.	1823—1841	N. P.
C. P. D.	Common Pleas Division (Law Reports).		
Camp.	Campbell.	1807—1816	N. P.
Carth.	Carthew.	1688—1699	K. B.
Chit.	Chitty.	1819-1820	B. C.
Clarke & Finelly.	Clarke and Finelly.	1831—1846	H. L.
Co.	Coke.	1572—1616	K. B.
Comb.	Comberbatch.	1685—1695	K. B.
Coop.	Cooper.	1815	Chanc.
Corb. & D.	Corbett and Daniell.	1819	Election Cases.
Cowp.	Cowper.	1774—1778	K. B.
Cr. & Ph.	Craig and Phillips.	1841	Chanc.
Cr. & St.	Craigie and Stewart.		H. L.
Cro. Eliz.	Croke.	*temp.* Eliz.	K. B. & C. P.
D.	Dunlop and others.	1838—1862	Court of Session.
D. & E. or D. & East.	Durnford and East or Term Reports.	1785—1800	K. B.
D. & L.	Dowling and Lowndes.	1844—1848	Q. B.
D. & M.	Davison and Merivale.	1843—1844	Q. B.
D. & R.	Dowling and Ryland.	1822—1828	K. B.
D. N. S.	Dowling (New Series).	1841-1843	B. C.
Dan.	Daniell.	1817—1819	Exch.
De G.	De Gex.	1844—1848	Bktcy.
De G. & J.	De Gex and Jones.	1857—1859	Chanc.
De G. J. & Sm.	De Gex, Jones and Smith.	1862—1865	Chanc.
De G. & Sm.	De Gex and Smale.	1846—1852	Chanc.
Dougl.	Douglas.	1775—1776	K. B.
Dow.	Dow.	1812—1818	H. L.
Dow & C.	Dow and Clark.	1827—1832	H. L.
Dow & Ry. N. P.	Dowling and Ryland's.	1822—1823	N. P.
Dowl.	Dowling's Practice Cases.	1830—1841	B. C.
Dr. & Sm. or Drew. & Sm.	Drewry and Smale.	1860—1865	Chanc.
Drew.	Drewry.	1852—1859	Chanc.
E. & B. or El. & Bl.	Ellis and Blackburn.	1851—1858	All.
East.	East.	1801-1814	K. B.

Abbreviation.	Reports or Compiler.	Period.	Court.
El. B. & E.	Ellis, Blackburn and Ellis.	1858	Q. B.
El. & El.	Ellis and Ellis.	1858—1860	Q. B.
Eq. Cas. Abr	Equity Cases Abridged.	1732	Chanc.
Esp.	Espinasse.	1793—1807	N. P.
F. & F.	Foster and Finlason.	1858—1867	N. P.
Finch.	Sir A. Finch.	1673—1681	Chanc.
Forrest.	Forrest.	1801	Exch.
Fortes.	Fortescue.	1695—1738	K. B.
Freem. K. B.	Freeman.	1670—1704	K. B.
Freeman.	Freeman.	1660—1706	Chanc.
G. & D.	Gale and Davison.	1841—1843	Q. B.
G. & J.	Glyn and Jameson.	1821—1828	Bktcy.
Gale.	Gale.	1835—1836	Exch.
Giff.	Giffard.	1857—1865	Chanc.
Godb.	Godbolt.	1575—1638	K. B.
Golds.	Goldesborough.	1586—1602	K. B.
Gow.	Gow.	1818—1820	N. P.
H. Bl. or H. Black.	Henry Blackstone.	1788—1796	C. P.
H. & C.	Hurlstone and Coltman.	1862—1867	Exch.
H. & H.	Horn and Hurlstone.	1838—1839	Exch.
H. & M.	Hemming and Miller.	1862—1865	Chanc.
H. & N.	Hurlstone and Norman.	1856—1861	Q. B.
H. & W.	Harrison and Wollaston.	1835—1857	K. B.
H. L. C.	House of Lords Cases (Clarke and Finelly).	1831—1846	H. L.
Hard.	Hardre.	1655—1669	Exch.
Hare.	Hare.	1841—1853	Chanc.
Har. & R.	Harrison and Rutherfurd.	1866—1868	C. P.
Hob.	Sir H. Hobart.	1613—1644	C. P.
Holt.	Holt.	1688—1711	K. B.
Holt. N. P.	Holt.	1815—1817	N. P.
Inst.	Coke's Institutes.	1568—1611	All.
Ir. Ch. Rep.	Irish Chancery.	1850—1866	Ir. Chanc.
Ir. R. C. L.	Irish Common Law.	1838—1866	Ir. C. L.
John.	Johnson.	1859	Chanc.
John. & H. or Johnson & H.	Johnson and Hemming.	1860—1862	Chanc.
Jones, T.	T. Jones.	1667—1685	K. B.
Jones, W.	W. Jones.	1620—1641	K. B.
Jur.	Jurist.	1837—1854	All.
Kay.	Kay.	1853—1854	Chanc.
Kay & J.	Kay and Johnson.	1854—1858	Chanc.
Keb.	Keble.	1661—1671	K. B.
Keen.	Keen.	1836—1838	Rolls.
Ken. or Keny.	Kenyon's Notes.	1753—1759	K. B.

Abbreviation.	Reports or Compiler.	Period.	Court.
L. & C.	Leigh and Cave.	1861—1865	C. C. R.
L. J.	Law Journal.		All.
L. M. & P.	Lowndes, Maxwell and Pollock.	1850—1851	B. C.
Latch.	Latch.	1625—1628	K. B.
Leach C. C.	Leach's Crown Cases.	1730—1815	C. C. R.
Leon.	Leonard.	1582—1615	K. B.
Lev.	Levinz.	1660—1696	K. B.
Lew. C. C.	Lewin's Crown Cases.	1822—1838	C. C. R.
Ld. Raym.	Lord Raymond.	1694—1730	K. B.
Lit. or Litt. Rep.	Littleton.	1626—1632	C. P.
Lofft.	Lofft.	1771—1774	K. B.
M. & A.	Montagu and Ayrton.	1833—1838	Bktcy.
M. D. & D.	Montagu, Deacon and De Gex.	1840—1844	Bktcy.
M. & G.	Manning and Granger or Macnaghten and Gordon.	1840—1844 1849—1851	C. P. Chanc.
M. & M'A.	Montagu and M'Arthur.	1828—1830	Bktcy.
M. & P.	Moore and Payne.	1828—1831	C. P.
M. & R.	Moody and Robinson.	1830—1844	N. P.
M. & S.	Maule and Selwyn.	1813-1817	K. B.
M. & Sc. or M. & Scott, or Moo. & S.	Moore and Scott.	1831—1834	C. P.
M. & W.	Meeson and Welsby.	1836—1847	Exch.
Madd.	Maddock.	1815—1822	Chanc.
Mar. N. C.	March's New Cases.	1639—1653	K. B.
Marsh.	Marshall.	1813—1816	C. P.
Maule & Sel. or M. & Sel.	Maule and Selwyn.	1813—1817	K. B.
M'Clel. & Y. or M'Clel. and Younge.	McCleland and Younge.	1824—1826	Exch.
Mer.	Merivale.	1815—1817	Chanc.
Mod.	Modern.	1669—1732	K. B.
Moo. & M.	Moody and Malkin.	1826—1830	N. P.
Moor. or Moore.	Moore.	1817—1827	C. P.
Mos.	Moseley.	1726—1731	Chanc.
N. & M. or Nev. & M.	Neville and Manning.	1832—1836	K. B.
N. & P. or Nev. & P.	Neville and Perry.	1836—1838	K. B.
N. C.	Notes of Cases, or Bingham's New Cases.	1841—1850 1834—1840	Adm. and Eccl. C. P.
N. R.	Bosanquet and Puller's New Reports.	1796—1807	C. P.
Noy.	Noy.	1595	K. B.
P. & D.	Perry and Davison.	1838—1841	Q. B.
P. D.	Probate Division (Law Reports).		

Abbreviation.	Reports or Compiler.	Period.	Court.
P. R. & D.	Power, Rodwell and Dew.	1848—1856	Election Cases.
P. W.	Peere Williams.	1695—1736	Chanc.
Palmer.	Sir G. Palmer.	1619—1653	K. B.
Parker.	Parker.	1743—1767	Exch.
Peake, N. P. C.	Peake's Nisi Prius Cases.	1790—1812	N. P.
Peake Ad. Cas.	Peake's Additional Cases.		N. P.
Peck.	Peckwell.	1796—1806	Election Cases.
Per. & Knapp.	Perry and Knapp.	1833	Election Cases.
Ph.	Phillips.	1841—1849	Chanc.
Pig. & R.	Piggott and Rodwell.		Election Cases.
Plowd.	Plowden.	1548—1571	K. B.
Pol.	Pollexfen.	1669—1685	K. B.
Pow. R. & D.	Power, Rodwell and Dew.	1847—1856	Election Cases.
Price.	Price.	1814—1824	Exch.
Q. B.	Queen's Bench (Adolphus and Ellis, New Series).	1841—1852	Q. B.
Q. B. D.	Queen's Bench Division (Law Reports).		
Ray. T.	Sir Thos. Raymond.	1660—1684	K. B.
R. & M.	Russell and Mylne, or Ryan and Moody.	1829—1831 1823—1826	Chanc. N. P.
Rep.	Coke's Reports.	1568—1611	All.
Rob.	Robinson's Entries.		
Roll.	Sir H. Rolle.	1614—1625	K. B.
Rose.	Rose.	1810—1816	Bktcy.
Russ. & R.	Russell and Ryan.	1799—1823	C. C. R.
S. L. C.	Smith's Leading Cases.		
S. & S.	Simons and Stuart.	1822—1826	Chanc.
Salk.	Salkeld.	1695—1704	K. B.
Saund. & C.	Saunders and Cole.	1842—1848	B. C.
Saville.	Sir J. Saville.	1579—1594	C. P.
Say.	Sayer.	1751—1756	K. B.
Scott.	Scott.	1834—1840	C. P.
Scott N. R.	Scott's New Reports.	1840—1845	C. P.
Show.	Shower.	1679—1694	K. B.
Sid.	Sir T. Siderfin.	1659—1671	K. B.
Sim.	Simons.	1826—1849	Chanc.
Sm. & G. or Sm. & Giff.	Smale and Giffard.	1852—1857	Chanc.
Stark.	Starkie.	1815—1823	N. P.
Stra.	Strange.	1716—1747	K. B.
Swans.	Swanston.	1818—1819	Chanc.
Sty.	Style.	1645—1646	K. B.
T. & M.	Temple and Mew.	1848—1851	C. C. R.
T. & R.	Turner and Russell.	1822—1824	Chanc.
T. R.	Term Reports (Durnford and East).	1785—1800	K. B.
Tam.	Tamlyn.	1829—1830	Rolls.

Abbreviation.	Reports or Compiler.	Period.	Court.
Taunt.	Taunton.	1807—1819	C. P.
Toth.	Tothill.	1559—1646	Chanc.
Tudor C. M. L.	Tudor's Leading Cases on Mercantile Law.		
Tudor Cas. Pr.	Tudor's Leading Cases on Real Property.		
Turn. & R.	Turner and Russell.	1822—1824	Chanc.
Tyr.	Tyrwhitt.	1830—1835	Exch.
Tyr. & G.	Tyrwhitt and Granger.	1836	Exch.
Ventris.	Ventris.	1668—1691	K. B.
Ves.	Vesey.	1747—1756	Chanc.
W. N.	Weekly Notes (Law Reports).		All.
W. R.	Weekly Reporter.		All.
W., W. & D.	Willmore, Wollaston and Davison.	1839	Q. B.
W., W. & H.	Willmore, Wollaston and Hodges.	1840	Q. B.
W. & S. App.	Wilson and Shaw.		H. L.
Wightw.	Wightwicke.	1810—1811	Exch.
West, H. L.	West.	1839—1841	H. L.
Wils.	Wilson.	1742—1774	K. B.
Wils. Ch.	Wilson.	1818—1819	Chanc.
Wils. Ex.	Wilson.	1817	Exch.
Wolf. & B.	Wolferstan and Bristow.	1859—1864	Election Cases.
Wolf. & D.	Wolferstan and Dew.	1856—1858	Election Cases.
Y. & J.	Younge and Jervis.	1827—1830	Exch.
Yelv.	Yelverton.	1603—1613	K. B.
You.	Younge.	1830—1832	Exch.

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ERRATA.

Page 5, line 7, for "being" read "having long been."
Page 121, for "Chapters xi—xxiii" read "Chapters xi—xxiv."
Page 439, footnote (*r*), for "Ayshford" read "Ashford."
Page 452, footnote (*t*), for "1 B. & Ad." read "1 B. & Ald."

THE LAW OF THE

OFFICE AND DUTIES OF THE SHERIFF.

CHAPTER I.

ORIGIN AND APPOINTMENT OF THE SHERIFF.

It is necessary, in considering the origin of the sheriff, the exact date of which is wrapped in considerable obscurity, to go back to a period of somewhat remote antiquity, and to glance as briefly as possible at an office now long obsolete, which was at one time closely allied with that of the sheriff, and to which some of the dignity of the latter office, and many of its duties, originally belonged.

The ealdorman. The dignitary next in importance to the king, under the Anglo-Saxon administration, was the ealdorman, who was invested with a civil as well as a military pre-eminence. In his capacity of civil ruler he was called *Ealdorman*, whilst in his military capacity he was termed *Heretoga* (*a*).

During the period of the so-called Heptarchy some of the petty princes were designated kings, whilst others reigned as ealdormen, so that at one period it was difficult to state what constituted the precise distinction. The chieftains of the first settlers in the island were first called ealdormen, and not kings (*b*).

But from the time of Ecgberht the distinction became more marked. The ealdorman then took his place as a subject, though occupying in some measure the position of a viceroy, or governor-general, on a small scale, differing,

(*a*) 1 Freeman, 77.
(*b*) *Ibid.*

however, in this respect, that he was appointed by the Witan as well as by the king, though this difference is perhaps one rather of form than of fact. The ealdorman was, moreover, only removeable by the powers which appointed him. This position was occupied in Mercia, when that kingdom was broken up, by Ethelred, the son-in-law of Alfred, but only with the limited authority above indicated, of the king's representative (*c*).

The ealdorman is variously termed by Latin writers *Dux*, *Princeps*, and *Comes*, the terms being apparently indiscriminately applied to the same functionary, although in strict legal signification the different names represented ranks and duties entirely distinct (*d*). Bæda uses the term *Dux* in referring to an ealdorman of Northumbria of the year A.D. 684 (*e*).

The earl of the county.

The ealdorman is frequently alluded to by later writers as the earl of the county, but the title of ealdorman is much older than the present division of shires, and it was never, apparently, the rule, for every shire to have its ealdorman, in the same way as it possessed its sheriff (*f*), although on this point learned authorities disagree (*g*). Each shire was, however, under an ealdorman as a part or the whole of his jurisdiction.

Hereditary ealdormen.

In time the ealdormanship became hereditary, and this change in the constitution appears to have commenced at the time when smaller sovereignties were annexed to and absorbed in the greater, the old royal dynasties continuing, with a diminished dignity, as hereditary ealdormen. The nomination, however, of hereditary ealdormen still required the consent of the king and the Witanegemot.

The *vicecomes*.

About this time, probably, the institution of the *vicecomes*, or sheriff, took place, though its exact date is involved in considerable obscurity. The reason of the institution of the office is also variously assigned, some

(*c*) 1 Freeman, 81.
(*d*) 2 Kemb. 126, 127.
(*e*) Bæda, Hist. Eccl. Gent. Angl. c. 26.
(*f*) 1 Stubbs, 112.
(*g*) Cf. 2 Kemb. 134, 137, 139, &c.

considering that it was a necessary consequence of the dignity of the ealdorman becoming hereditary, a circumstance which did not insure the competency of the occupant to discharge the duties of the office, whilst others attribute its institution to the fact that the absence of the ealdorman from his district was a matter of frequent occurrence, he being required to accompany the king to his wars, and to be in constant attendance on the royal person, thus rendering it essential to the due administration of justice that his duties in the county should be capable of being adequately discharged in his absence (*h*).

Jurisdiction of *vice-comes*.

The jurisdiction of the *vice-comes* was, unlike that of the ealdorman, limited to a single shire. He was a royal officer, and was, as a rule, nominated by the king, although perhaps in the earliest periods the office was elective (*i*), and possibly to the last the people may have enjoyed, theoretically at least, a sort of concurrent choice (*j*). Sir Edward Coke tells us that, "The sheriff, though he be still called *vice-comes*, yet all he doth, and all his authority, is immediately from and under the king, and not from or under the earl."

The ealdorman was, however, unquestionably a national officer, and was nominated by the king and Witan (*k*), though this did not prevent his frequently being of royal extraction, as in the case of Ethelred, above mentioned.

The sheriff sat with the ealdorman and the bishop of the shire, in the folkmoot, or popular assembly of the shire (*l*).

Derivation of name sheriff.

The name "shire" or "scir," which is derived from a Saxon word, "scyran," to divide, merely means a subdivision or "share" of the larger whole, and was used generally of a territorial sphere appointed to any particular

(*h*) Coke, 7, 33.
(*i*) *Vide* 28 Edw. 1, c. 13.
(*j*) 2 Kemb. 165.
(*k*) 1 Stubbs, 113.
(*l*) *Ibid.*, 119.

magistracy—*e.g.*, a bishop's diocese was called his "scire" (*m*). The word "gerefa" meant a guardian, and signified that he was the guardian or chief officer of the crown in his own "scir" or county, the word "county" being derived from the French "comte."

The word "scir," attached as a prefix to "gerefa," was soon dropped, and "gerefa" alone was used in the laws and common parlance, though "scir-gerefa" still continued to be found in the charters.

The sheriff, from his later title of *vice-comes*, has by some been regarded as merely the deputy of the ealdorman, but this, as has been shown above, and will be more fully explained, is an erroneous impression (*n*).

There is no evidence of the ealdorman sitting in judgment without the sheriff in the folkmoot, while there is evidence that the sheriff sat without the ealdorman (*o*).

It may, in fact, be concluded that the presence of the sheriff was necessary for judicial purposes, while that of the ealdorman might be dispensed with (*p*).

Shires. The jurisdiction of each sheriff was confined to his particular shire, as has been stated above, but it will be well to bear in mind that the shires as they now exist were not simultaneously established, nor were they established by any single authority. They owe their origin to a variety of causes, and the process of establishment has been, as indicated by the nomenclature, a gradual one.

Kent. Kent was the earliest permanent Teutonic settlement in England, and was one of the seven kingdoms which stand out more conspicuously than any others among the fluctuating mass of principalities which we meet with in the history of Britain; for the Heptarchy, in the form of seven contemporaneous and defined kingdoms, continuing for any definite period, and united under the supremacy of one paramount ruler, never existed. This settlement took

(*m*) Bæda, 3 Hist. Eccl. c. 7.
(*n*) 2 Kemb. 158.
(*o*) *Ibid.*, 159.
(*p*) 2 Kemb. 159.

place about A.D. 449, and Kent continued a kingdom till the early part of the ninth century; but in the reign of Athelstan, who came to the throne in the early part of the tenth century, it was a shire, and was named Cantescyre (*q*). It was at one time divided into East and West Kent, each of which divisions was a separate kingdom, a fact which accounts for its being the sole instance of an English shire possessing two episcopal sees—Canterbury and Rochester (*r*).

Teutonic usages, long vanished from other counties, still linger in Kent to mark its origin.

Essex, Sussex, and Middlesex.

Essex and Sussex were two Saxon kingdoms, whilst Middlesex was an offshoot of Essex; these, with Wessex, form, as their names imply, the east, south, west, and middle settlements of the Saxons.

Hants, Devon, Berks, Dorset, Wilts, Somerset.

The West Saxon or Wessex shires still bear the original titles of the principalities founded by the successors of Cerdic and Cynric, two Saxon chiefs, who were then called ealdormen, and landed A.D. 495 on the south coast of Britain, and formed a settlement (*s*). The names Hamptonscire, Difnascire, and Bearroscire appear, in the Anglo-Saxon chronicle, side by side with the Dorsœtas, the Wilsœtas, and the Somersœtas, and probably these shires owe their origin to the early settlements of the West Saxons, or their successive conquests (*t*). Gneist considers A.D. 880 as the most probable date, and attributes the division to the treaty arrangements of Alfred and Guthrum (*u*). The Thames and the Avon were the most permanent boundaries of Wessex on the north. North of the Thames were the three great Anglian kingdoms—Mercia, East Anglia, and Northumbria.

Mercia.

In Mercia the case differed from Wessex, for there, at some date subsequent to Alfred's reign, the earlier names were replaced by others derived from towns.

(*q*) 1 Stubbs, 109.
(*r*) 1 Freeman, 26.
(*s*) *Ibid.*, 72.
(*t*) 1 Stubbs, 110.
(*u*) Gn. Verwaltungsrecht, 1, 56.

Cheshire, Staffordshire.

Thus Cheshire and Staffordshire are derived from Chester and Stafford, and so forth.

Shropshire and Rutland.

Shropshire and Rutland may perhaps be regarded as exceptions, but Rutland does not appear in Domesday as a separate shire (*x*). These considerations, and the fact that whilst the Wessex shires have retained their former boundaries the Mercian boundaries have been frequently obliterated, lead to the conclusion that the Mercian shires were artificially mapped out either by the Danish conquerors of the ninth century, or more probably by Edward the Elder, A.D. 901—925 (*y*).

The Mercian kingdom, moreover, appears throughout its history to have been far more divided than any other part of England, and it has no distinctly recorded founder or date of origin; this will, in some measure, account for the frequent change in the boundaries of the Mercian shires, and make them at the same time difficult to trace with accuracy (*z*).

Norfolk and Suffolk.

The two divisions of East Anglia, North Folk and South Folk, have come down to us unimpaired, except that the two Folks have been converted into shires. In these cases the principalities appear to have consisted of kindred, though distinct, races of colonists, each ruled by a separate prince of the same royal house (*a*). The first recorded king of East Anglia was Offa, who began to reign A.D. 571 (*b*).

Northumberland and Westmoreland.

Northumberland and Westmoreland are the remnants of Northumbria, which extended from the Humber to the Forth, the first recorded king being Ida, who began to reign A.D. 547 (*c*).

Yorkshire.

Yorkshire is the sole surviving sub-division of Northumbria, which existed as a shire before the Conquest (*d*).

(*x*) Gl. Enc. *shire.*
(*y*) *Ibid.*
(*z*) Cf. 1 Freeman, 25, 26.
(*a*) *Ibid.*, 26.
(*b*) *Ibid.*, 25.
(*c*) 1 Freeman, 25.
(*d*) 1 Stubbs, 111.

Lancashire is a modern denomination for the country between the Ribble and the Mersey, which in Domesday was reckoned as part of the West Riding (*e*). Lancashire.

Cumberland is the English share of the old Cumbrian or Strathclyde kingdom (*f*). Cumberland.

Durham was the county palatine of William the Conqueror's minister (*g*). Durham.

The arrangement of the whole kingdom into shires was a work which could not have been completed until it was permanently united under Edgar, and the existing subdivisions are all traceable back to his day at the latest (*h*).

The sheriff occupied very much the position of the king's steward in his own county, and at this day the sheriff takes precedence of every nobleman in the county during his tenure of office, and is a grand conservator of the peace. Sheriff's precedence.

It was his duty in his capacity of steward to levy all dues, fines, and amercements, and to publish the king's writs and demands for aid in the shire Courts.

His jurisdiction was confined generally to his own shire or division, although for some time subsequent to the Conquest the shires were administered in pairs. Some of the sheriffdoms became hereditary after the Conquest, and continued to remain so long after the abuse had become constitutionally dangerous (*i*), the Norman lord who undertook the office of sheriff acquiring more unrestricted power than the earlier sheriffs (*k*). It never, however, became a rule in England that the sheriffdom should be hereditary, and after the Norman Conquest, under the altered title of *vice-comes*, the sheriffdom was used by the kings as a means of ousting or preventing the creation of any feudal rule, such as that of the counts and dukes of the continent. The history of the sheriff- Jurisdiction. Hereditary sheriffs.

(*e*) 1 Stubbs, 109.
(*f*) *Ibid.*, 110.
(*g*) *Ibid.*
(*h*) *Ibid.*
(*i*) *Ibid.*, 272.
(*k*) *Ibid.*, 276.

dom is thus one of the most important departments of constitutional history (*l*). Although there are occasional records in the Anglo-Saxon Chronicle which go to prove that the shiremoot, or general Court for judicial purposes, was presided over by the ealdorman (*m*), and by an enactment of Edgar the co-operation of the bishop of the shire was required, yet it would appear that when the sheriff became a constituent part of the Court, and held the shiremoot, which, according to Edgar's law, was to be twice in the year (*n*), the ealdorman and bishop merely sat to declare the law secular and spiritual, while the sheriff was the constituting officer (*o*).

The president of the shiremoot.

Folkmoot.

It would appear that the folkmoot and the shiremoot were identical assemblies, with deliberative as well as judicial functions, forming a sort of Court of Appeal from the Hundred Court, intermediate between that Court and the king, but not final, and also being the council of the shire. The judicial functions exercised by the shiremoot were both criminal and civil, and transfers of land, wills, private charters, and documents of all sorts were attested by the Court. The ancient forms were in use, witness, compurgation and ordeal, the theory obtaining that the whole body of suitors were the judges (*p*). The suitors were freeholders (or their stewards representing them), the parish priest, the reeve, and the four best men of each township, as was the case in the Hundred Courts (*q*); but as various inconveniences might arise from the uncertainty of the number, qualifications, or attendance of the whole, a representative body of twelve seems to have been instituted as a kind of judicial committee of the Court (*r*).

Deliberative functions.

Judicial functions.

The judges.

Besides exercising these judicial functions, the shire-

Constitu-

(*l*) 1 Stubbs, 114.
(*m*) 2 Kemb. 135.
(*n*) Edgar II. § 5, "Twice in the year be a shiremoot held, and let both the bishop of the shire and the ealdorman be present, and there expound both the law of God and of the world."
(*o*) 1 Stubbs, 114.
(*p*) *Ibid.*, 394.
(*q*) *Ibid.*, 103; Hen. 1, 7, §§ 4, 7.
(*r*) *Ibid.*, 103, 115.

moot was the popular assembly of the shire, and was in a great measure a representative body, consisting, as it did, of twelve sworn deputies from every hundred in the shire. It was left unchanged by the judicial reforms of the Plantagenets. In it the knighthood, yeomanry, and husbandmen of the shire gathered round the sheriff, and a representative body of witnesses was appointed to give validity to the acts executed in it. Here, besides the publication of the king's writs and demands for aid, and the receipt of presentment of criminals and inquests, the local taxation was assessed, and the lesser barons were summoned to the Great Assembly. The constitution of the Court would be interesting if for no other reason than that in it may be discovered the germs of the modern representative system of Parliament (*s*). tion of shiremoot.

The authority of the sheriff in the shiremoot was rather that of a chairman than a judge, but the duty of seeing the law executed devolved upon him, though originally writs were directed to the ealdorman, bishop, and sheriff of the shire (*t*). Authority of sheriff in shiremoot.

There is in existence a writ directed by William Rufus to the sheriff of Northamptonshire, ordering him to call together his shire to examine into the rights of the monks of Ramsey (*u*). Writ of William Rufus.

It is clear that use was sometimes made of the shiremoot by the sheriffs after the Conquest to practise extortion, and the charter of Henry the First, which orders the restoration of the ancient customs and Courts, makes a special provision that the Courts shall be summoned only at the sovereign will of the king, thereby depriving the sheriffs of their opportunities of exaction (*x*). Extortion by sheriffs in shiremoot.

Camden (*y*) reckoned that there were 39 shires in England and 13 in Wales. Wales was divided into 12 counties in 1542 (*z*).

(*s*) 6 Gl. Enc. *shire;* 1 Stubbs, 119.
(*t*) 2 Kemb. 150.
(*u*) 1 Stubbs, 393. Mon. Angl. 1, 301.
(*x*) 1 Stubbs, 397.
(*y*) P. 159.
(*z*) 34 & 35 Hen. 8, c. 26.

Appointment of the Sheriff.

Notification of appointment in *London Gazette*.

Warrant.

Whenever any person has been duly pricked or nominated by the sovereign to be sheriff of any county in England or Wales, except the county palatine of Lancaster, the fact must be forthwith notified in the *London Gazette*, and a warrant in the form set forth in the schedule to the statute 3 & 4 Will. 4, c. 99, must be forthwith made out and signed by the clerk of the Privy Council, and transmitted by him to the person so appointed (*a*).

Duplicate warrant.

A duplicate of the warrant must, within ten days after the date of the warrant, be transmitted by the clerk of the Privy Council to the clerk of the peace of the county for which the sheriff is appointed, and the clerk of the peace is required to enrol and keep the duplicate without charge (*b*).

When new sheriff can exercise powers of office.

The sheriff so appointed, upon taking the oath of office mentioned hereafter, has, and can exercise, all the powers and privileges of the office, without payment of any fee whatever (*c*).

Appointment of sheriffs.

Formerly sheriffs were appointed by patent, but their appointment is now governed by the Act of 3 & 4 Will. 4, c. 99, s. 2, whereby sheriffs are relieved of the necessity of suing out patents, in consequence of the great expense and trouble which had previously attended the appointment of sheriffs.

Prior to the appointment of the sheriffs, the custom is now that a nomination list, or bill, is made up, and returned to the senior judge on circuit, containing the names of six persons, who ought from their social and financial position to undertake the duties of the office, and that the judges, together with the other great officers, usually the Chancellor of the Exchequer, the Lord President of the Council, the Lord Chief Justice of England, the Lord Chamberlain, the Chancellor of the Duchy of Lancaster, and other Lords Justices, judges, and Privy

(*a*) 3 & 4 Will. 4, c. 99, s. 3.
(*b*) *Ibid.*, s. 4.
(*c*) *Ibid.*, s. 3.

Councillors, attended by the Queen's Remembrancer, the clerk of the Council, the deputy clerk of the Council, and the chief clerk of the Privy Council office, assemble in the Court of the Exchequer Division, on the morrow of St. Martin (November 12) yearly, and then and there the judges propose three of the aforesaid six persons to be reported (if approved of) to the sovereign, who afterwards appoints one of them sheriff (*d*).

The President of the Council was first associated with the nomination of sheriffs by the statute 21 Hen. 8, c. 20, s. 2.

Formerly the day of meeting was the morrow of All Souls, but this day was altered by the last Act for abbreviating Michaelmas Term (*e*), which enacts as follows:—

"And whereas by the abbreviation of Michaelmas Term, pursuant to this Act, the morrow of All Souls will not be in full term, and thereby will prove inconvenient for the purpose of ordaining sheriffs, pursuant to an Act of Parliament made in the fourteenth year of the reign of King Edward the Third, intituled, 'How long a Sheriff shall continue in his Office:' be it therefore enacted by the authority aforesaid, that from and after the commencement of this Act, the same officers and persons, who by virtue of the said last-mentioned Act, or any other law or statute, ought to assemble at the Exchequer yearly, on the morrow of All Souls, for the ordaining or nominating of sheriffs, shall not assemble on that day, but instead thereof shall assemble yearly on the morrow of Saint Martin, at the Exchequer, in the like manner, and for the same intent and purpose."

The 95th section of the Judicature Act of 1873 provides that "the same order and course with respect to the appointment of sheriffs shall be used and observed in the Exchequer Division of the said High Court as has been heretofore used and observed in the Court of Exchequer."

Nomination of sheriffs.

The mode of proceeding upon the nomination of sheriffs is as follows: after the great officials and judges have

(*d*) 14 Edw. 3, st. 1, s. 7. 24 Geo. 2, c. 48, s. 12. 1 Bl. Com. 340.
(*e*) 24 Geo. 2, c. 48, s. 12.

taken their places upon the bench, the Queen's Remembrancer reads, county by county, in alphabetical order, the names of the noblemen and gentlemen who were nominated for service as sheriffs on the morrow of St. Martin in the preceding year. The name of the high sheriff actually in office is struck out, and the senior judge of assize who went the last summer circuit gives in another name, which is generally adopted and placed on the nomination list. If the senior judge is prevented from attending, another judge officiates in his place. If deaths have occurred, or if any excuses are made and allowed, other names are supplied, so as to make up the list of three names for each county; the names so settled are finally read out by the Queen's Remembrancer, and are then taken to be nominated as they are to be placed upon the roll. Excuses are sometimes made in open Court, but are generally forwarded previously to the Privy Council office, and are mentioned by the Lord President of the Council. The names are afterwards engrossed upon a long roll of parchment, which is submitted to the Queen in Council, and Her Majesty selects a name for sheriff from the three names appearing on the roll for each county, by pricking through the parchment with a golden bodkin, the name thus pricked being usually the first on the list (*f*).

Sheriff of Lancaster.

The sheriff of the county palatine of Lancaster is afterwards nominated and appointed by the Sovereign as Duke or Duchess of Lancaster, in the office of the duchy, and the sheriff of Cornwall is then nominated by the Prince of Wales, as Duke of Cornwall, in the office of that duchy.

Sheriff of Cornwall.

The sheriffs for Wales (the nomination for which was formerly vested in the justices of the Great Sessions, who were to certify the names of three persons for each county to the Privy Council) are now nominated at the same time and in the same way as the sheriffs for England (*g*).

(*f*) L. J. Nov. 16, 1878.
(*g*) 8 & 9 Vict. c. 11.

Originally, as has been previously stated, sheriffs were chosen by the inhabitants of their respective counties, and 28 Edw. 1, c. 13, confirmed this privilege to the "commons of the shire." By 9 Edw. 2, st. 2, this method of electing the sheriffs was done away with in consequence of the disturbances which the elections gave rise to, and the election was vested in the chancellor, treasurer, and judges.

Sheriffs, how formerly elected.

The king has no power to appoint any person to be sheriff who has not been duly elected in the usual way. In the reign of Henry the Sixth a man being appointed sheriff for Lincolnshire by the king without being duly elected refused to undertake the office. The opinion of the judges was taken on the case, and their unanimous opinion was delivered by the two Chief Justices, Sir John Fortescue and Sir John Prisot, "that the king did an error when he made a person sheriff that was not chosen and presented to him according to the *statute;* that the person refusing was liable to no fine for disobedience, as if he had been one of the three chosen according to the tenor of the *statute;* that they would advise the king to have recourse to the three persons chosen according to the *statute*, or that some other thrifty man be intreated to accept the office for this year, and that the next year, in eschewing such inconveniences, the order of the *statute* in this behalf made be observed." The statute mentioned in this opinion of the judges cannot now be found, but the principle laid down by them is recognized by the statute 34 & 35 Hen. 8, c. 26, s. 61.

King has no power to appoint as sheriff without due election.

The appointment to the shrievalty of Durham was formerly in the hands of the bishop, but by the 6 & 7 Will 4, c. 19, the palatine jurisdiction of Durham, and with it the appointment of the sheriff, passed to the Crown.

Appointment of sheriff of Durham.

The shrievalty of Westmoreland was formerly hereditary in the family of the Earl of Thanet, but upon the death of the last earl the title became extinct, and the appointment of the sheriff passed to the Crown (*h*).

Sheriff of Westmoreland.

(*h*) 13 & 14 Vict. c. 30, s. 2.

Sheriff of Middlesex.

The appointment of the sheriff of Middlesex is vested, by a charter of Henry the First, confirmed by John, in the citizens of London.

Sheriffs of London and Middlesex.

The common council of the City of London, by an act of council, dated April 7th, in 1748, vested the right of appointment of the sheriffs of London and Middlesex in the liverymen of the companies in the city, and provided that the election should take place annually on June 24th, unless that day fell on a Sunday, in which case it was to be on the following day. In the event of a vacancy occurring, the lord mayor may appoint a day of election.

Candidates for office of sheriff nominated by lord mayor.

The lord mayor may nominate between April 14th and June 14th every year one or more fit persons, not exceeding nine, to the court of aldermen, to be publicly put in nomination, and any two or more liverymen, on the day of election, may nominate any freeman of the city as a proper person to be elected (*i*).

Approval of election of sheriffs of London and sheriff of Middlesex, how signified.

Formerly it was necessary for the sheriffs of London and the sheriff of Middlesex to attend, on the morrow of St. Michael, in the Court of Exchequer, to have the approval of their election by the Crown signified to them, but now the approval by the Crown is signified by warrants under the great seal of the Exchequer, prepared at the office of the Crown's Remembrancer, which warrants may be delivered to the sheriffs, or their undersheriffs or agents, without fee, on the morrow of St. Michael, or between that day and the morrow of St. Martin, in each year, and an entry must be made on the roll of the Court of such warrants having been granted (*k*).

Rendering of certain rents by corporation of London.

The rendering of certain rents and services by the corporation of London, which was formerly done in open Court before the barons of the Exchequer, on the occasion of the presentation of the sheriffs of the city of London and the sheriff of Middlesex for the approval of the Crown, may now be done by the corporation of London, or their agent on their behalf, at the office of the

(*i*) Wat. Sh. 13.
(*k*) 22 & 23 Vict. c. 21, s. 42.

Crown's Remembrancer, on the morrow of St. Michael, or between that day and the morrow of St. Martin, and the proper entries in respect of such rents and services must be made on the rolls of the Court (*l*).

"The Moors," and "the Forge."

The rents and services alluded to are in respect of the tenure of a piece of waste ground, called "the Moors," in the county of Salop, and of a tenement called "the Forge," in the parish of St. Clement Danes, in the county of Middlesex.

The new sheriffs are required to take upon them the office on the vigil of St. Michael, and to hold it until that time in the ensuing year.

Shrievalty of Middlesex.

The shrievalty of Middlesex is held by the sheriffs of the city of London, who are called the sheriff of Middlesex, but the shrievalty of Middlesex is preserved entirely distinct from the shrievalty of the city of London.

Cities and towns which are counties and have sheriffs.

The cities and towns of London, York, Bristol, Chester, Gloucester, Lincoln, and Northampton were by charter counties of themselves, and had each two sheriffs; whilst Canterbury, Exeter, Lichfield, Worcester, Southampton, Kingston-upon-Hull, Nottingham, Poole, Newcastle-upon-Tyne, Carmarthen, and Haverfordwest were also counties, and appointed one sheriff each, prior to the Municipal Corporation Act, 5 & 6 Will. 4, c. 76; by that Act Oxford and Berwick-upon-Tweed were added to the list of the cities and towns which were counties, with power to appoint sheriffs (*m*).

Annexation of Coventry to Warwickshire.

The town of Coventry, which was formerly a county, was annexed to Warwickshire, and its sheriff, with other officers, taken away, by the statute 5 & 6 Vict. c. 110.

The election of sheriffs for these cities and towns must be by the municipal council, annually, on the 9th of November, and the sheriff so elected will hold office until the appointment of his successor (*n*).

Pocket-

The practice of occasionally naming what are termed

(*l*) *Ibid.*, s. 43.
(*m*) 22 & 23 Vict. c. 21, s. 61.
(*n*) 6 & 7 Will. 4, c. 105, s. 5.

riffs. pocket-sheriffs by the sole authority of the Crown continued, we are told by Sir William Blackstone, down to the reign of George the Third, but it is added in a note that it is probable that no compulsory instance of the appointment of a pocket-sheriff ever occurred; and the unanimous opinion of the judges, preserved in the record cited by the learned commentator from 2 Inst. 559, precludes the possibility of such a case occurring (*o*).

Oath of office of sheriff. Every person appointed sheriff or undersheriff, with the exception of the sheriffs and undersheriffs of Wales and the county palatine of Chester, is required, before entering on his office, to take the oath of office required by the statute 3 Geo. 1, c. 15, s. 18.

Oath of sheriffs of Wales and Chester. The sheriffs of the several counties in Wales and the county palatine of Chester are not obliged to take the oath prescribed above, but are expressly excepted by the 20th section of the same Act, and are permitted to take the oaths as they were formerly accustomed, with the following omission, "ye shall be dwelling in your own proper person within your bailiwick, for the time ye shall continue in the same office (except ye be otherwise licensed by the king)."

Before whom taken. The oath may be taken before the judges of the High Court of Justice, or any of them, or any one of the justices of the peace for the county in which the person so swearing is appointed sheriff or undersheriff (*p*). The oath must be fairly written on parchment and duly signed by the newly appointed sheriff or undersheriff (*q*).

Clerk of peace to enrol oath. The oath so signed, which is not subject to stamp duty, must be transmitted to the clerk of the peace of the county, and must be enrolled by him among the records of his office. For this he is entitled to receive from the sheriff or undersheriff whose oath is enrolled a fee of ten shillings (*r*).

(*o*) Bl. Co. 341, Christian, and see p. 3.
(*p*) 3 & 4 Will. 4, c. 99, s. 6. For form of sheriff's and undersheriff's oaths, see Appendix.
(*q*) *Ibid.*
(*r*) *Ibid.*

By the "Promissory Oaths Act, 1868," an affirmation is substituted for an oath in the case of all persons for the time being permitted by law to make an affirmation instead of an oath (*s*). Affirmation in place of oath.

If a person refuses to undertake the duties of the shrievalty, after being duly appointed, he may be proceeded against by indictment or information in the Queen's Bench Division (*t*); where a defendant had paid a fine to be discharged from serving the office of sheriff in a corporate town, it was held, that he was not discharged, by such payment, for any longer time than one year, unless the corporation expressly agreed to a further discharge (*u*). Refusal to serve the office. Payment of fine for discharge.

In the case of The Mayor of Exeter *v.* Starre (*x*) it was held that a refusal to take the oaths amounted to a refusal to take the office. Refusal to take the oaths.

Where a freeman of the city of London was elected one of the sheriffs, but refused to take the office on the ground that he was a dissenter, and, as such, had not received the holy sacrament according to the rites of the Church of England within a year before his election, in accordance with the provisions of certain statutes, an action was brought against him to recover the penalty incurred by refusal, and judgment was given against him (*y*). The action being brought in the sheriff's Court, a writ of error was brought in the Court of hustings, and judgment was affirmed. Defendant having obtained a special commission of errors, the judge's delegates reversed both judgments, and, on a writ of error in the House of Lords, the judgment of the reversal was affirmed. But by 9 Geo. 4, c. 17, and now by the Promissory Oaths Act, 1871 (which while repealing the Act of 9 Geo. 4, c. 17, for convenience sake, in a measure re-enacts its provisions, and further repeals so much of several acts as imposes the necessity of receiving the rites of the sacrament as a Refusal by a dissenter. Necessity of receiving holy sacrament removed.

(*s*) S. 12.
(*t*) Rex *v.* Woodrow, 2 D. & East, 731.
(*u*) *Ibid.*
(*x*) 3 Lev. 116; 2 Show. 158, S. C.; Carth. 307.
(*y*) Harrison *v.* Evans, 3 Brown P. C. 465, ed. Tomlins.

qualification for certain offices and employments), that observance is no longer required as a necessary preliminary to undertaking the office.

Declaration abolished.

The declaration formerly required by 9 Geo. 4, c. 17, s. 5, was also abolished by the "Promissory Oaths Act, 1871."

CHAPTER II.

ON THE QUALIFICATIONS, EXEMPTIONS, DISABILITIES, AND AUTHORITY OF THE SHERIFF.

Qualification of the sheriff.

THE qualification of the sheriff has been variously regulated by statute from time to time, in consequence of the importance and power attached to the office, and in order to guard against the temptations which no doubt presented themselves in former times to a needy occupant of the office to extort money by oppression. The statute 9 Edw. 2, st. 2, provides that "none shall be sheriff unless he have sufficient land within the same shire where he shall be sheriff, to answer to the king and his people." This provision was confirmed by the statute 4 Edw. 3, c. 9, and again confirmed in the following year (*a*), and these statutes are still unrepealed.

What constitutes "sufficiency of lands."

What constitutes a sufficiency of lands, within the meaning of the statute, is not definitely laid down; but it is clear that those appointed to the office of sheriff should be persons of means and position, within the general acceptation of the term; as the functions and dignity of the sheriff entail a considerable expenditure, for which no provision is made in the way of emolument, except in isolated instances, and in these the provision is entirely inadequate. Formerly, grants were occasionally made by Parliament, but this practice has now almost entirely fallen into disuse, though the sheriff of Middlesex is still paid £10 a year for issuing proclamations, and 40*s.* per annum "for exposing acts of Parliament to be read."

Remuneration of the sheriff.

(*a*) 5 Edw. 3, c. 4.

Statutes exposed in office of sheriff for public reading.

Two copies of acts are annually forwarded to the sheriff, one bound, to keep, and others loose, as published, which the public are supposed to attend at his office to read. Though the practice of attending at the sheriff's office to read acts of Parliament has long become obsolete, the right still remains.

Exemptions from office.

"No one can be exempt from the office of sheriff but by act of Parliament or letters patent," for "the king has a natural interest in every subject, and may compel him to serve him in any function in which he shall judge him capable" (*b*).

Exemption by 1 Ric. 2, c. 11.

By the statute 1 Ric. 2, c. 11, it is ordained that no one who has been sheriff of a county for a whole year "shall be within three years next ensuing chosen again, or put in the office of sheriff, if there be other sufficient in the said county of possessions and goods to answer to the king and his people."

Not to apply to town corporate.

It has been held, however, that this exemption does not apply to the case of a town corporate, although it may be a county of itself (*c*).

Exemption in city of London.

Any person nominated by the Lord Mayor of London to the office of sheriff may exempt himself from the office for ever, unless he become an alderman, by paying, after six notices, the sum of £400, and twenty marks to the chamberlain, for certain purposes declared by one of the bye-laws of the city of London, an act of council, dated April 7th, 1848.

By another act of council, dated June 11th, 1799, any person either elected or nominated may be discharged from such election or nomination, by making *affidavit* before the court of aldermen that he is not worth £20,000 in lands, goods, and separate debts; this *affidavit* must be supported by the oaths of six other citizens and freemen of the city, that they believe his *affidavit* to be true.

Practising

Exemption is also made in the case of practising

(*b*) Rex *v.* Larwood, 1 Salk. 167; 1 Lord Raym. 29.
(*c*) Rex *v.* Haythorne, 5 B. & C. 410.

barristers and solicitors. The exemption in the case of a solicitor was stated by Lord Mansfield to be the privilege of the Court of which he was an officer, rather than of the solicitor himself. Barristers and solicitors exempt.

Members of Parliament are exempt from serving the office of sheriff, by a resolution of the House of Commons, which declared it to be a breach of privilege to nominate any member of that house, to the sovereign, for the office of sheriff (*d*). Members of parliament exempt.

No Postmaster-General nor any officer of the post office can be compelled to serve as mayor or sheriff (*e*). Post-office officials exempt.

By the statute 7 & 8 Geo. 4, c. 53, s. 11, "No commissioner or assistant commissioner of excise, or officer of excise, or person employed in the collection or management of or accounting for the revenue of excise or any part thereof, shall, during the time of his acting as such commissioner or assistant commissioner or officer, or being so employed as aforesaid, be compelled to serve as a mayor or sheriff," or to serve on any jury (see Juries), "any law, usage, or custom to the contrary thereof notwithstanding." Commissioners and officers of excise exempt.

By the statute 16 & 17 Vict. c. 59, s. 17, the above statute is extended, and it is enacted that "no officer or person appointed by the commissioners of inland revenue or employed by them or under their authority or direction, in any way relating to any of the duties under their care or management, shall, so long as he shall continue in and exercise such last-mentioned office or employment, be compelled to serve as mayor or sheriff," or in any of the offices mentioned in the previous act. Officers of inland revenue exempt.

The statute 39 & 40 Vict. c. 36, s. 9, still further extends these two acts, and provides that "no commissioner, officer, clerk, or other person acting in the management or service of the customs, shall be compelled to serve in the militia, or on any jury or inquest, or to assume the office of a mayor or sheriff." Officers of customs exempt.

Militia officers are not exempt from serving the office Militia

(*d*) Passed Jan. 7, 1689. 1 Roe on Elections, 161.
(*e*) 7 Will. 4 & 1 Vict. c. 33, s. 12.

officers, when exempt.

of sheriff by reason of their being officers in the militia; but if a sheriff is an officer of militia at any time when the militia of which he is an officer are called out and embodied for actual service, he is discharged from personally performing the office of sheriff while the militia remain embodied; and the undersheriff is answerable for the execution of the duties of the office in the name of the high-sheriff, the security given by the undersheriff, and his pledges to the high-sheriff, standing as security to the Crown for the due performance of the duties of the office (*f*).

Officers of royal marines exempt.

No person who is commissioned and in full pay as an officer in the royal marine forces, or who is employed in enlisting for such forces, is capable of being nominated or elected to the office of sheriff (*g*).

Exemption by reason of a judgment.

In the case of Rex *v.* Larwood, cited above (*h*), the judge laid down that if a man be disabled by judgment from bearing an office, he is excused, *quia judicium redditur in invitum*, but where he can remove the sentence, he may take no advantage of it (*i*).

Disabilities.

No sheriff may act as justice of the peace during his shrievalty, and all acts done by such sheriff in virtue of his commission of the peace during the period of his shrievalty are void (*j*).

A sheriff may sit as member of Parliament for a county or borough, but not for any constituency of which he is returning officer (*k*).

Continuance in office.

Formerly, sheriffs held their offices by the king's grant, for a considerable period; but as this was the source of much oppression to the subject, various statutes were passed, limiting the term of office to one year; the statute 23 Hen. 6, c. 7, confirms the former statutes to this effect, and further enacts a penalty of £200 per annum

Penalty, &c.

(*f*) 2 & 3 Vict. c. 59, ss. 1, 2.
(*g*) 30 Vict. c. 14, s. 57.
(*h*) P. 20; 1 Salk. 167; 1 Lord Raym. 29.
(*i*) See also Sir John Read's case, 2 Mod. 299.
(*j*) 1 Mary, st. 2, c. 8. *Ex parte* Colville, 1 Q. B. D. 133
(*k*) 4 Inst. 48; Litt. Rep. 326.

for the offence of occupying the office of sheriff, under-sheriff, or sheriff's clerk, contrary to the effect of the statute. This penalty was recoverable by action, one half of the sum recovered to go to the Crown, and the other half to the party suing.

Exceptions were made in favour of all sheriffs in counties where the office is by inheritance, and in favour of the undersheriffs and all other officers in the city of London. Exceptions.

By subsequent statutes, sheriffs having their writs of discharge may return writs, and otherwise perform the duties of their offices, during Michaelmas and Hilary terms after the expiration of their terms of office, unless meanwhile they are lawfully discharged (*l*).

By the schedule to the statute 3 & 4 Will. 4, c. 99, the sheriff is appointed "to be sheriff of the county of ——, during his (or her) Majesty's pleasure," which is the present form of appointment. But as the pleasure of the Crown must always be in distinct accordance with the law, it is apprehended that even at the present day a sheriff could not be continued in office for more than a year, even with the present abridged power of the sheriff. Sheriff still debarred from continuance in office.

The sheriff may be dismissed at the pleasure of the Crown (*m*). Sheriff dismissable.

But though the sovereign can determine the power and appointment of the sheriff at will, he can only determine them *in toto*; he cannot determine the office in one district of the sheriff's county, while continuing it in the remainder; nor can any attributes of the office be taken away by the sovereign, unless the office be taken away also, as the office must exist in its entirety (*n*). For the same reasons, the sheriff himself, though he may appoint a deputy, cannot curtail the power of his deputy, for the deputy must have the same power as the sheriff; but the sheriff has no power to authorise his deputy to Crown can only determine appointment of sheriff *in toto*. Sheriff may not curtail dignity of office.

(*l*) 12 Edw. 4, c. 1. 17 Edw. 4, c. 7.
(*m*) Finch, 11.
(*n*) Dalt. Sh. 6. Milton's case, 4 Rep. 33.

perform those acts which should be performed by the sheriff in person.

Elevation of sheriff to peerage. The office is not determined by the sheriff becoming a peer, but he continues sheriff notwithstanding (*o*).

Sheriff's residence in his county. It was formerly required by the statute 4 Hen. 4, c. 5, that sheriffs should reside within their bailiwicks or counties, but that statute was repealed by the statute 19 & 20 Vict. c. 64, and the repeal was continued by the Statute Law Revision Act, 1875.

Authority co-extensive with county. The sheriff's authority is co-extensive with his bailiwick or county and no further; he has no power or authority in any other county than his own (*p*).

Coroner appointed sheriff. A coroner is discharged from the duties of the office of coroner upon his appointment to the office of sheriff (*q*).

Forfeiture of office. A forfeiture of the office of sheriff may arise from abuse of authority, where the office is held for life or in fee; by a natural sequence, therefore, abuse of authority would be sufficient ground for superseding a sheriff appointed "*durante bene placito.*"

Death of sheriff. When a sheriff of any county in England or Wales dies before the expiration of his year of office, the undersheriff appointed by him must execute the office, in the name of the deceased sheriff, until a new sheriff be sworn; the undersheriff will, under such circumstances, be answerable for the execution of the office in the same way as the deceased would have been, and his security to the deceased sheriff will stand as security to the Crown for the proper discharge of the duties of the office during the interval (*r*).

Demise of the crown. Formerly upon the demise of the Crown, the sheriff was continued in office for six months longer, but the statute 1 Anne, st. 1, c. 8, which made this provision, was repealed by the Statute Law Revision Act, 1867, and the sheriff's office now expires with the death of the king or

(*o*) Sir Lewis Mordaunt's case, Cro. Eliz. 12.
(*p*) Le Count de Northumberland *v.* Le Count de Devon, 2 Roll. Rep. 163; Plowd. 37a.
(*q*) F. 163.
(*r*) 3 Geo. 1, c. 15, s. 8.

Queen, except in those cases where the office is elective, but as one of the first acts of a new sovereign is to confirm the holders of Crown appointments in their offices, no inconvenience is likely to arise.

Transfer of office.

The transfer of the office of sheriff is generally effected by power of attorney given by the high-sheriff to the undersheriff.

Transfer formerly by indenture.

Before the statute 3 & 4 Will 4, c. 99, the out-going sheriff was not discharged from the liability of his office, nor was any liability imposed upon the new sheriff until the former had received his writ of discharge (now abolished), and had assigned over all process in his hands unexecuted, and prisoners in his custody, by indenture to the latter (*s*); but since the passing of the 3 & 4 Will. 4, c. 99, the writ of discharge and indenture of assignment are unnecessary, and by the seventh section of that act "every sheriff of any county, city, liberty, division, town corporate, or place, shall, at the expiration of his office, make out and deliver to the new or in-coming sheriff a true and correct list and account under his hand of all prisoners in his custody, and of all writs and other process in his hands not wholly executed by him, with all such particulars as shall be necessary to explain to the said in-coming sheriff the several matters intended to be transferred to him, and shall thereupon turn over to him and transfer to the care and custody of the said in-coming sheriff all such prisoners, writs and process, and all records, books, and matters appertaining to the said office of sheriff; and the said in-coming sheriff shall thereupon sign and give a duplicate of such list and account to the sheriff going out of office, to whom the same shall be a good and sufficient discharge of and from all the prisoners therein mentioned and transferred to the said in-coming sheriff, and the further charge of the execution of the writs, process and other matters therein contained, without any writ of discharge or other writ whatsoever; and the said in-coming

Now abolished.

Out-going sheriff to hand a list of writs, &c., to his successor.

In-coming sheriff to give duplicate.

(*s*) Davidson *v.* Seymour, Moo. & M. 34.

sheriff shall thereupon stand and be charged with the said prisoners, and also with the execution and care of the said writs, process, and other matters contained in the said list and account, as fully and effectually as if the same writs and process had been turned over by indenture and schedule; and in case any sheriff shall refuse or neglect at the expiration of his office to make out, sign, and deliver such list and account as aforesaid, and to turn over the process aforesaid, in manner aforesaid, every such sheriff so neglecting or refusing shall be liable to make such satisfaction by damages and costs to the party aggrieved as he, she, or they may sustain by such neglect or refusal."

Refusal of sheriff to make out list.

So, under the present system, the out-going sheriff is discharged on receiving from the in-coming sheriff the duplicate list mentioned in the section above cited.

Where a sheriff who had seized and sold certain goods under a *fi. fa.* kept the money in his hands in consequence of a suit in Equity between the parties respecting the amount due to the plaintiff, it was held that the writ must be considered as wholly executed, and ought not, on the sheriff's going out of office, to be transferred to his successor, under the above section (*t*).

Sheriff's accounts. How audited formerly.

The sheriff's accounts were formerly, by the 8th section of the above statute, audited by commissioners appointed for auditing public accounts; but now that section is repealed by the statute 22 & 23 Vict. c. 21, s. 28, and the examination and auditing of the sheriff's accounts are, by the same section, placed in the hands of "such persons as the commissioners of her Majesty's Treasury may from time to time, by warrant under their hands, direct;" "and the commissioners of the Treasury may, by any such warrant, make all such provisions in relation to the transmission, examination, and audit of such accounts, and for ascertaining and determining the balances due from and the discharge of the persons accounting, as to the said

Now by appointees of commissioners of the treasury.

(*t*) Harrison *v.* Paynter, 6 M. & W. 387; 8 Dowl. 349; 4 Jur. 488.

commissioners may seem proper; and every such warrant shall be laid before both houses of Parliament within fourteen days after the making thereof, if Parliament be sitting, and if Parliament be not sitting, then within fourteen days after the next meeting of Parliament." Warrant appointing auditors, &c.

Subject to such provisions as may be made by the warrant sent to each sheriff, all sheriffs and undersheriffs required to transmit accounts to the commissioners for auditing public accounts, in the manner provided by the 9th section of the 3 & 4 Will. 4, c. 99, are to transmit the same to the commissioners of her Majesty's Treasury.

The sheriffs of the counties palatine of Chester, Lancaster, and Durham were excepted from the provisions of the 3 & 4 Will. 4, c. 99, s. 9. Counties palatine excepted.

The statute 11 Geo. 4 & 1 Will. 4, c. 70 (*u*), makes provision for the passing of the accounts of the sheriffs of the county of Chester, and the principality of Wales—as follows:—

"And whereas it is expedient that the accounts of the sheriffs of the county of Chester and principality of Wales should be passed, as nearly as circumstances will admit, in the same manner as heretofore; be it enacted, That the clerk of assize, within ten days after the conclusion of the assizes in the county of Chester and in each county in Wales, shall make out a roll containing the names and places of residence of all persons liable to payment of any fines, issues, amercements, recognizances, compositions, or other sums imposed or forfeited during the preceding assizes, with the sums set opposite to each name, and shall forthwith transmit the same to the sheriff, with an order upon the sheriff, signed in the name of one of the judges of assize, directing the sheriff to cause such sums to be levied and recovered from the parties liable to pay the same, which order shall be of the same force and efficacy, and be returnable to the same person or persons, as any writ or process heretofore issued to the sheriff for the like purpose; and the sheriff, upon the receipt thereof, For passing accounts of sheriffs of county of Chester and principality of Wales.

(*u*) S. 33.

shall proceed to levy the sums in the said roll mentioned, and shall be accountable for the same, and all arrears thereof, in the same manner, at the same time, and to the same officer, and shall pass his accounts before the same officer or officers, as he hath been heretofore accustomed."

Accoun's when sent in.

Death of sheriff.

All other sheriffs of any county, city, or town in England, within two calendar months after the expiration of their office (or, in case of the death of any sheriff, the undersheriff by him appointed, within two calendar months of the death of the deceased sheriff), are required to transmit to the commissioners of her Majesty's Treasury a just and true account, under their hands, of all sums paid or claimed by them, or on their behalf, except those usually inserted in the bill of cravings (which will be treated of below), and of all sums received by them for the use of the Crown, with all particulars necessary to explain the same (*x*). The undersheriff will not, however, be held personally responsible for any moneys received by a deceased sheriff, but the representatives of such deceased sheriff will have to answer for his default (*y*), if any default have been made.

Under-sheriff not answer-able for sheriff's default.

Sheriff of West-moreland's accounts.

The sheriff of Westmoreland must annually, within two calendar months after the 1st of January, transmit, in like manner, a similar account to the commissioners of her Majesty's Treasury (*z*).

Oath or *affidavit* of sheriff as to accounts.

In case it should be necessary for any sheriff or under-sheriff to make oath or *affidavit* in any matter connected with his accounts, such oath or *affidavit*, except when the commissioners shall require his personal examination before them, may be sworn before any of the judges of the High Court of Justice or any commissioner appointed for taking *affidavits* in any of the superior Courts, or before any master or master extraordinary in the Chancery Division or before any justice of the peace (*a*).

(*x*) 3 & 4 Will. 4, c. 99, s. 9.
(*y*) *Ibid.*
(*z*) *Ibid.*
(*a*) *Ibid.*, s. 10.

Bill of cravings.

The claim of the sheriff for certain allowances, on account of moneys paid on behalf of the Crown, in the execution of his office, such as for advertisements, the execution of felons, the lodgings of the judges, &c., must be made by what is called a bill of cravings to the Lord High Treasurer or the commissioners of the Treasury for the time being, who, or any three or more of them, may grant a warrant for the allowance of the claims or cravings, or for the payment of such sum in respect of them as they shall think reasonable (*b*).

Attachment for not finishing accounts.

No sheriff or undersheriff may be attached, or taken into custody, for not finishing his accounts in due time, or for any contempt or neglect whatever relating to his account, except by writ, formerly under the seal of the Exchequer Division of the High Court of Justice, or by warrant for that purpose, to be signed, similarly, by the Lord Chief Baron, or one of the judges of the Exchequer Division, now by any judge of the High Court of Justice, to be executed by the marshal of the Court, or his deputy, in which warrant the name of such sheriff or undersheriff must be particularly inserted, and his offence specified (*c*).

No clerk to hinder passing of sheriff's accounts, &c.

"If any officer, clerk, or other person concerned in the passing of the sheriff's accounts, shall wilfully retard or hinder the sheriff in the passing of his accounts, or by wilful neglect or other undue means prevent a sheriff being apposed or cast out of Court in due time, or after payment or tender of due fees, shall refuse or neglect to inrol, or make out, or sign, or deliver his *quietus*, or discharge, in due time, the person so offending shall, in every such case, make such compensation and satisfaction to the aggrieved party as shall be adjudged by the judges of the Exchequer Division of the High Court of Justice upon complaint made before them in such summary way as shall seem fit to them" (*d*).

Accounts

The sheriffs of the city and county of the city of

(*b*) 3 & 4 Will. 4, c. 99, s. 11.
(*c*) 3 Geo. 1, c. 15, s. 5.
(*d*) *Ibid.*, s. 6.

of sheriffs of the city of Chester.

Chester are required to account before the mayor of that city for all matters granted to the city from the Crown in their several charters, but for other matters not mentioned in the charters they must account, and obtain their discharge, from the auditor of the county of Chester, or his deputy, in the same way as the sheriffs of that county are appointed to do (*e*).

Sheriffs to give notice of their offices.

For the purpose of elections of members of Parliament, which will be more fully treated of hereafter, the sheriff is required by 53 Geo. 3, c. 89, s. 2, to give notice to the Postmaster-General of the place where he holds his office, specifying in such account such particulars as shall be necessary to ascertain its exact position, and from time to time, if the place be changed, to notify the change "with all convenient speed," and an account of the post town or place nearest to his office, if the office be not in a post town.

Provision where sheriffs hold their offices in or near the metropolis.

Where a sheriff or other person to whom writs for the election of members of Parliament ought to be directed holds his office within the cities of London or Westminster, or the borough of Southwark, or within five miles thereof, the sheriff, or officer, must send such account as mentioned above, of the place where he holds his office, to the messenger of the great seal, instead of to the Postmaster-General, and the messenger, or his deputy, must carry all such writs to such office (*f*).

Coroner to act where sheriff is interested in compensation cases.

In compensation cases, where the sheriff is interested in the matter in dispute, by the 39th section of the 8 & 9 Vict. c. 18, the coroner of the county in which the lands in question, or some part of them, are situate, is directed to preside, and if the coroner be interested, then some past sheriff, or coroner, who is not interested, must preside.

Coroner when to

If the sheriff is a party, writs should be directed to the coroner (*g*), and if directed to the sheriff, the Court will set

(*e*) 3 Geo. 1, c. 15, ss. 24, 25.
(*f*) *Ibid.*, s. 3.
(*g*) Western *v.* Coulson, 1 Black. Rep. 506.

aside the writ, on *affidavit* that he is interested (*h*). This rule would not apply where there are two sheriffs, and one is not interested (*i*). Where the coroner is interested the writ must be directed to elisors, named for that purpose by the master (*k*).

Act in other cases.

Where coroner is interested.

(*h*) Wat. Sh., 2nd ed. 64.
(*i*) Letsom *v.* Bickley, 5 Maule & Sel. 144.
(*k*) Andrews *v.* Sharp, 2 Black. Rep. 911.

CHAPTERS III—V.

THE UNDERSHERIFF, SHERIFF'S OFFICERS, AND SURETIES FOR OFFICERS.

CHAPTER III.

THE UNDERSHERIFF.

Appointment of undersheriff.

THE sheriff is required, within one calendar month of the notification of his own appointment in the *London Gazette*, by writing under his hand, to nominate and appoint some fit and proper person to be his undersheriff, and to transmit a duplicate of such appointment to the clerk of the peace for the county, to be by him filed among the records of his office, and for which he is entitled to receive from the undersheriff, so appointed, the sum of five shillings; such appointment and duplicate are not liable to stamp duty (*a*).

Office of undersheriff not to be sold, or let to farm.

The 10th section of the statute 3 Geo. 1, c. 15, after reciting that the office of undersheriff and other offices and places in the disposal of the high-sheriff had been frequently sold and let to farm, contrary to law, and to the great inconvenience of the subject, owing to the oppressions and exactions of undersheriffs, bailiffs, and other officers concerned in the execution of the king's process, enacts that it shall not be lawful for any person to "buy, sell, let, or take to farm the office of undersheriff, deputy sheriff, seal keeper, county clerk, shire clerk, gaoler,

(*a*) 3 & 4 Will. 4, c. 99, s. 5.

bailiff, or any other office or place pertaining to the office of high-sheriff of any county or shire in England or Wales, or to contract for, promise, or grant for money, or other reward or benefit, the said offices or places, or any of them; nor to give, take, promise, or receive any other consideration for the said offices, or any of them, directly or indirectly, by themselves or any person in trust for them, or for their use," under penalty of forfeiting the sum of £500, one half to go to the Crown, and the other half to the prosecutor, to be recovered by action in any of the Courts of record at Westminster, provided that such suit be commenced within two years after such offence is committed.

Nor the office of bailiff, &c., under penalty of £500.

But it is expressly provided by the 11th section that nothing contained in the preceding section is to hinder a high-sheriff from appointing an undersheriff or deputy sheriff, to act in his stead, as by law he ought to do; nor to hinder an undersheriff, in the event of the high-sheriff's death, when he acts as high-sheriff, from appointing a deputy, which this section empowers him to do, nor does it hinder the sheriff or undersheriff from taking the fees of the office, nor does it discharge the undersheriff or other officer from accounting for fees, nor does it hinder the sheriff from allowing salaries to his undersheriff and other officers, nor the undersheriff or other officer from receiving them.

Nothing to hinder sheriff from appointing undersheriff, &c.

The 21st section provides that the act shall not extend to the sheriffs of London and Middlesex, the county palatine of Durham, the county of Westmoreland, or to the sheriffs of any city or town, being a county of itself, or to any of them, as to their placing in or disposing of any of the offices, places, or employments of their undersheriffs, county clerks, bailiffs, or other officers, or their continuance therein.

Act not to extend to sheriffs of London, &c., as to disposing of offices, &c.

There appears to be no special qualification required for the office of undersheriff, but he is generally a solicitor of respectability.

Qualification of undersheriff.

The sheriff should, however, take security from the

Security

from undersheriff.

undersheriff for the proper discharge of the duties of his office, and as, by the statute 3 Geo. 1, c. 15, s. 8, the security given by the undersheriff to the high-sheriff will, in the event of the death of the sheriff, and by 2 & 3 Vict. c. 59, if the sheriff be called out in the militia, become security to the sovereign and his people, this would appear to be compulsory.

Dalton quaintly observes, "If the high-sheriff will sleep quietly, and take his repose in safety, he shall do well and wisely to look for and to take good security from his undersheriff, before he do trust him with his office" (*b*).

Nature of security.

The security is commonly by a bond or covenant. The bond should contain covenants to the following effect:—

Covenants of the bond of the undersheriff.

1. To indemnify the sheriff for default of the undersheriff or his servants.
2. To give notice to the sheriff when his personal attendance is required.
3. To attend and assist the sheriff thereat, and to assist in levying such force as the sheriff shall be enjoined to raise.
4. That the bonds of bailiffs shall indemnify the undersheriff as well as the sheriff.
5. To keep the Courts by law established in the county, by himself or deputy.
6. To take all lawful fees belonging to the office of sheriff.
7. To cause all persons sentenced to death to be punished according to law.
8. To be of good behaviour in his office.

Other covenants may be added, such as to return juries, to see that all writs not wholly executed are duly transferred at the expiration of the sheriff's office, to see that the sheriff's accounts are duly executed, &c.

Undersheriff

Formerly, the undersheriff was not allowed to practise as an attorney; the statute 1 Hen. 5, c. 4, forbade under-

(*b*) C. 2, p. 20.

sheriffs and sheriffs' officers to practise as attornies during the time they continued in office, and a rule of the Queen's Bench, 1654, s. 1, was to the same effect; but the statute referred to was repealed by 7 Will. 4 & 1 Vict. c. 55, s. 1, and although that section was itself repealed by the Statute Law Revision Act, 1863, the provisions of the 1 Hen. 5, c. 4, have never been re-enacted.

Formerly not to practise as an attorney.

By the statute 22 Geo. 2, c. 46, s. 14, no undersheriff could act as solicitor, attorney, or agent, or sue out any process at any General or Quarter Sessions of the peace held for any place where he was executing his office, on pain of forfeiture of £50. That statute, however, was repealed by the Statute Law Revision Act, 1871.

Undersheriff practising at quarter sessions.

The same statutes which forbade the continuance in office by the sheriff for more than a year included the undersheriff in the prohibition, and in some cases the sheriff's clerks, but these statutes are now obsolete, for though the statute 23 Hen. 6, c. 7, still remains on the statute book, a statute passed in the year 42 Edw. 3, c. 9, against the continuance in office of undersheriffs and sheriffs' clerks, and a further act passed in the year 1 Hen. 5, c. 4, against the continuance in office of bailiffs for more than three years, were both repealed so far as relates to the continuance in office of sheriffs' officers, by the statute 7 Will. 4 & 1 Vict. c. 55, s. 1, which section has, however, been itself repealed, but the prohibitions have never been re-enacted, and the repeal of 42 Edw. 3, c. 9, has been continued in the Statute Law Revision Act, 1863, so that the principle of limiting the continuance in office of sheriffs' officers has been set aside.

Continuance in office by undersheriff.

Prohibitive statutes repealed.

At the same time, it must be borne in mind, that the office of undersheriff ceases with the expiration of the office of sheriff, and the same is the case with the inferior offices; so that, therefore, the continuance in office of any of them is, in fact, a re-appointment by the new sheriff.

Continuance in office a re-appointment by new sheriff.

The undersheriff of any county in England, except the county palatine of Chester, is required before entering

Undersheriff's oath.

upon the execution of his office to take the oath required by 3 Geo. 1, c. 15, s. 19.

Under-sheriff not officer of courts.

The undersheriff, as such, is not an officer of the High Court, except when he is acting as high-sheriff in place of a deceased sheriff, or under the Mutiny Acts (*c*).

Duties of under-sheriff. Ministerial.

The duties of the undersheriff are to execute all the ordinary and ministerial and some of the judicial duties of the sheriff. Further particulars with regard to the latter duties will be given hereafter. In his ministerial capacity, the undersheriff must "receive all manner of writs, in any place and at all times, within his county, when and wheresoever they shall be delivered him, without taking of anything other than such fees as the law alloweth, and shall make thereof warrant" (*d*).

It is essential to the proper discharge of his duties that the deputy should have the whole power of his principal, and a covenant or condition to restrain it is void (*e*).

Sheriff not to abridge his office in appointing under-sheriff.

A sheriff cannot make an undersheriff for executing part of the duty of the office, and reserve the residue to himself; so, where a sheriff, by his covenant with the undersheriff, stipulated that the undersheriff should not levy executions for above £20 before he had first made known the nature and quality of the writ to the sheriff, and without the special warrant of the sheriff, the covenant was held to be void and illegal (*f*), and the undersheriff was held to be liable, notwithstanding such proviso, for allowing a prisoner, arrested on a writ above £40, to escape.

Appointment of two under-sheriffs.

Where a sheriff appointed two undersheriffs extraordinary to hold an inquest, the Court for that reason set the inquisition aside, as the undersheriff was the proper person to hold the inquest (*g*).

(*c*) Laicock's case, Latch. 187. Atk. Sh., 5th ed., 30. Com. Dig. (tit. Visct.).
(*d*) Imp. Sh. 41.
(*e*) Parker *v.* Kett, 1 Salk. 96.
(*f*) Norton *v.* Simmes, Hob. 13. Boucher *v.* Wiseman, Cro. Eliz. 440. Chamberlain *v.* Goldsmith, 2 Brownl. 280.
(*g*) Denny *v.* Trapnell, 2 Wils. 378.

Acts of undersheriff must be in name of sheriff.

Whatsoever of the office and duty of the sheriff is transacted by the undersheriff must be done in the name of the sheriff, and every writ or process delivered to the undersheriff, he, as well as the high-sheriff, may, by warrant in writing, command the bailiffs to execute, but it must be done in the sheriff's name (*h*).

Posse comitatus.

The undersheriff may, without express authority from the sheriff, raise the *posse comitatus* (*i*).

Proof of authority of undersheriff to act for sheriff.

Where an assignment of a lease by deed, taken in execution, was made in the name and under the seal of office of the sheriff, by A. B., acting as undersheriff, it was held, that such assignment was sufficiently proved, without further proving the appointment of A. B. as undersheriff, and that he had power by deed to execute deeds in the name of the sheriff (*k*), for the undersheriff *virtute officii* has power to do all official acts.

Undersheriff may appoint bailiffs, &c.

The undersheriff has power to appoint bailiffs, and to issue precepts, in virtue of his office, and it is not necessary that the sheriff should acquaint him with his powers (*l*).

Writs to be directed to sheriff.

The sheriff being the immediate officer of the king and his Court to execute all writs and process, so to him all writs are directed, although it be of a matter done within a liberty or franchise, in which case the sheriff must send or write his precept to the bailiff of the liberty, who must serve and execute the same as servant to the sheriff, and make return to the sheriff, who must return the writ into Court (*m*).

Writs, how usually delivered.

Writs directed to the sheriff are generally delivered at once to the undersheriff, or to his London deputy, who, as previously pointed out, has power by virtue of his office to make out the necessary warrants.

Making warrant

The fifty-third section of the statute 6 Geo. 1, c. 21, after reciting that undersheriffs "make and deliver out

(*h*) Dalt. 103.
(*i*) *Ibid.*, 104.
(*k*) James *v.* Brawn, 5 B. & Ald. 243.
(*l*) Parker *v.* Kett, 1 Salk. 96.
(*m*) Imp. Sh. 48.

without having writ punishable by fine of £10,

blank warrants to attornies and bailiffs for arresting persons on *mesne* process without having any writ to justify the same," enacted, that "if any sheriff, &c., shall make or deliver any warrant either in blank, or filled up in part, or in all, before he shall actually have in his custody the writ, &c., he shall forfeit £10," and the fifty-fourth section required that the day and year should be set down in the warrant.

repealed by 33 & 34 Vict. c. 99.

This statute was, however, repealed by the 33 & 34 Vict. c. 99, but the principle that a warrant is not to be made out by the sheriff or undersheriff, prior to receipt of the writ, has been laid down in a variety of cases, and though the penalty of £10 may not now be enforced, a remedy by action would lie against the sheriff (*n*), for the sheriff is only the executive of the Court and has no power to move without the precept of the Court.

Responsibility of sheriff for acts of undersheriff.

If the return to a writ be false, or there be any neglect of duty by the undersheriff, or bailiffs, the sheriff is himself responsible; attachments are issued against the sheriff, and not the undersheriff, and no action will lie against the undersheriff for any default in him, as the default is a matter between the sheriff and undersheriff, against which the sheriff is protected by the undersheriff's security (*o*).

The sheriff, however, is not criminally answerable for acts of the undersheriff unauthorised by him (*p*).

Deputies resident in London for receipt of writs, &c.

By the statute 3 & 4 Will. 4, c. 42, s. 20, the sheriffs of all counties in England and Wales are required severally to "name a sufficient deputy who shall be resident, or have an office, within one mile from the Inner Temple Hall, for the receipt of writs, granting warrants thereon, making returns thereto, and accepting of all rules and orders, to be made on or touching the

(*n*) Hall *v.* Roche, 8 D. & East. 187—Kenyon, C. J.

(*o*) Cameron *v.* Reynolds, Cowp. Rep. 406. 57 Geo. 3, c. 68, s. 3, allows actions against the undersheriff in Ireland, unless for the immediate act of the sheriff.

(*p*) Latch. 187.

execution of any process or writ to be directed to such sheriff."

Omission to appoint deputy.

In a case where a sheriff omitted to appoint a deputy in London for the receipt of writs, in accordance with the above requirement, and a writ being sent to the person generally supposed to be the London deputy for the undersheriff, delay was occasioned in consequence of the person presumed to be the deputy declining to act, which necessitated the forwarding of the writ to the sheriff himself, thereby enabling the defendant to execute a bill of sale before the delivery of the writ to the sheriff; in this case, the sheriff was held liable for his negligence in not appointing a London deputy in accordance with the provisions of the act (*q*).

Office of undersheriff, how determined.

The undersheriff has no estate or interest in his office (*r*), for the sheriff can only appoint the undersheriff at will, as the undersheriff is but the sheriff's deputy, and if the sheriff should expressly agree that the appointment should be irrevocable, he may nevertheless remove him, for it is said to be necessary, both for the public service and for the indemnity of the sheriff, that the undersheriff should be removeable (*s*).

(*q*) Brackenbury *v.* Laurie, 3 Dowl. 180.
(*r*) Parker *v.* Kett, Salk. 95.
(*s*) Norton *v.* Simmes, Hob. 13.

CHAPTER IV.

SHERIFF'S OFFICERS.

Bailiffs of three kinds.

THE sheriff's officers or bailiffs are of three kinds: 1. Bound bailiffs. 2. Special bailiffs. 3. Bailiffs of liberties.

Bound bailiff in Sir William Blackstone's time.

Of the bound bailiff Sir William Blackstone says, "it is usual to join special bailiffs with them (*i.e.*, the old bailiffs of hundreds), who are generally mean persons employed by the sheriffs on account only of their adroitness and dexterity in hunting and seizing their prey. The sheriff being answerable for the misdemeanours of these bailiffs, they are therefore usually bound in an obligation, with sureties for the due execution of their office, and thence are called bound bailiffs, which," he adds, "the common people have corrupted into a much more homely appellation."

Sergeant-at-mace.

In London the bound bailiff is called the sergeant-at-mace.

Bailiffs errant.

Common bailiffs.

Bound bailiffs are called in the old books bailiffs errant; they are also known as common bailiffs because they are the ordinary officers of the sheriff.

They are called bound bailiffs because they are bound in an obligation, with sureties for the faithful discharge of the duties which they are appointed to perform.

Obligation of bound bailiff.

The obligation of a bound bailiff should contain stipulations to the following effect,—

Covenant to execute warrants.

1. To execute all warrants or mandates directed to him by the sheriff or undersheriff, and to make a true and sufficient return in writing to all warrants which shall come to his hands, as bailiff, for execution.

To give up

2. To deliver up to the sheriff, or undersheriff, all bonds

and other securities belonging to the said sheriff, within two days after the same shall come to his hands as bailiff for execution. bonds and securities to sheriff.

3. To give, day by day, instructions in writing, for the sheriff's return to each writ and process, upon which any warrant shall have been granted to him, or by colour of which he shall have acted as bailiff to the sheriff, whether the writs shall have been executed or not. To give written instructions for the sheriff's return.

4. To execute all writs delivered to him, for execution, from the High Court of Justice. To execute writs.

5. To make a true return, and inventory, of all goods and chattels seized in execution by him, as bailiff to the sheriff, and, before removal, to pay the landlord the rent in arrear, not exceeding one year, and all taxes due in respect thereof, pursuant to the statute (*a*), and to indemnify the sheriff on account of any mistake or default relating thereto. To make inventory of goods seized, &c.

6. To pay to the sheriff, or undersheriff, the consideration or purchase-money mentioned in every bill of sale, or assignment, executed by the sheriff or undersheriff at the request of the bailiff, notwithstanding the acknowledgment of the receipt thereof by the sheriff, contained in such bill of sale or assignment. To pay purchase-money mentioned in bills of sale executed by sheriff.

7. To pay to the sheriff, or undersheriff, all monies received by the bailiff on any arrest or levy made by him. To pay all monies received.

8. To demean and behave himself honestly as bailiff, and faithfully and diligently to serve and attend the sheriff, and undersheriff, in due and lawful manner, in all matters connected with the office. To be of good behaviour.

9. To indemnify the sheriff, and undersheriff, from all damages, loss, costs, and charges, which they or either of them may be put to, by the nonfeazance or misfeazance of the bailiff, or by reason of the payment of any money by them, or either of them, To indemnify the sheriff, and undersheriff, from loss.

(*a*) 8 Anne, c. 18, s. 1.

to any one, or by reason of any return to any writ or process by them, or either of them, at the request of the bailiff.

To indemnify the sheriff and undersheriff in all actions, &c., against them.

10. To indemnify the sheriff and undersheriff, their executors and administrators, from all actions, fines, penalties, contempts, forfeitures, loss, costs, charges, damages, and expenses, which may be prosecuted or imposed on them or either of them, by reason of extortion happening by default of the bailiff, or by reason of the misfeazance or nonfeazance of the bailiff in any other matter whatsoever.

Bound bailiffs in Cumberland.

It would appear by a case reported in the eighth volume of the Term Reports, that there are no bound bailiffs in Cumberland; but the sheriff of that county is bound, like other sheriffs, either to execute the writ himself, or to procure it to be executed by some other person, for whom he is responsible (*b*).

Bound bailiffs in Cornwall.

The same remark will apply to Cornwall, where, instead of bailiffs regularly bound to the sheriff, the practising attornies themselves send to the sheriff's office for their warrants, which are directed to persons of their own nomination, usually their clerks, and are executed by themselves (*c*).

Attornies liable to sheriff.

Attornies acting in this capacity are liable to the sheriff (*d*).

A sheriff may select his bailiffs, and impose such terms upon them as he shall see fit, and they acquiesce in (*e*).

Warrant addressed to bailiff.

If a warrant be addressed to a bailiff alone, and not to him and his assistants, he must himself execute it; and where a bailiff, under a warrant addressed to him alone, seized goods in execution, and went away, leaving the goods in charge of keepers, and during his absence the goods were rescued by the prisoner from the keepers, it was held, that under these circumstances, he could not be

(*b*) Taylor *v.* Richardson, 8 D. & E. 505—Lord Kenyon.
(*c*) Sawle *v.* Paynter, 1 D. & R. 307.
(*d*) *Ibid.*
(*e*) Farebrother *v.* Worsley, 1 Price P. C. 64—Bayley, B.

convicted of having by threats and violence compelled the bailiff to abandon the seizure (*f*).

Special bailiff.

The special bailiff is an officer appointed for a special purpose by the sheriff, *e.g.*, the execution of a particular writ, at the instance of the plaintiff, or of his attorney, and exists *pro hac vice*. The sheriff is not responsible for the acts of the special bailiff to the party at whose instance he is appointed (*g*), so long as his special appointment continues, but to all other persons except the party appointing he is liable for the misconduct of his servant (*h*); the party appointing is also liable (*i*).

Responsibility of sheriff for acts of special bailiff.

What constitutes appointment as special bailiff.

A mere expression of a wish, or a request by a solicitor that a certain officer, who is usually employed, may execute the writ, is not, in the absence of anything else, sufficient to constitute that officer a special bailiff (*k*); because, in point of practice, particular bailiffs are always employed by solicitors to perform the duties of their respective offices.

Ford *v.* Leche.

But the following letter was held to amount to such an appointment—"Myself against D. I enclose you a writ herein, and shall feel obliged by your granting a warrant hereon, directed to Mr. M. and Mr. B. I shall write to Mr. B. in a day or two" (*l*).

Wright *v.* Child.

A debtor, whose goods had been seized under a writ of *fi. fa.*, persuaded the officer executing the writ not to advertise the sale, and himself interfered to prevent the issue of the bills; on the day of the sale, also, his agent induced the officer to postpone it to a later hour, and on the officer's proceeding to sell, directed him to sell also for a writ that day lodged with him, under which he could not otherwise have then sold; further, in the management of the sale, the officer conducted himself negligently

(*f*) Reg. *v.* Noonan, 10 Ir. R. C. L. 505—C. C. R.
(*g*) Pallister *v.* Pallister, 1 Chit. 614. Ford *v.* Leche, 6 Ad. & El. 699; 1 N. & P. 737, S. C.
(*h*) Wat. Sh., 2nd ed., 41.
(*i*) *Ibid.*
(*k*) Alderson *v.* Davenport, 13 M. & W. 46. Balson *v.* Meggatt, 4 Dowl. 557. Corbet *v.* Brown, 6 Dowl. 794.
(*l*) Ford *v.* Leche, 6 Ad. & El. 699; 1 N. & P. 737, S. C.

in not properly lotting the goods, so that they sold at an undervalue; it was held, that the above facts did not constitute the officer agent of the execution debtor, so as to absolve the sheriff from liability for the officer's negligence (*m*). This is the farthest extent to which the cases go against the sheriff, in the matter of special bailiffs.

Doe *v.* Trye.

So, where the plaintiff's solicitor requested that the warrant on a *ca. sa.* might be addressed to a particular officer, himself delivered the warrant to that officer, took him in his carriage to the place of arrest, and overruled doubts which he entertained as to the legality of the arrest, it was held that the officer must be considered as a special bailiff (*n*).

What constitutes a special bailiff.

The question as to whether certain expressions are a mere suggestion or an appointment of a special bailiff, is a matter of evidence in each particular case (*o*).

The relations between a plaintiff and a special bailiff are those of principal and agent (*p*).

Sheriff discharged by appointment of special bailiff.

Therefore the sheriff is discharged by the plaintiff's appointing a special bailiff and agent to manage the sale of goods seized under a *fi. fa.*, although the sheriff had returned that he had sold, and that he had paid a sum illegally deducted for the auction (*q*).

Bailiffs of liberties.

Bailiffs of liberties are those bailiffs who have the same jurisdiction and powers within their liberties as the sheriff's bound bailiff has within the sheriff's bailiwick.

Liberty or franchise.

The liberty or franchise, for the two words are used as synonymous terms, is a royal privilege, or grant of a royal prerogative to a subject. Thus, by letters patent, king James the first granted "to A., his heirs and assigns, that he or they, by his or their bailiff or bailiffs for that purpose by him and them from time to time to be deputed,

Grant of liberty.

(*m*) Wright *v.* Child, L. R. 1 Exch. 358.
(*n*) Doe *v.* Trye, 5 N. C. 573; 7 Scott 704, S. C.
(*o*) Ford *v.* Leche, 6 Ad. & El. 699—Patterson; 1 N. & P. 737, S. C.
(*p*) Balson *v.* Meggatt, 4 Dowl. 557—Coleridge, J.
(*q*) Pallister *v.* Pallister, 1 Chit. 614 *n.*

should have the full return of all writs, mandates and precepts within a certain district, and that no sheriff or other officer of the king, concerning the same returns within the said district, should in any manner intermeddle, &c., nor enter in execution of the premises, unless through default of the bailiff or bailiffs of the said A., his heirs or assigns, or some of them" (*r*).

How derived.

Being, therefore, derived from the Crown, they must arise from the king's grant, or in some cases may be held by prescription, which presupposes a grant.

Different kinds of franchises.

Franchises are of different kinds; a county palatine is a franchise vested in a number of persons. The right of holding a Court leet, or the holding of a manor or lordship, is also a franchise.

Writs for execution within a franchise.

The sheriff being the immediate officer of the Court, all writs are directed to him, although relating to matters to be done within a franchise, in which case he sends his precept to the lord or the bailiff of the franchise; if to the former, then the lord must send it to the bailiff of the liberty, who acts within his franchise as a bound bailiff would in the county at large.

Whether the sheriff is to direct his mandate to the lord or the bailiff of the franchise, must depend on the terms of the grant of the franchise to the lord.

But if the writ contain what is commonly called a *non omittas* clause, the sheriff or his officer must enter the franchise, and execute the writ.

Sheriff entering franchise without the *non omittas* clause.

Should the sheriff, however, enter the franchise and execute a writ without the *non omittas* clause, the execution is not on that account irregular, but the lord may recover compensation from the sheriff for an infringement of his right; though the party against whom the writ issued has no remedy, and no action will lie by the bailiff of such liberty against the party suing out such writ (*s*).

When the crown is a party.

When the Crown is a party the sheriff needs no *non omittas* clause to authorise him to enter a franchise.

(*r*) Newland *v.* Cliffe, 3 B. & Ad. 630.
(*s*) Carrett *v.* Smallpage, 9 East. 330.

Bailiff of franchise liable.

When the sheriff has made out his mandate to the bailiff of a franchise, the bailiff, and not the sheriff, is answerable (*t*).

Process directed to bailiff generally void.

Process directed in the first instance to the bailiff of a franchise is generally void, and the bailiff executing it is guilty of a trespass against the party whose goods are taken in execution, for he is not the recognized officer of the Court, but the sheriff (*u*).

High bailiff of Westminster.

This, however, is not always the case, for in the case of the high bailiff of Westminster, precepts are directed to him in the first instance.

Liberty of the honour of Pontefract.

The statute 8 & 9 Vict. c. 72, makes it imperative upon the sheriff of the county of York to enter the liberty of the honour of Pontefract to execute all writs against the person (*x*).

The liberty of the Cinque Ports.

Formerly the execution of writs within the Cinque Ports (*i.e.*, in Dover, Sandwich, Romney, Hastings and Hythe), together with the ancient towns of Winchelsea and Rye, which were in the same liberty, was in the hands of the lord-warden, but the statute 18 & 19 Vict. c. 48, s. 2, abolished this jurisdiction, and required writs and judgments in the Cinque Ports to be directed and executed as in other places.

Lord-warden.

Bailiff's return generally to the court.

The sheriff's mandate always requires that the bailiff shall make his return to the sheriff; but, in practice, the bailiffs make their returns directly to the Court (*y*). The bailiff should put his name to the return (*z*).

Bailiffs to attend judges of assize, &c.

All stewards, bailiffs, and other ministers of liberties, are required to attend the judges of assize and gaol-delivery, and "the justices of the peace at large," for the shires wherein their liberties are situate (*a*).

Bailiff of

Where a sheriff issues his mandate to the bailiff of a

(*t*) Boothman *v.* E. of Surrey, 2 D. & East. 4—Grose, J. 27 Hen. 8, c. 24, s. 8.
(*u*) Grant *v.* Bagge, 3 East. 128.
(*x*) S. 4.
(*y*) Wat. Sh., 2nd ed., 61.
(*z*) 12 Edw. 2, c. 5.
(*a*) 27 Hen. 8, c. 24, s. 6.

liberty to summon a jury to attend the Quarter Sessions, the Sessions have the power to fine the acting bailiff for not complying with the mandate (*b*). liberty to summon juries.

If the sheriff return the answer of the bailiff, and the bailiff's answer prove to be false, an action lies against the bailiff, and not against the sheriff, for the false return (*c*). False answer by bailiff.

If the grant by the Crown be that the grantee has, by his bailiff, the full return of writs within a certain district, then the mandate may be directed to the bailiff by name, and the return made in his name; but if the grant has not the proviso as to the bailiff, then the bailiff is the lord's deputy, and all things must be done in the name of the principal. If the sheriff cannot obtain certain knowledge upon these points, it is safer to address to the lord (*d*). If the grant provide that bailiff shall return writs, mandate how addressed.

A bailiff of a liberty, when addressed in a mandate as the sheriff's bailiff, may waive his franchise, and act upon it in the latter character (*e*).

If after the delivery of the mandate to the bailiff of a franchise, the bailiff die or be removed, and a new bailiff succeeds before the return, the new bailiff should make the return (*f*); where, also, under those circumstances, the sheriff returned the answer of the old bailiff, which was false, it was held that no action lay against the old bailiff for such answer, for it was the return of a mere stranger (*g*). Death of bailiff of franchise.

For cases in which the sheriff's liability for the acts of his officers is more fully discussed, the reader is referred to the chapters on remedies against the sheriff (*h*). Sheriff's liability for acts of his officers.

Formerly, in addition to the before-mentioned officers of the sheriff, when replevin proceedings were within the jurisdiction of the sheriff, the sheriff had also replevin Replevin clerks.

(*b*) Rex *v.* Jaram, 4 B. & C. 692.
(*c*) Jackson *v.* Hill, 10 Ad. & El. 477.
(*d*) Atk. Sh., 6th ed., 35.
(*e*) Jackson *v.* Hill, 10 Ad. & E. 477.
(*f*) Wat. Sh., 2nd ed., 61.
(*g*) *Ibid.* Palmer *v.* Marsh, 1 Roll. Abr. 99.
(*h*) Chapters XXV—XXVII.

clerks for the transaction of that portion of his duties; but by the statute 19 & 20 Vict. c. 108, s. 63, the powers and responsibilities of the sheriff with respect to replevin proceedings have been removed, and the registrar of the county Court of the district in which any distress subject to replevin is taken, is now empowered to approve of replevin bonds, and to grant replevins, and to issue all necessary process in relation thereto, such process to be executed by the high bailiff.

Replevin proceedings transferred to county court.

Formerly, too, the gaoler was a servant of the sheriff, and was appointed by the sheriff, who had *ex officio* the custody of the gaol, and was responsible for the gaoler and his actions, with power to dismiss him at will.

Gaoler formerly servant of sheriff.

By the "Prisons Act, 1865" (*i*), the power of appointing the gaoler was taken away from the sheriff and vested in the justices of the peace for the county, and every prisoner confined in a prison was by that statute placed in the legal custody of the gaoler, instead of the sheriff as formerly. That act, however, retained the sheriff's jurisdiction over debtors; it repealed his liability for the escape of any prisoner other than a debtor, and he consequently had to take security from the gaoler for the safe custody of debtors; but now, by the Prisons Act, 1877 (*k*), the sheriff's liability for escape of prisoners is entirely repealed. The word "prisoner" is, by the fifty-seventh section of the latter act, defined to mean "any person committed to prison on remand, or for trial, safe custody, punishment or otherwise," so that the sheriff's immunity commences when the party is in the custody of the gaoler.

Appointment of gaoler transferred to magistrates.

Sheriff not liable for escape of prisoners.

Definition of prisoner.

Both these statutes reserve the jurisdiction of the sheriff in respect to prisoners under sentence of death, in so far as may be necessary for carrying the sentence into effect.

Reservation as to prisoners under sentence of death.

The duties which formerly devolved upon the sheriff

Duties of

(*i*) 28 & 29 Vict. c. 126.
(*k*) 40 & 41 Vict. c. 21, s. 31.

with respect to gaols, now therefore devolve upon the gaoler; he, therefore, instead of the sheriff, has to deliver to judges of assize, and justices in Quarter Sessions, the calendar of prisoners for trial at such assizes and Sessions which was formerly required of the sheriff.

gaoler at assizes and quarter sessions.

CHAPTER V.

SURETIES FOR OFFICERS.

Remedy against sureties for bailiffs.

If a sheriff is damnified by the act or negligence of his officer, he has his remedy on the bailiff's bond. It is necessary in an action against a surety, for the default of the bailiff in executing a writ, to aver that the warrant was *delivered* to the bailiff, and it seems to be also necessary to aver that the warrant was *directed* to the bailiff (*a*).

Sureties, how far liable.

Cook v. Palmer.

The sureties are liable only for the due performance of acts within the scope of the officer's duty. So, where a sheriff's officer had seized under a *fi. fa.* goods of a trader, more than sufficient to satisfy the levy, and the trader having become bankrupt, and assignees chosen before the goods were sold, the assignees authorised the officer to deliver the whole of the goods to A. B., and to receive from him a certain sum as the full value of the goods, which he did accordingly, and out of that money satisfied the execution creditor, but never paid over the residue to the assignees, it was held that they could not sue the sheriff for the money, the officer not having derived his authority to sell the whole of the goods from the sheriff, but from the plaintiffs, the assignees (*b*).

Remedy against sureties.

The bailiff's covenant may be such as entitles the sheriff to recover against him the costs or loss incurred by the sheriff in defending an action, although the bailiff may have done no wrong in the matter wherein he acted, and

(*a*) Desanges *v.* Priestley, 3 Moore, 246.
(*b*) Cook *v.* Palmer, 6 B. & C. 739; 9 D. & R. 723.

in respect of which the action had been brought against the sheriff, or the loss had been sustained (*c*).

It is not necessary to aver the misconduct of the bailiff, if the covenant applies to the acts of the bailiff generally (*d*).

If a sheriff defends an action for false return as well as he can, he may recover his costs from the sureties, though he has a verdict against him on the ground that evidence was not produced, which in another and subsequent suit between the same parties involving the same question was obtained (*e*).

If in such an action, after he has obtained a rule *nisi* for a new trial, he compromises the suit with the assent of some of the sureties, by paying a less sum for damages than would be recoverable, and a less sum for costs than were incurred, he may recover his own costs against a surety who did not assent, if it appear that the compromise was, under such circumstances, reasonable (*f*).

Discharge of surety.

A surety cannot discharge himself within the year of his suretyship, without the consent of the sheriff (*g*).

A sheriff cannot recover on an indemnity bond which has been procured by the fraud of his own officer (*h*).

A plea to an action on such a bond, that it was obtained by the sheriff and others in collusion with him by fraud and covin, is a good plea (*i*).

(*c*) Farebrother *v.* Worsley, 1 Price P. C. 64; 1 Tyr. 424; 1 C. & J. 549; 5 C. & P. 102.
(*d*) *Ibid.* Wat. Sh., 2nd ed., 47.
(*e*) *Ibid.*
(*f*) *Ibid.*
(*g*) Martin *v.* Wenman, Lofft. 225.
(*h*) Raphael *v.* Goodman, 3 N. & P. 547; 8 Ad. & E. 565; 1 W. W. & H. 363.
(*i*) *Ibid.*

CHAPTERS VI—X.

THE SHERIFF'S JUDICIAL DUTIES.

His county Court: 1. For election of coroners. 2. For proceedings in outlawry. 3. For the election of members of Parliament. 4. On a writ of inquiry. 5. The compensation Court.

CHAPTER VI.

COUNTY COURT.

County court. Magna Charta.

THE Magna Charta forbade county Courts to be held by the sheriff more than once a month, and where the interval had previously been greater it was to continue so.

Sheriff's *torne*.

The sheriff was further forbidden to hold his *torne*, or circuit, in the hundred, more than twice a year, and on these occasions the Court was to be held at regularly appointed times, once after Easter, and again at Michaelmas (*a*).

Criminal jurisdiction taken away.

The criminal jurisdiction which the sheriff's *torne* had possessed was also taken away by the Magna Charta (*b*), but indictments and inquests were still found in the *torne*, and process granted upon them.

Power of granting process, &c., in the *torne*

This becoming a source of oppression, the power of granting out any process against persons indicted in the *torne*, and of attaching, arresting and putting in prison and assessing, levying and taking fines, by reason of such

(*a*) C. 35.
(*b*) C. 17.

indictments, was taken away by 1 Edw. 4, and the sheriff was directed to take all indictments and presentments taken before him in his *torne* to the justices of the peace at their next sessions in the county, under pain of forfeiting £40 in case of default, and a £100 fine in case of his taking action on any indictment, without process from the justices of the peace. taken away.

Formerly the sheriff made inquiries and found indictments of felony by commission, but this power was also taken away by the statute 28 Edw. 1, c. 9. Indictments for felony.

Even at this day an indictment might be found in the *torne*, but the sheriff has no power to grant process upon it, for the *torne* has long become obsolete (*c*). Indictment in the *torne*.

The sheriff's county Court has gradually been stripped, in this way, of its former powers, and the county Courts appointed under 9 & 10 Vict. c. 95, and subsequent statutes, have absorbed almost the whole of the judicial business of the sheriff's Court. The Courts held under this act received the same jurisdiction as the old sheriff's county Courts, and were appointed Courts of record. By the statute 3 & 4 Will. 4, c. 42, s. 17, it was enacted, that, in any action in one of the superior Courts for debt or demand in which the sum sought to be recovered and indorsed on the writ of summons did not exceed £20, it should be competent for the Court to direct that the issues should be tried before the sheriff of the county where the action was brought, or any judge of any Court of record for the recovery of debt in such county, if the Court should be of opinion that such trial would not involve any difficult question of law or fact, and a writ should issue to the sheriff commanding him to try the case with a jury. Appointment of county courts to supersede sheriff's court. Debts under £20 formerly triable by sheriff.

This enactment was, however, repealed by the statute 30 & 31 Vict. c. 142, s. 6, so that now no case wherein issue is joined can be tried before the sheriff. When repealed.

The judicial duties of the sheriff, therefore, now con- Sheriff's

(*c*) Wat. Sh., 2nd. ed., 401.

judicial duties.

sist in: 1. Holding Courts for the election of coroners. 2. Sitting with the coroner in matters of outlawry. 3. Discharging the duties of returning officer at the election of members of Parliament. 4. Executing, either in person or by deputy, writs of inquiry. 5. Presiding, either in person or by deputy, in the compensation Court.

ELECTION OF CORONERS.

Sheriff's duty in election of coroners.

When there is a vacancy in the office of coroner, a writ "*de coronatore eligendo*" issues out of the Chancery Division, directed to the sheriff, reciting the death of the late coroner, and commanding the sheriff to proceed to the election of a new one.

Qualification of coroner.

In ancient times, in accordance with the requirements of the statute of Westminster, no person could be chosen to the office of coroner who was not a knight, and the fact that he was not a knight was deemed sufficient cause for discharging a person from the office (*d*).

Coroner to be a person of means.

It was also required by 14 Edw. 3, stat. 1, c. 8, that he should have land in fee in the same county sufficient to answer "to all manner of people." These enactments are, however, now obsolete, though the latter is still unrepealed, and it is sufficient that a coroner be a person of moderate means. The 28 Edw. 3, c. 6, enacted that the commons of the counties should elect the coroners, for their respective counties, from "the most meet and lawful people that shall be found in the same counties to execute the said offices, saving always to the king and other lords who ought to make such coroners, their seignories and franchises." This latter clause related to powers granted to certain subjects, to appoint coroners within their respective franchises, in a similar way to that in which power had been granted to subjects to appoint bailiffs of franchises.

Coroners appointed by great lords.

(*d*) Wat. Sh., 2nd. ed., p. 444.

Coroner appointed according to statute.

The appointment of coroners is now governed by the statute 7 & 8 Vict. c. 92. This statute repeals the act of 58 Geo. 3, c. 95, and provides that a county may be divided into two or more districts, or an alteration may be effected in an existing district by petition to her Majesty from the justices of the peace in General or Quarter Sessions assembled (*e*).

Writ "*de coronatore eligendo.*"

Her Majesty may, upon consideration of such petition, and with the advice of her Privy Council, direct the issue of a writ "*de coronatore eligendo*," for the purpose of authorising the election of an additional coroner in any county, and may order a county to be divided into as many districts as shall seem desirable, assigning a name to each district, and determining the place where the Court for the election of the coroner for such district is to be held; such order to be published in the *London Gazette* (*f*).

Justices to assign a district to each coroner.

The justices in General or Quarter Sessions assembled must assign one of such districts to each person holding the office of coroner in the county, and every successor of such coroner, and every person thereafter elected coroner in such county, must be elected according to the provisions of this act, and reside within two miles of the district for which he is elected (*g*).

List of parishes, &c., to be prepared by justices.

The justices, assembled as aforesaid, must order a list to be prepared by the clerk of the peace of their respective counties, of the several parishes, townships or hundreds, as the case may be, in each of the districts into which the counties shall be divided under this act, specifying in the list the place in each district where the Court for the election of the coroner will be held, and also the places where the poll will be taken (*h*).

Order to be enrolled.

This order must be enrolled among the records of the county (*i*).

Detached

Isolated or detached portions of counties are to be con-

(*e*) S. 4.
(*f*) *Ibid.*
(*g*) S. 5.
(*h*) S. 7.
(*i*) *Ibid.*

parts of counties.

sidered, for the purposes of this act, as forming portions of the counties by which they are surrounded; or, if they are surrounded by more than one county, as a portion of the county which affords the longest boundary (*k*).

Coroner elected by majority of qualified voters.

After any county has been divided as above described, every election of coroner for any such district must be held within the district in which he is to serve the office of coroner, and must be by a majority of persons resident in the district qualified to vote (*l*).

The sheriff should make proclamation of the day and place of election a sufficient time beforehand.

Sheriff to hold court for election of coroner.

After the division of any county into coroners' districts, the sheriff of the county where an election of coroner is to be made must hold a Court for the election, within the district, on an appointed day, not less than seven or more than fourteen days after the receipt of the writ "*de coronatore eligendo*," and if the election is not then decided upon the view, then the sheriff, or in his absence the undersheriff, must adjourn the Court till 8 a.m. on the next day but one, unless that day shall fall on a Saturday or Sunday, in which case he must adjourn it to the following Monday, and on that day the sheriff, or in his absence the undersheriff, and such other persons as he may require to assist him, must proceed to take the poll in some appointed public place or places (*m*). The polling is to continue, by the provisions of 23 & 24 Vict. c. 116, s. 2 (which repeals 7 & 8 Vict. c. 92, so far as it authorises polling for two days), for eight hours, during one day only, and no poll is to be kept open later than 4 p.m. on such day. With regard to the prohibition of the poll being taken on a Saturday, mentioned above, it may not be inexpedient to mention here that that prohibition was found necessary before the act of 23 & 24 Vict. c. 116, s. 2, when the duration of the poll extended over two days, but inasmuch as that statute limited its duration to a single day, the objection to the

If election not determined on the view, poll to be taken.

Duration of poll.

Prohibition of poll on Saturday.

(*k*) 7 & 8 Vict. c. 92, s. 8.
(*l*) S. 9.
(*m*) S. 10.

poll being taken on a Saturday is now removed, though it appears to have escaped the notice of the legislature. The public place or places appointed for taking the poll must be the same as the place appointed for holding the Court for the election, and such other places within the district as may be appointed by the magistrates in Quarter Sessions assembled (*n*).

Place for polling.

The qualification for voting for a coroner is that the voter should be a freeholder in the county and a resident in the district, with the exception that persons having freeholds in the city of London only may not vote for a coroner in either of the districts of the county of Middlesex.

Qualification for voting for coroner.

A person can only vote for the coroner of the district of the county in which he resides, but the freehold which empowers him to vote may be in any part of the county.

Thus, taking the county of Middlesex, which is divided into three separate districts, the eastern, western and central, as an illustration, a voter possessing a freehold in the eastern district, and residing in the western, may vote for a coroner in the western district, but not in the eastern district, although the freehold which empowers him to vote is in that district.

Division of county of Middlesex.

The county of Middlesex comprises all the parishes in the county, with the exception of those which are situated in the city of London.

If the magistrates do their duty properly, there will be two classes of voters—

Two classes of voters.

1. Those residing in the district, whose freeholds are also in the district.
2. Those residing in the district, whose freeholds are out of the district, but in the county.

The first of these classes will poll in the polling-places provided by the magistrates' order. The locality of the polling-place will be governed by the locality of the freehold.

(*n*) 7 & 8 Vict. c. 92, s. 11.

The second class may poll at any polling-place within the district, for the locality of the freehold, being without the district, cannot affect the locality of the polling-place.

If no polling-place be assigned to some parish.

But if, by an error of the magistrates, some parish be mentioned in the magistrates' order, to which no polling-place is assigned, then those who vote in respect of freeholds situated in any such parish, may poll at any polling-place within the district.

Votes for parish not mentioned.

But the magistrates may omit to mention some parish within the district altogether, and in this case all those who vote in respect of freeholds situated in any such parish must poll at the principal place of election (*o*).

Booths to be erected for polling purposes.

At every contested election of coroner, for any district in a county, the sheriff or sheriff's deputy, if required on behalf of any candidate, or if it appears expedient to him, is to cause a booth to be erected for taking the poll, at the Court or principal place of election, and at each of the polling-places within the district, to be used for the purposes of the election (*p*).

Names of parishes, &c., to be posted on booths.

Upon the most conspicuous part of each booth, the names of the several parishes, townships or places for which the particular booth is allotted are to be posted (*q*).

Voter not to poll out of his district.

No voter is to poll out of the district in which his property lies (*r*), except in the cases treated of above, where the magistrates have omitted to mention a parish, or, having mentioned it, have omitted to assign a polling-place to it.

Poll clerks to be nominated by sheriff, and to be sworn.

The sheriff, or in his absence, his deputy, must appoint as many poll clerks as shall be necessary for taking the poll, which must be taken in the presence of the sheriff, or his deputy; the poll clerks must be sworn by the sheriff, or his deputy (*s*).

Inspector of poll clerks.

The sheriff or his deputy must appoint for each candidate one inspector of poll clerks, to be nominated by

(*o*) 7 & 8 Vict. c. 92, s. 12.
(*p*) *Ibid.*
(*q*) *Ibid.*
(*r*) *Ibid.*
(*s*) S. 13.

the candidate (*t*). The sheriff, if required on behalf of any candidate, must administer the oath ordained by the 13th section, to every elector, before he is admitted to poll.

Sheriff to administer oath to electors.

At the close of the poll the poll clerks must enclose and seal their books, and publicly deliver them enclosed and sealed to the sheriff, undersheriff, or sheriff's deputy presiding at the poll, who must give them a receipt for the same, and every deputy who receives any poll books must deliver or transmit them, forthwith, so enclosed and sealed, to the sheriff or undersheriff, who must keep them unopened till the reassembling of the Court on the next day but one after the close of the poll, unless that day happen to fall on a Sunday, and then on the Monday; he must then openly break the seals, add up the votes in the several books, and declare the poll, proclaiming the person elected, not later than 2 p.m. on the same day (*u*).

Custody of poll books.

Counting votes and declaring poll.

The sheriff's declaration of election is final. Where a defendant was called on by *quo warranto* to show by what authority he exercised the office of coroner for a district of a county, and pleaded that after 7 & 8 Vict. c. 92, a writ was issued to the sheriff, commanding him to elect a coroner; that the sheriff duly appointed and held a Court for the purpose; that the defendant, further, being duly qualified, was one of three candidates nominated, and a poll, being demanded, was taken the next day but one, and at the close of the poll the poll books were duly sealed and delivered to the sheriff; that the Court reassembled on the day next but one after the close of the poll, and the sheriff then opened the books and cast up the number of votes; that he openly declared the state of the poll, and *made proclamation* that the defendant was duly chosen by a majority of such persons residing within the district as were duly qualified to vote; it was held that the plea was good, without alleging that the defendant *was* duly elected by a majority of duly qualified voters; for

Sheriff's declaration of poll final.

Reg. *v.* Diplock.

(*t*) 7 & 8 Vict. c. 92, s. 13.
(*u*) S. 15.

Validity of votes not to be questioned on a *quo warranto*.

that the sheriff exercises judicial functions in holding a Court for the election of coroner; his declaration therefore of the election is final, and the validity of votes cannot be inquired into on a *quo warranto* (*x*).

Sheriffs' expenses.

The sheriff's and undersheriff's reasonable expenses in taking the poll at the election must be borne by the candidates at the election in equal proportions (*y*).

Reasonable expenses.

Reasonable expenses include the cost of providing poll books, booths, and clerks, the clerks not being paid more than one guinea *per diem* (*z*).

County of Chester.

The county of Chester, which was exempted from the provisions of the act of the years 7 & 8 Vict. c. 92, is now subject to the general law as to county coroners (*a*).

Coroners of Isle of Ely.

By the statute 6 & 7 Will. 4, c. 87, s. 16, coroners of the Isle of Ely are directed to be chosen by the freeholders of the isle, in the same way as coroners are chosen in the case of other counties and divisions of counties of England.

(*x*) Reg. *v.* Diplock, 4 Q. B. 549.
(*y*) 7 & 8 Vict. c. 92, s. 16.
(*z*) *Ibid.*
(*a*) 23 & 24 Vict. c. 116, s. 7.

CHAPTER VII.

PROCEEDINGS IN OUTLAWRY.

Sheriff's duties in outlawry.

The sheriff's judicial duties in matters of outlawry formerly constituted a far more important portion of his office than they do at the present day, for by recent enactments they have become in a great measure obsolete.

2 Will. 4, c. 39, ss. 1—10, inclusive, repealed.

The sections of the Uniformity of Process Act, 2 Will. 4, c. 39, which regulated the mode of proceeding to outlawry in a civil action before judgment, have all been repealed by the C. L. P. Act, 1852, and the Debtors' Act, 1869 (*a*).

Practice before C. L. P. A., 1852.

Before the C. L. P. Act, 1852, if it were made to appear by *affidavit*, or to the satisfaction of the Court whence the process issued, or, in vacation, of any of the judges of the superior Courts at Westminster, that any defendant had not been personally served with a writ of summons, and had not appeared in accordance with the summons, and could not be compelled to do so without some more efficacious process, then the Court or judge might order the now obsolete writ of *distringas* (*b*) to be issued, directed to the sheriff of the county where the place of abode of the defendant was situate, or to the sheriff of any other county, or to any other officer to be named by the Court or judge, in order to compel the appearance of the defendant. Upon the return of *nulla bona* or *non est inventus* to the writ of *distringas*, proceedings in outlawry might be taken.

Writ of *distringas*.

(*a*) 32 & 33 Vict. c. 62.
(*b*) Abolished by C. L. P. Act, 1852, s. 24.

Proceedings to outlawry before judgment abolished.

Proceedings to outlawry before judgment cannot, since the C. L. P. Act, 1852, s. 24 (which abolished outlawry on *mesne*, but not on *final* process), now be taken.

If a return of *non est inventus* was made to a *ca. sa.* an *exigi facias* was sued out.

Writ of *exigi facias.*

The writ of *exigi facias*, or exigent, as it was also called, was a judicial writ, directed to the sheriff of the county where the venue of the action was laid, or where the indictment was found, and the sheriff was required by it to demand the defendant from county Court to county Court, in five consecutive county Courts immediately following the receipt of the writ, and no county Court was to be omitted.

Writ when returnable.

The writ must have been returnable on a day certain, on some day being either the third inclusive before the commencement of term, or between that day and the third day exclusive before the last day of the term.

It seems it ought to have been tested on the *quarto die post* of the return of the *ca. sa.*, and in term time.

Fifteen days between *teste* and return.

It could not be made returnable in a term after the term following that in which the writ was tested, and there must have been fifteen days at least between the *teste* and return.

Debtors' Act, 1869.

By the Debtors' Act, 1869 (*c*), imprisonment for debt was abolished, except in certain cases, but, by the same act, power is given to the Courts to commit debtors contumaciously refusing to pay judgment debts.

Exigi facias, how executed.

A writ of proclamation is, it seems, unnecessary. The writ of *exigi facias* is executed by exacting the defendant, or calling upon him to appear at five successive county Courts, or in London at five successive hustings, unless before that time he appear.

Writ of *allocatur exigent.*

If there are not five county Courts or hustings between the *teste* and the return of the *exigi facias*, there must be issued an *allocatur exigent*, so as to make up the number. If the defendant appear before the return of

(*c*) 32 & 33 Vict. c. 62.

the exigent a *supersedeas* is issued to stay any further proceedings in the sheriff's office. If the defendant do not appear, he is outlawed at the return of these writs, and a *capias utlagatum* issues, which is either *general*, against the person only, or *special*, against the person, lands, and goods. Writ of *supersedeas*. Writ of *capias utlagatum*.

If he has not yet appeared, and there is no probability of his doing so, satisfaction for the debt and costs may be obtained out of the property seized under the *capias utlagatum*. A transcript of the proceedings is obtained from the master, and taken to the Queen's Bench Division, where a rule is granted for persons to come in and claim the property seized, upon the expiration of which rule a *venditioni exponas* issues to the sheriff to sell the goods, a *levari facias* to levy the issues and profits of the freehold land, and a *scire facias* to recover debts due to the defendant if necessary (*d*). Satisfaction to be obtained on non-appearance out of property seized.

In a case, however, where a sheriff had seized goods under a *capias utlagatum*, and the time for entering claims had expired, and, moreover, a *venditioni exponas* had issued to the sheriff and been executed, the Court admitted a party claiming the goods to enter his claim and to traverse the inquisition, on its being established that the delay had arisen from the claimant's attorney having mistaken his course, and brought an action against the sheriff, instead of having claimed and traversed on payment of costs (*e*).

If to a special *capias utlagatum* the sheriff returns an inquisition, finding that defendant has benefices, but no lay fee, the Court will award a writ of sequestration on reading the transcript of the outlawry and inquisition. When the goods have been sold, &c., if the amount does not exceed the sum of £50, a motion is made in the Queen's Bench Division for an order to pay it over to the person at whose instance the outlawry has taken place, and a *subpœna* will issue to the sheriff requiring him to Writ of sequestration. Where proceeds are under £50.

(*d*) 2 Chit. Arch. Prac., 12th ed., 1309.
(*e*) Rex *v.* Randell, 5 Price, 576.

pay over the proceeds, deducting necessary expenses (*f*).

Where proceeds exceed £50.

If the proceeds exceed £50, the lords of the Treasury must be petitioned, and the consent of the Attorney-General must be obtained. If the debt be considerable, and the chattel property be not sufficient to satisfy it, a lease or grant of the Queen's right to levy the issues of the defendant's freehold lands, by petition to the lords of the Treasury, may be obtained.

Grant of queen's right to levy.

A warrant will thereupon be granted for the lease, and the lease is made out at the proper office of the Queen's Bench Division (*g*).

A defendant could not be outlawed on a judgment after error brought (*h*).

Judges in outlawry proceedings.

The suitors or freeholders were nominally the judges in proceedings in outlawry, but as a matter of practice, three suitors were asked to sign their names as witnesses, and their names were entered in the record, but were not named in the return to the writ.

When proceedings in outlawry took place.

The proceedings in outlawry were generally arranged so as to take place upon the same day as the other business of the Court, and the three suitors or freeholders were generally three jurors, but where proceedings in outlawry happened to fall on some public holiday, as on Christmas day (for outlawry proceedings were obliged to take place on the regularly appointed days), then it was customary to get some clerks or servants of the Court to sign the proceedings; so that the theory of the freeholders being the judges of the sheriff's Court, in outlawry proceedings, has long been obsolete.

Practice.

Defendant, how relieved.

The defendant might be relieved from the outlawry, either by obtaining the Queen's pardon, or by reversing the outlawry by an application to the Court or a judge at chambers; or he might take proceedings in error, *coram nobis* or *vobis* (*i*).

(*f*) 2 Chit. Arch. Prac., 12th ed., 1309.
(*g*) *Ibid.*
(*h*) *Ibid.*
(*i*) *Ibid.*

Condition of an outlaw.

The maxim applicable to outlaws is "let them be answerable to all, and none to them."

Accordingly, any person outlawed is *civiliter mortuus*. He can hold no property given or devised to him, and all the property which he held before is forfeited. He can neither sue on his contracts, nor has he any legal rights which can be enforced, while at the same time he is personally liable upon all causes of action.

He can bring actions *in autre droit*.

He can, however, bring actions *in autre droit*, as executor, administrator, &c., because in such actions he only represents persons capable of contracting, and under the protection of the law (*k*).

Wife of outlaw.

The wife of an outlaw can be made bankrupt if she becomes a trader (*l*).

The statute 33 & 34 Vict. c. 23, which abolishes escheat and forfeiture for treason or felony, expressly provides that nothing in that act shall affect the law of forfeiture consequent upon outlawry.

Waiving

In the case of a female who is put out of the protection of the law, it is termed "waiving," for as women were not sworn to the law by taking the oath of allegiance in the leet (as men formerly were at the age of twelve and upwards), they could not properly be outlawed, but were said to be waived or disregarded (*m*).

Who could not be outlawed.

Children under twelve years of age cannot be outlawed, nor, except in criminal cases, can peers or members of Parliament (*n*).

Where more than one defendant.

Where there are several defendants there may be outlawry against one or more of them (*o*).

(*k*) Walford *v.* Eversham, Moore 431. Brook *v.* Phillips, Cro. Eliz. 684.
(*l*) *Ex parte* Franks, 7 Bing. 767.
(*m*) Wh. L. L., 686, 5th ed.
(*n*) Wh. L. L., 674, 6th ed.
(*o*) *Ibid.*

CHAPTER VIII.

ELECTION OF MEMBERS OF PARLIAMENT.

Forty days to elapse between *teste* and return of writ of summons.

THE statute 7 & 8 Will. 3, c. 25, s. 1, required that when any new Parliament should be summoned, forty days should elapse between the *teste* and return of the writ of summons, and that the Lord Chancellor, Lord Keeper or Lords Commissioners of the great seal for the time being, should issue out the writs for the election of members to serve in the same Parliament with as much expedition as possible.

Parliament may meet after thirty-five days

But the 23rd chapter of the 15 & 16 Vict. in effect repeals to a certain extent the 7 & 8 Will. 3, c. 25, s. 1, for it provides that so often as her Majesty shall, by royal proclamation, appoint a time for the first meeting of Parliament after a dissolution, the time so appointed may be any time not less than thirty-five days after the date of the proclamation.

Writs to be delivered to the proper officer.

The 7 & 8 Will. 3, c. 25, s. 1, goes on to provide that "as well from the calling or summoning any new Parliament, as also in the case of any vacancy during the session of Parliament, the several writs shall be delivered to the proper officer to whom the execution thereof doth belongs or appertain, and to no other person whatsoever, and every such officer upon the receipt of the same writ, shall upon the back thereof indorse the day he received the same."

Messenger of great seal to carry writs to sheriffs of London and Middlesex.

The statute 53 Geo. 3, c. 89, s. 1, provides that the messenger of the great seal shall carry election writs directed to the sheriffs of London and Middlesex, to the respective offices of such sheriffs, and all other writs to the Postmaster-General, or some other person deputed by him

who is to forward them to the officers to whom the writs are directed.

Sheriffs to give notice to postmaster-general of places where they intend to hold their offices.

Sheriffs are required by the second section to give notice to the Postmaster-General, for the time being, of the place where they intend to hold their offices. Included in this requirement were formerly the chancellor of the county palatine of Lancaster, the lord bishop of Durham, or his temporal chancellor of the county palatine of Durham, the chamberlain of the county palatine of Chester, and the warden of the Cinque Ports; but the portion of the section which relates to these functionaries was repealed by the Statute Law Revision Act, 1873. Sheriffs holding office in or near the capital must send notice of the place where they hold their offices to the messenger of the great seal (*a*).

Neglect to deliver writs.

Any person concerned in the delivery or transmission of such writs, wilfully neglecting to deliver them or any of them, is guilty of a misdemeanour (*b*).

Returning officers in counties.

The returning officers for counties are the sheriffs of the respective counties, and writs for the election of members of Parliament are directed to them (*c*).

Returning officer in boroughs under Municipal Corporations Act.

In boroughs under the Municipal Corporations Act (5 & 6 Will. 4, c. 76), the mayor, or if there be two mayors within the boundaries of the borough, the one to whom the writ is directed (*d*), is the returning officer. In case the mayor be dead, or incapable of discharging the duties of returning officer, or if there be no mayor, the town council may elect an alderman to act as returning officer (*e*).

Returning officer under 2 & 3 Will. 4, c. 45.

In the boroughs created by the statute 2 & 3 Will. 4, c. 45, to which no returning officer is attached, and which have since that act been incorporated by royal charter, the mayor or chief municipal officer is the returning

(*a*) 53 Geo. 3, c. 89, s. 3.
(*b*) S. 6.
(*c*) 16 & 17 Vict. c. 68, s. 1.
(*d*) S. 57; Rog. El., 12th ed., 278.
(*e*) *Ibid.*

officer, if their charter gives them power to elect a mayor or other chief municipal officer (*f*).

Under 30 & 31 Vict. c. 102.

In the new boroughs created by the statute 30 & 31 Vict. c. 102, which are or include a municipal borough, the mayor is the returning officer (*g*).

Under 31 & 32 Vict. c. 58, s. 33.

It is provided, generally, by the 31 & 32 Vict. c. 58, s. 33, that whenever a parliamentary borough becomes a municipal borough, the office of the then returning officer shall cease, and the mayor shall become the returning officer (*h*).

Where no returning officer has been appointed specially.

In those boroughs enfranchised by 2 & 3 Will. 4, c. 45, to which no special returning officer has been attached, and which have not received a grant of incorporation since, the sheriff of the county in which the borough is situate is the returning officer (*i*), and he should, in the month of March in each year, appoint a fitting deputy (*k*).

Boroughs created by 30 & 31 Vict. c. 102.

The returning officer of a parliamentary borough created by 30 & 31 Vict. c. 102, schedules B and C, where such borough is not, nor includes, a municipal borough, is to be appointed in the same way (*l*).

If deputy die, &c.

In case of death, sickness, or other sufficient impediment, the sheriff may appoint a substituted deputy, to fill the office during the remainder of the year (*m*).

Qualification of sheriff's deputy.

The only qualification of the sheriff's deputy required by this section is that he shall be resident, but certain exemptions are allowed, as enumerated in the section (*n*).

Appointment of deputy.

The appointment of the deputy (but not of the substitute) must be by the sheriff in writing, and delivered within a week to the clerk of the peace, to be enrolled with the records of his office (*o*).

Returning

At the universities of Oxford, Cambridge and London,

(*f*) S. 11; Rog. El., 12th ed., 278.
(*g*) S. 47; Rog. El., *ibid.*
(*h*) Rog. El., *ibid.*
(*i*) 2 & 3 Will. 4, c. 45; Rog. El., *ibid.*
(*k*) S. 11; Rog. El., *ibid.*
(*l*) S. 47; Rog. El., 278, 279.
(*m*) 2 & 3 Will. 4, c. 45, s. 11; Rog. El., 279.
(*n*) *Ibid.*
(*o*) *Ibid.*

the vice-chancellors are respectively the returning officers, and the duration of the polling is not to exceed five days (*p*). Universities.

By s. 61 of the statute 2 & 3 Will. 4, c. 45, the sheriffs of Yorkshire and Lincolnshire, and the sheriffs of the counties divided in schedule F of that statute, are to cause proclamation to be made in each division of their respective counties, of the days fixed for the election, at the places fixed by 2 & 3 Will. 4, c. 64, or 30 & 31 Vict. c. 102, schedule D (*q*). Notice of election in Yorkshire, Lincolnshire, &c.

In counties not divided, notice must be given as before the 2 & 3 Will. 4, c. 45, increase of members causing no difference (*r*). In counties not divided.

The returning officer, in the case of a county election, within two days after the day on which he receives his writ, and in the case of a borough election, on the same or following day, must give public notice between the hours of nine in the morning and four in the afternoon, as to when and where the election will be held, and when the poll will be taken, in case the election is contested, and when and where forms of nomination papers may be obtained, and, in a county election, he must send one such notice by post, under cover, to the postmaster of the principal post-office of each polling place in the county, endorsed with the words "Notice of election," and such notice is to be forwarded free of charge, and the postmaster receiving the notice is required to publish it at once, in the manner in which post-office notices are usually published (*s*). The day of election is to be fixed by the returning officer, in an election for a county or a district borough, not later than the ninth day after the receipt of the writ, with an interval of not less than three clear days between the day on which he gives the notice and the day of election; and in an election for any borough other than Time of notice in counties and boroughs. Notice of each polling place to postmaster of principal post-office. Day of election to be fixed by returning officer.

(*p*) 16 & 17 Vict. c. 68. 30 & 31 Vict. c. 102, s. 41. 35 & 36 Vict. c. 33, ss. 27, 31.
(*q*) Rog. El., 12th ed., 284.
(*r*) *Ibid.*
(*s*) Ballot Act, 1872, 1st Schedule, s. 1.

a district borough, not later than the fourth day after the receipt of the writ, with an interval of not less than two clear days between the day on which he gives the notice, and the day of election (*t*). The place of election is to be a convenient room, situated in the town in which such election would have been held prior to the passing of the Ballot Act, or in the case where the election would not have been held in a town, then situated in such town in the county, as the returning officer may from time to time determine to be most convenient for the electors (*u*).

Place of election.

Use of school and public room for poll.

The returning officer at a parliamentary election may use, free of charge, for the purpose of taking the poll at such election, any room in a school receiving a grant out of monies provided by Parliament, and any room the expense of maintaining which is payable out of any local rate, but he must make good any damage done to such room, and defray any expense incurred by the person or body of persons, corporate or unincorporate, having control over the same on account of its being used for the purpose of taking the poll as aforesaid (*x*).

Use of room in unoccupied house.

The use of any room in an unoccupied house for the purpose of taking the poll does not render any person liable to be rated or to pay any rate for such house.

Liverymen of London to poll in Guildhall.

In the city of London, the returning officer, or officers, must take the poll or votes of freemen of the city, being liverymen of the several companies, entitled to vote at such election, in the Guildhall of the city, and need not provide any booth or compartment for them, but must take one poll for the whole number of such liverymen at the same place (*y*).

Time of election.

The time for the election, if there be no contest, is to be such two hours between 10 a.m. and 3 p.m. as the returning officer may appoint, and the returning officer

(*t*) Ballot Act, 1872, 1st Schedule, s. 2.
(*u*) *Ibid.*, s. 3.
(*x*) Ballot Act, 1872, s. 6.
(*y*) 6 & 7 Vict. c. 18, s. 92.

must be present during those two hours and one hour after (z).

The hours for polling, if there be a contest, are, by 16 & 17 Vict. c. 15, s. 2, to commence at 8 a.m., and to conclude at 5 p.m., and on one day only. Hours of polling.

The hours of polling in the metropolis are, however, by the provisions of 41 Vict. c. 4, s. 1, extended, and polling may go on from eight in the morning until eight at night in any of the metropolitan districts enumerated in that act. Extension of hours of polling in metropolis.

A Bill was recently brought in to extend the advantages conferred on the metropolis by the 41 Vict. c. 4, s. 1, to other large towns specified, but the Bill did not get beyond the second reading. Some measure of a similar nature will probably find a place in the Statute Book, at no very distant date.

By the first section of the Ballot Act, 1872, a candidate for election to serve in Parliament for a county or borough is to be nominated in writing. The writing is to be subscribed by two registered electors of such county or borough, as proposer and seconder, and by eight other registered electors of the same county or borough as assenting to the nomination, and is to be delivered during the time appointed for the election to the returning officer by the candidate himself, or his proposer or seconder. Nomination of candidates for parliamentary elections

If at the expiration of one hour after the time appointed for the election no more candidates stand nominated than there are vacancies to be filled up, the returning officer is forthwith to declare the candidates who may stand nominated to be elected, and return their names to the clerk of the Crown in Chancery; but if at the expiration of such hour more candidates stand nominated than there are vacancies to be filled up, the returning officer is to adjourn the election and to take a poll in the manner mentioned in this act.

A candidate may, during the time appointed for the With-

(z) Ballot Act, 1872, 1st Schedule, s. 4.

Withdrawal of candidature.

election, but not afterwards, withdraw from his candidature by giving a notice to that effect, signed by him, to the returning officer: provided that the proposer of a candidate nominated in his absence from the United Kingdom may withdraw such candidate by a written notice signed by him and delivered to the returning officer, together with a written declaration of such absence of the candidate.

Death of candidate after adjournment of election and before poll.

If after the adjournment of an election by the returning officer for the purpose of taking a poll one of the candidates nominated dies before the poll has commenced, the returning officer, upon being satisfied of the fact of such death, is to countermand notice of the poll, and all the proceedings with reference to the election are to be commenced afresh in all respects as if the writ had been received by the returning officer on the day on which proof was given to him of such death; provided that no fresh nomination shall be necessary in the case of a candidate who stood nominated at the time of the countermand of the poll.

Poll at elections.

In the case of a poll at an election the votes are to be given by ballot. The ballot of each voter must consist of a paper (called a ballot paper) showing the names and description of the candidates. Each ballot paper is to have a number printed on the back, and a counterfoil attached with the same number printed on the face. At the time of voting, the ballot paper is to be marked on both sides with an official mark, and delivered to the voter within the polling station, and the number of such voter on the register of voters is to be marked on the counterfoil, and the voter having secretly marked his vote on the paper, and folded it up so as to conceal his vote, is to place it in a closed box in the presence of the officer presiding at the polling station after having shown to him the official mark at the back (*a*).

Ballot

Any ballot paper which has not on its back the

(*a*) Ballot Act, 1872, s. 2.

official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything, except the said number on the back, is written or marked by which the voter can be identified, is to be void and not counted (*b*). paper, when void.

After the close of the poll the ballot boxes are to be sealed up, so as to prevent the introduction of additional ballot papers, and to be taken charge of by the returning officer, and that officer, in the presence of such agents, if any, of the candidates as may be in attendance, is to open the ballot boxes, and ascertain the result of the poll by counting the votes given to each candidate, and forthwith declare to be elected the candidates or candidate to whom the majority of votes have been given, and return their names to the clerk of the Crown in Chancery. The decision of the returning officer as to any question arising in respect of any ballot paper is to be final, subject to reversal on petition questioning the election or return. Sealing up ballot boxes at close of poll.

Where an equality of votes is found to exist between any candidates at an election for a county or borough, and the addition of a vote would entitle any of such candidates to be declared elected, the returning officer, if a registered elector of such county or borough, may give such additional vote, but is not in any other case entitled to vote at an election for which he is returning officer. In case of equality of votes.

It was resolved by a vote of the House of Commons in 1866, "that, according to the law and usage of Parliament it is the duty of the sheriff or other returning officer in England, in case of an equal number of votes being polled for two or more candidates at an election, to return all such candidates" (*c*), and unless he is on the register himself, such would still be his duty (*d*), and even in the event of his being on the register, it would appear that the returning officer is not compelled to give a casting vote, as the Ballot Act is only directory on this point, and gives a Return of more than one candidate, in case of equality of votes.

(*b*) Ballot Act, 1872, s. 2.
(*c*) Journ. 27, July, 1866.
(*d*) Rog. El., 12th ed., 336.

discretion to the returning officer, and in a recent election (*a*) a double return was made, the sheriff not recording his vote. A treble return has been made before now (*b*). Where, from the imperfect state of the returns, one candidate appeared to have a majority, while from private information the returning officer learnt that the other candidate had in fact the greater number of votes, a double return was received without blame to the officer (*c*).

Treble return.

Imperfect information as to number of votes.

A double return may also be made if a disqualified candidate be elected, for the sheriff is no judge of the eligibility of candidates (*d*).

If candidate disqualified.

If it be impossible to complete the election, the officer may state the facts in a special return, and the House of Commons will receive a special return, if every reasonable effort has been made to proceed with the election (*e*).

Where election cannot be completed.

Every returning officer, and every officer, clerk, or agent authorised to attend at a polling station or at the counting of the votes, must, before the opening of the poll, make a statutory declaration of secrecy in the presence, if he is the returning officer, of a justice of the peace, and if he is any other officer, or an agent, of a justice of the peace or of the returning officer; but no such returning officer, officer, clerk, or agent is to be required as such to make any other declaration or oath on the occasion of any election (*f*).

Returning officer and clerks, &c., to make statutory declaration of secrecy.

Every officer, clerk, and agent in attendance at a polling station must maintain and aid in maintaining the secrecy of the voting in such station, and must not communicate, except for some purpose authorised by law, before the poll is closed, to any person, any information as to the name or number on the register of voters of any elector who has or has not applied for a ballot paper or voted at that

Infringement of secrecy.

(*a*) South Northumberland, 1878.
(*b*) Knaresborough, 2 P. R. & D. 210.
(*c*) Cardigan, B. & Aust. 264; Rog. El., 12th ed., 337.
(*d*) Flint case, 1 Peck 526; Rog. El., 12th ed., 337.
(*e*) Knaresborough, 2 Peck 383; Rog. El., 12th ed., 340.
(*f*) Ballot Act, 1872, sch. 1, s. 54.

station, or as to the official mark, and no such officer, clerk, or agent, and no person whatever, may interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at such station. Every officer, clerk, and agent in attendance at the counting of the votes must maintain and aid in maintaining the secrecy of the voting, and not attempt to ascertain, at such counting, the number on the back of any ballot paper, or communicate any information obtained at such counting, as to the candidate for whom any vote is given, in any particular ballot paper. No person may directly or indirectly induce any voter to display his ballot paper after he has marked it, so as to make known to any person the name of the candidate for or against whom he has so marked his vote (*g*).

Conclusiveness of register of voters.

At any election for a county or borough, a person is not entitled to vote unless his name is on the register of voters for the time being in force for such county or borough, and every person whose name is on such register is entitled to demand and receive a ballot paper and to vote: but nothing in the above provision entitles any person to vote who is prohibited from voting by any statute, or by the common law of Parliament, or to relieve such person from any penalties to which he may be liable for voting (*h*).

General powers and duties of returning officer.

Every returning officer must provide such nomination papers, polling stations, ballot boxes, ballot papers, stamping instruments, copies of register of voters, and other things, appoint and pay such officers, and do such other acts and things as may be necessary for effectually conducting an election (*i*).

(*g*) Ballot Act, 1872, s. 4. (*h*) S. 7. (*i*) S. 8.

Expenses of returning officer.

All expenses properly incurred by any returning officer in carrying into effect the provisions of the Ballot Acts, 1872, in the case of any Parliamentary election, are payable in the same manner as expenses incurred in the erection of polling booths at such election are payable (*k*).

Sheriff appointing deputy.

Where the sheriff is returning officer for more than one county as defined for the purposes of Parliamentary elections, he may, without prejudice to any other power, by writing under his hand, appoint a fit person to be his deputy for all or any of the purposes relating to an election in any such county, and may, by himself or such deputy, exercise any powers and do anything which the returning officer is authorised or required to exercise or do in relation to such election (*l*).

Keeping order in polling station.

If any person misconducts himself in the polling station, or fails to obey the lawful orders of the presiding officer, he may immediately, by order of the presiding officer, be removed from the polling station by any constable in or near that station, or any other person authorised in writing by the returning officer to remove him; and the person so removed is not, unless with the permission of the presiding officer, again to be allowed to enter the polling station during the day (*m*).

Disorderly persons to be kept in custody, but not so as to prevent electors from voting.

Any person so removed, if charged with the commission in such station of any offence, may be kept in custody until he can be brought before a justice of the peace; provided that the powers thus conferred are not to be exercised so as to prevent any elector who is otherwise entitled to vote at any polling station from having an opportunity of voting at such station (*n*).

Powers of presiding officer and administration of oaths, &c.

For the purpose of the adjournment of the poll, and of every other enactment relating to the poll, the presiding officer has the power by law belonging to a deputy returning officer; any presiding officer, therefore, and any clerk appointed by the returning officer to attend at a polling

(*k*) Ballot Act, 1872, s. 8.
(*l*) *Ibid.*
(*m*) S. 9.
(*n*) *Ibid.*

station, has the power of asking the questions and administering the oath authorised by law to be asked of and administered to voters; any justice of the peace, also, and any returning officer, may take and receive any declaration authorised to be taken before him (*o*).

Liability of officers for misconduct.

Every returning officer, presiding officer, and clerk who is guilty of any wilful misfeasance or any wilful act or omission in contravention of the Ballot Act, 1872, must, in addition to any other penalty or liability to which he may be subject, forfeit to any person aggrieved by such misfeasance, act, or omission a penal sum not exceeding one hundred pounds (*p*).

Nomination papers.

Each candidate must be nominated by a separate nomination paper, but the same electors, or any of them, may subscribe as many nomination papers as there are vacancies to be filled, but no more (*q*).

Description of candidates in nomination papers.

Each candidate must be described in the nomination paper in a manner calculated, in the opinion of the returning officer, to identify the candidate sufficiently; the description to include his names, abode, and rank, profession or calling. His surname is to be placed first in the list of his names. No objection to a nomination paper on the ground of the description of the candidate therein being insufficient, or not being in compliance with this rule, is to be allowed unless the objection is made by the returning officer, or some other person, at or immediately after the time of the delivery of the nomination paper (*r*).

Nomination papers, to whom to be given.

The returning officer must supply a form of nomination paper to any registered elector requiring one during such two hours as the returning officer may fix, between 10 a.m. and 2 p.m. on each day intervening between the day of the notice of election and the day of election, and during the time of the election. The use of a nomination paper

(*o*) Ballot Act, 1872, s. 10.
(*p*) S. 11.
(*q*) Sch. 1, s. 5.
(*r*) *Ibid.*, s. 6.

supplied by the returning officer is not obligatory, but the paper must be in the form prescribed by the act (*s*).

When to be delivered to returning officer.

The nomination papers must be delivered to the returning officer at the place of election during the time of the election, and the candidate nominated by each nomination paper, his proposer and seconder, and one other person selected by the candidate and no one else, except for the purpose of assisting the returning officer, are entitled to attend the proceedings during the time of the election (*t*).

In contested election, notice of the day for polling to be given, &c.

In a contested election the returning officer must give public notice, as soon as practicable after adjourning the election, of the day on which the poll will be taken, and of the candidates as described in their respective nomination papers, and of the names of the persons subscribing the nomination paper of each candidate, and of the order in which the names of the candidates will be printed in the ballot paper, and, in a county election, deliver to the postmaster of the principal post-office of the town in which the place of election is situated, a paper signed by himself containing the names of the candidates nominated, and stating the day on which the poll will be taken, and the postmaster must forward the information contained in the paper by telegraph, free of charge, to the several postal telegraph offices situated in the county for which the election is to be held, and such information is to be published, forthwith, at each office, in the manner in which post-office notices are usually published (*u*).

In county election paper containing names of candidates, &c., to be given to postmaster of principal post-office, &c.

Withdrawal of candidate.

If any candidate nominated during the time appointed for the election is withdrawn, the returning officer must give public notice of the name of the candidate, and the names of the persons who signed his nomination paper, and the names of the candidates who stood nominated or were elected (*x*).

Publica-

The returning officer must, upon a nomination paper

(*s*) Ballot Act, 1872, sch. 1, s. 7.
(*t*) *Ibid.*, s. 8.
(*u*) *Ibid.*, s. 9.
(*x*) *Ibid.*, s. 10.

being presented to him, forthwith publish a notice of the name of the person nominated, with the names of his proposer and seconder, by a placard in a conspicuous position outside the building in which the election is appointed to take place (*y*). tion of name of candidate.

No person can have his name inserted as a candidate in any ballot paper unless he has been duly nominated, and every person is to be considered duly nominated whose nomination paper has been delivered to the returning officer during the time appoined for the election, unless objection be made to his nomination paper by the returning officer or some other person before the expiration of the time appointed for the election, or within an hour afterwards (*z*). No name to be inserted in any ballot paper unless person duly nominated.

The returning officer is to decide on the validity of every objection to a nomination paper, and his decision if disallowing the objection is to be final, but if allowing it is to be subject to reversal on petition questioning the election or return (*a*). Objection to nomination paper.

By 30 & 31 Vict. c. 102, s. 50, "no returning officer for any county or borough, nor deputy, nor any partner or clerk, or either of them, shall act as agent for any candidate in the management or conduct of his election as a member to serve in Parliament for such county or borough; and if any returning officer, his deputy, the partner or clerk of either of them shall so act he shall be guilty of a misdemeanour." Returning officer not to act as agent.

Formerly it was necessary for the returning officer to take the bribery oath after reading the writ for the election of a member (*b*), but this is now done away with by the Ballot Act, which also did away with the oath to be taken by candidates, and with the necessity of the sheriff's reading the act of 2 Geo. 2, c. 24, after reading the writ. The bribery oath administered to electors was abolished by 17 & 18 Vict. c. 102 (*c*). Bribery oath.

(*y*) Ballot Act, 1872, sch. 1, s. 11.
(*z*) *Ibid.*, s. 12.
(*a*) *Ibid.*, s. 13.
(*b*) 2 Geo. 2, c. 24, s. 3.
(*c*) Sch. A.

7 & 8 Will. 3, c. 25, s. 3, repealed.

The third section of the 7 & 8 Will. 3, c. 25, which directed the sheriff to hold his county Court for the election at the most public and usual place of election within his county where the election had "most usually been held for forty years past," is repealed by the Ballot Act, 1872, which provides, as stated above, that the place of election is to be a convenient room in the town where the election would have been held if that act had not passed (*d*).

Place of election.

Returning officer not to reject voters whose names are on the register,

The sheriff or returning officer has no power to hold, as it were, a scrutiny on the qualifications of voters at the poll; the register is to be his guide, and is conclusive not only on the returning officer but also on every tribunal which has to inquire into elections, except only in the case of persons prohibited from voting by any statute or by the common law of Parliament, such as peers, women, persons holding certain offices or employments under the Crown, persons convicted of crimes which disqualify, or the like; nor can the returning officer refuse a vote by reason of the receipt of parochial relief since the date of the register, or non-residence within the prescribed limits of the borough, insufficient qualification, &c.; as to these the register is conclusive (*e*).

even though the voter may receive parish relief, &c.

Voting on tendered ballot papers.

The presiding officers at polling booths have no right, because they are unacquainted with a voter or disbelieve that he is the person he represents himself to be, to make such voter record his vote on a tendered ballot paper (*f*), unless another person has previously voted in his name; otherwise it would be competent to a returning officer, by simply expressing disbelief in a voter's identity, to turn the voting by ballot into open voting.

Offences at Elections.

Every person who,—

Nomination papers.

(1.) Forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the

(*d*) P. 70.
(*e*) Stowe *v.* Jolliffe, L. R. 9 C. P. 734; 43 L. J. N. S. C. P. 265.
(*f*) Ballot Act, 1872, s. 27.

returning officer any nomination paper, knowing the same to be forged; or

(2.) Forges or counterfeits, or fraudulently defaces, or fraudulently destroys any ballot paper, or the official mark on any ballot paper; or Ballot papers.

(3.) Without due authority supplies any ballot paper to any person; or

(4.) Fraudulently puts into any ballot box any paper other than the ballot paper which he is authorised by law to put in; or

(5.) Fraudulently takes out of the polling station any ballot paper; or

(6.) Without due authority destroys, takes, opens, or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election; Ballot boxes, &c.

shall, by the 3rd section, be guilty of a misdemeanor, and be liable, if he is a returning officer, or an officer or clerk in attendance at a polling station, to imprisonment for any term not exceeding two years, with or without hard labour, and if he is any other person, to imprisonment for any term not exceeding six months, with or without hard labour. Penalty.

Any attempt to commit any offence specified in this section is punishable in the manner in which the offence itself is punishable.

In any indictment or other prosecution for an offence in relation to the nomination papers, ballot boxes, ballot papers, and marking instruments at an election, the property in such papers, boxes, and instruments may be stated to be in the returning officer at such election, as well as the property in the counterfoils. Property in election furniture.

With regard to the offence of personating voters, and the duties of the returning officer with reference to it, the 85th to the 89th sections, inclusive, of the 6 & 7 Vict. c. 18, which formerly controlled this question, are specially applied by the Ballot Act, 1872, the 24th section of which provides that for all purposes of the laws relating to par- Personation.

liamentary elections a person is to be deemed to be guilty of the offence of personation, who, at an election for a county or borough, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who having voted once at any such election applies at the same election for a ballot paper in his own name.

Personation a felony.

The offence of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, is a felony, and any person convicted thereof is liable to imprisonment for a term not exceeding two years with hard labour. It is the duty of the returning officer to institute a prosecution against any person whom he may believe to have been guilty of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, at the election for which he is returning officer, and the costs and expenses of the prosecutor and the witnesses in such case, together with compensation for their trouble and loss of time, will be allowed by the Court in the same manner in which Courts are empowered to allow the same in cases of felony.

Registration Acts to apply.

The provisions of the Registration Acts, specified in the third schedule to this act, apply to personation under this act, in the same manner as they apply to a person who knowingly personates and falsely assumes to vote in the name of another person as mentioned in those acts.

Agents may be appointed by candidates to detect personation at the time of polling.

By the 6 & 7 Vict. c. 18, any candidate, at any election of a member or members to serve in Parliament for any county, city, or borough, previous to the time fixed for taking the poll at such elections, may nominate and appoint an agent or agents on his behalf to attend at each or any of the booths appointed for taking the poll at such election, for the purpose of detecting personation; such candidate is to give notice in writing to the returning officer, or his respective deputy, of the name and address of the person or persons so appointed by him to act as agents for such purpose; thereupon such agent may

attend, during the time of polling, at the booth or booths for which he shall have been appointed (*g*).

Returning officer to order persons charged with personation into custody.

If at the time any person tenders his vote at such election, or after he has voted, and before he leaves the polling booth, any such agent shall declare to the returning officer, or his respective deputy, that he believes, and undertakes to prove, that the person so voting is not in fact the person in whose name he assumes to vote, then in every such case the returning officer, or his deputy, is required, immediately after such person shall have voted, to order any constable or other peace officer to take the person so voting into custody, which order is to be a sufficient authority to the constable for so doing: but nothing shall authorise any returning officer, or his deputy, to reject the vote of any person who shall answer in the affirmative *the questions authorised to be put to him* at the time of polling, and shall take the oaths or make the affirmations authorised and required of him; but the returning officer, or his deputy, is to cause the words, "Protested against for personation," to be placed against the vote of the person so charged with personation when entered in the poll book (*h*).

Vote not to be rejected if questions answered in the affirmative.

As to the questions authorised to be put to a voter in Scotland, the statute 43 Vict. c. 18, s. 3, enacts that—

Amendment of law as to parliamentary elections in Scotland.

"In all elections whatever of a member or members to serve in Parliament for any county, division of a county, or for any city or burgh, or district of burghs, in Scotland, no inquiry shall be permitted at the time of polling as to the right of any person to vote, except only as follows; (that is to say,) that the presiding officer or clerk appointed by the returning officer to attend at a polling station shall, if required on behalf of any candidate, put to any voter at the time of his tendering his vote, and not afterwards, the following questions, or either of them:

"(1.) Are you the same person whose name appears as *A. B.* on the register of voters now in force for the

(*g*) 6 & 7 Vict. c. 18, s. 85.
(*h*) S. 86.

county of [or for the division of the county of], or for the city [*or* burgh] of , or for the district of burghs [*as the case may be*]?

"(2.) Have you already voted, either here or elsewhere, at this election for the county of [or for the division of the county of], or for the city [*or* burgh] of , or for the district of burghs [*as the case may be*]?

"And if any person shall wilfully make a false answer to either of the questions aforesaid, he shall be deemed guilty of a crime and offence within the meaning of the Ballot Act, 1872."

35 & 36 Vict. c. 33.

Persons charged with personation to be taken before two justices.

Bail to be taken in certain cases.

A constable or peace officer must take the person consigned to his custody, at the earliest convenient time, before some two justices of the peace acting in and for the county, city, or borough, within which the person shall have so voted: provided that in case the attendance of two justices cannot be procured within the space of three hours after the close of the poll on the day on which such person shall have been taken into custody, the constable is required, at the request of the person in his custody, to take him before any one justice of the peace acting as above, and such justice is required to liberate such person on his entering into a recognizance, with one sufficient surety, conditioned to appear before any two such justices, at a time and place to be specified in such recognizance, to answer the said charge; if no such justice shall be found within four hours after the closing of the poll, then such person is forthwith to be discharged from custody: provided also, that if in consequence of the absence of such justices, or for any other cause, the said charge cannot be inquired into within the above time, any two such justices may inquire into the same on the next or on some other subsequent day, and, if necessary, issue their warrant for the apprehension of the person so charged (*i*).

(*i*) 6 & 7 Vict. c. 18, s. 87.

If on the hearing of the charge the two justices shall be satisfied, upon the evidence on oath of not less than two credible witnesses, that the person brought before them has falsely assumed to vote in the name of some other person within the meaning of this act, and is not in fact the person in whose name he voted, then the said two justices may commit the offender to the gaol of the county, city, or borough within which the offence was committed, to take his trial according to law, and may bind over the witnesses, in their respective recognizances, to appear and give evidence on such trial, as in the case of other misdemeanors (*k*).

If justices are satisfied that the person charged has been guilty of personation, they are to commit him for trial.

If the justices shall on the hearing of the charge be satisfied that the person so charged with personation is really and in truth the person in whose name he voted, and that the charge of personation has been made against him without reasonable or just cause, or if the agent so declaring, or some one on his behalf, shall not appear to support the charge before the justices, then the justices are required to make an order in writing under their hands, on the agent so declaring, to pay to the person falsely charged, if he shall consent to accept the same, any sum not exceeding ten pounds nor less than five pounds, by way of damages and costs; if the sum be not paid within twenty-four hours after such order shall have been made, then the sum is to be levied, by warrant under the hand and seal of any justice of the peace acting as above, by distress and sale of the goods and chattels of the agent, and in case no sufficient goods or chattels of the agent can be found on which such levy can be made, then the sum is to be levied in like manner on the goods and chattels of the candidate by whom such agent was appointed to act; in case the sum be not paid or levied in the manner above, then the said person to whom the sum of money was ordered to be paid may recover it from the agent or candidate, with full costs of suit, in an action of debt to be brought in any one of her Majesty's superior Courts of

If justices are satisfied that the charge is unfounded, they are to order compensation.

(*k*) S. 88.

If party charged accepts compensation, no action to be brought.

record at Westminster: provided always, that if the person so falsely charged shall have declared to the justices his consent to accept such sum by way of damages and costs, and if the whole amount of the sum so ordered to be paid shall have been paid or tendered to such person, in every such case, but not otherwise, the said agent, candidate, and every other person shall be released from all actions or other proceedings, civil or criminal, for or in respect of the said charge and apprehension (*l*).

Sheriffs and returning officers to provide constables.

The high sheriff of any county, and the mayor or returning officer of any city or borough, are required to provide a sufficient attendance of constables or peace officers in each booth at the different polling places within their respective counties, cities, or boroughs (*m*).

For providing for the safe custody of poll books.

At every contested election of a member or members to serve in Parliament, the sheriff, undersheriff, or returning officer, after having declared the state of the poll, and made proclamation of the member or members chosen to serve in Parliament in the manner provided, must forthwith enclose and seal up the several poll books, and tender them to each of the candidates, to be sealed by them respectively; and in case any candidates neglect or refuse to seal them, the sheriff, undersheriff, or returning officer must thereupon indorse on one of the poll books the fact of such neglect or refusal; and every sheriff, undersheriff, or other returning officer must, by himself or his agent, as soon as possible after such proclamation, deliver the poll books, so sealed, to the clerk of the Crown in Chancery, or his deputy, or deliver them, directed to the clerk of the Crown, to the postmaster or deputy postmaster of the city, town, or place wherein such proclamation shall have been made, who on receipt thereof must give an acknowledgment in writing of such receipt to such returning officer, expressing therein the time of such delivery, and must keep a duplicate of such acknowledgment, signed by the returning officer; and the-

(*l*) 6 & 7 Vict. c. 18, s. 89.
(*m*) S. 90.

postmaster or deputy postmaster must dispatch all such poll books, so sealed and directed, by the first post or mail after the receipt thereof, to the general post office in London; the Postmaster-General is directed, immediately on receipt of such poll books, to convey them to the Crown office, and to deliver them there, sealed, to the clerk of the Crown, or his deputy; the clerk of the Crown, or his deputy, is required to give to the Postmaster-General, returning officer, or agent delivering them, a memorandum in writing, acknowledging the receipt of such poll books, and setting forth the day and hour when they were delivered at the Crown office; and the clerk of the Crown, or his deputy, is required, immediately on receipt of such books, to register the same in the books of the said Crown office, and to indorse thereon the day and hour upon which he received them; and every returning officer is required, at the time of transmitting such poll books through the post office, to address and forward a letter by the same post to the clerk of the Crown, informing him of such transmission, and giving the number and description of poll books transmitted (*n*).

Poll to take place on day appointed by returning officer.

The poll is to take place on such day as the returning officer may appoint, not being, in the case of an election for a county or a district borough, less than two nor more than six clear days, and not being, in the case of an election for a borough other than a district borough, more than three clear days after the day fixed for the election (*o*).

Returning officer to provide sufficient number of polling stations.

At every polling place the returning officer is to provide a sufficient number of polling stations for the accommodation of the electors entitled to vote at such polling place, and to distribute the polling stations amongst those electors in such manner as he thinks most convenient, provided that in a district borough there shall be at least one polling station at each contributory place of such borough (*p*).

(*n*) 6 & 7 Vict. c. 18, s. 93.
(*o*) Ballot Act, 1872, sch. 1, s. 14.
(*p*) *Ibid.*, s. 15.

Polling stations to be furnished with compartments.

Each polling station is to be furnished with such number of compartments, in which the voters can mark their votes, screened from observation, as the returning officer thinks necessary, so that at least one compartment be provided for every one hundred and fifty electors entitled to vote at such polling station (*q*).

A separate room or separate booth may contain a separate polling station, or several polling stations may be constructed in the same room or booth (*r*).

No person is to be admitted to vote at any polling station except the one allotted to him (*s*).

Notice of position of polling stations.

The returning officer must give public notice of the situation of polling stations and the description of voters entitled to vote at each station, and of the mode in which electors are to vote (*t*).

Returning officer to provide materials, &c.

The returning officer must provide each polling station with materials for voters to mark the ballot papers, with instruments for stamping thereon the official mark, and with copies of the register of voters, or such part thereof as contains the names of the voters allotted to vote at such station. He must keep the official mark secret, and an interval of not less than seven years must intervene between the use of the same official mark at elections for the same county or borough (*u*).

Returning officer to appoint presiding officer for each station.

The returning officer must appoint a presiding officer to preside at each station, and the officer so appointed must keep order at his station, regulate the number of electors to be admitted at a time, and exclude all other persons except the clerks, the agents of the candidates, and the constables on duty (*x*).

Ballot papers to contain alphabeti-

Every ballot paper must contain a list of the candidates, described as in their respective nomination papers, and arranged alphabetically in the order of their surnames, and

(*q*) Ballot Act, 1872, sch. 1, s. 16.
(*r*) *Ibid.*, s. 17.
(*s*) *Ibid.*, s. 18.
(*t*) *Ibid.*, s. 19.
(*u*) *Ibid.*, s. 20.
(*x*) *Ibid.*, s. 21.

(if there are two or more candidates with the same surname) of their other names, in the form set forth in the second schedule to this act, or as near thereto as circumstances admit, and must be capable of being folded up (*y*). cal list of candidates.

Every ballot box must be so constructed that the ballot papers can be introduced therein, but cannot be withdrawn without the box being unlocked. The presiding officer at any polling station, just before the commencement of the poll, must show the ballot box empty to such persons, if any, as may be present in such station, so that they may see that it is empty, and shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking the seal, and must place it in his view for the receipt of ballot papers, and keep it locked and sealed (*z*). Ballot boxes not to admit of papers being withdrawn.

Immediately before a ballot paper is delivered to an elector it must be marked on both sides with the official mark, either stamped or perforated, and the number, name, and description of the elector as stated in the copy of the register must be called out, and the number of such elector marked on the counterfoil, and a mark placed in the register against the number of the elector, to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received (*a*). Ballot papers to be marked with official mark.

The elector, on receiving the ballot paper, must forthwith proceed into one of the compartments in the polling station, and there mark his paper, and fold it up so as to conceal his vote, and then put his ballot paper, folded up, into the ballot box; he must vote without undue delay, and quit the polling station as soon as he has put his ballot paper into the ballot box (*b*). How to vote.

The presiding officer, on the application of any voter who is incapacitated by blindness, or other physical cause, from voting in manner prescribed in this act, or (if the poll be taken on Saturday) of any voter who declares that In cases of blindness or other incapacity.

(*y*) Ballot Act, 1872, sch. 1, s. 22.
(*z*) *Ibid.*, s. 23.
(*a*) *Ibid.*, s. 24.
(*b*) *Ibid.*, s. 25.

he is of the Jewish persuasion, and objects on religious grounds to vote in manner prescribed by this act, or of any voter who makes a declaration as hereinafter mentioned that he is unable to read, must, in the presence of the agents or the candidates, cause the vote of such voter to be marked on a ballot paper in manner directed by the voter, and the ballot paper to be placed in the ballot box, and the name and number on the register of voters of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked, must be entered on a list in this act called "the list of votes marked by the presiding officer" (*c*).

Declaration of inability to read.

The declaration, in this act referred to as "the declaration of inability to read," must be made by the voter at the time of polling, before the presiding officer, who is to attest it in the form hereinafter mentioned, and no fee, stamp, or other payment may be charged in respect of such declaration, and the declaration must be given to the presiding officer at the time of voting (*d*).

Where person applies for ballot paper after another party has voted in his name.

If a person, representing himself to be a particular elector named on the register, applies for a ballot paper after another person has voted as such elector, the applicant, upon duly answering the questions and taking the oath permitted by law to be asked of and to be administered to voters at the time of polling, is to be entitled to mark a ballot paper in the same manner as any other voter, but the ballot paper (in this act called a tendered ballot paper) must be of a colour differing from the other ballot papers, and instead of being put into the ballot box, must be given to the presiding officer and indorsed by him with the name of the voter and his number in the register of voters, and set aside in a separate packet, and not counted by the returning officer. And the name of the voter and his number on the register are to be entered on a list, in this act called the tendered votes list (*e*).

(*c*) Ballot Act, 1872, sch. 1, s. 26.
(*d*) *Ibid.*
(*e*) *Ibid.*, s. 27.

Spoiling ballot papers by inadvertence.

A voter who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper, may, on delivering to the presiding officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the presiding officer, obtain another ballot paper in the place of the ballot paper so delivered up (in this act called a spoilt ballot paper), and the spoilt ballot paper must be immediately cancelled (*f*).

Making up of ballot papers, &c., into packets.

The presiding officer of each station, as soon as practicable after the close of the poll, must, in the presence of the agents of the candidates, make up into separate packets sealed with his own seal and the seals of such agents of the candidates as desire to affix their seals,—

(1.) Each ballot box in use at his station, unopened but with the key attached; and

(2.) The unused and spoilt ballot papers, placed together; and

(3.) The tendered ballot papers; and

(4.) The marked copies of the register of voters, and the counterfoils of the ballot papers; and

(5.) The tendered votes list, and the list of votes marked by the presiding officer, and a statement of the number of the voters whose votes are so marked by the presiding officer under the heads "physical incapacity," "Jews," and "unable to read," and the declarations of inability to read;

and deliver such packets to the returning officer (*g*).

Accompanied by statement.

The packets must be accompanied by a statement made by the presiding officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt, and tendered ballot papers, which statement is in this act referred to as the ballot paper account (*h*).

(*f*) Ballot Act, 1872, sch. 1, s. 28.
(*g*) *Ibid.*, s. 29.
(*h*) *Ibid.*, s. 30.

Counting votes.

The candidates may respectively appoint agents to attend the counting of the votes (*i*).

Agents to be present.

The returning officer must make arrangements for counting the votes in the presence of the agents of the candidates, as soon as practicable after the close of the poll, and give to the agents of the candidates appointed to attend at the counting of the votes notice in writing of the time and place at which he will begin to count the same (*k*).

Public not admitted to counting of votes.

The returning officer, his assistants and clerks, and the agents of the candidates, and no other person, except with the sanction of the returning officer, may be present at the counting of the votes (*l*).

Ballot papers to be mixed together, and their numbers not to be exposed.

Before the returning officer proceeds to count the votes, he must, in the presence of the agents of the candidates, open each ballot box, and, taking out the papers therein, count and record the number thereof, and then mix together the whole of the ballot papers contained in the ballot boxes. The returning officer, while counting and recording the number of ballot papers and counting the votes, must keep the ballot papers with their faces upwards, and take all proper precautions for preventing any person from seeing the numbers printed on the backs of such papers (*m*).

Returning officer to count votes continuously.

The returning officer must, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshment, and excluding (except so far as he and the agents otherwise agree) the hours between seven o'clock at night and nine o'clock on the succeeding morning. During the excluded time the returning officer must place the ballot papers, and other documents relating to the election, under his own seal and the seals of such of the agents of the candidates as desire to affix their seals, and otherwise take proper precautions for the security of the papers and documents (*n*).

(*i*) Ballot Act, 1872, sch. 1, s. 31.
(*k*) *Ibid.*, s. 32.
(*l*) *Ibid.*, s. 33.
(*m*) *Ibid.*, s. 34.
(*n*) *Ibid.*, s. 35.

Rejected ballot papers.

The returning officer must endorse "rejected" on any ballot paper which he may reject as invalid, and add to the indorsement "rejection objected to," if an objection be in fact made by any agent, to his decision. The returning officer must report to the clerk of the Crown in Chancery the numbers of ballot papers rejected, and not counted by him, under the several heads of—

1. Want of official mark;
2. Voting for more candidates than entitled to;
3. Writing or mark by which voter could be identified;
4. Unmarked or void for uncertainty;

and must, on request, allow any agents of the candidates, before such report is sent, to copy it (*o*).

Sealing of counted and rejected ballot papers.

Upon the completion of the counting, the returning officer must seal up, in separate packets, the counted and rejected ballot papers. He must not open the sealed packet of tendered ballot papers, or marked copy of the register of voters and counterfoils, but proceed, in the presence of the agents of the candidates, to verify the ballot paper account given by each presiding officer, by comparing it with the number of ballot papers recorded by him, and the unused and spoilt ballot papers in his possession, and the tendered votes list, and reseal each sealed packet after examination. The returning officer must report to the clerk of the Crown in Chancery the result of such verification, and on request allow any agents of the candidates, before such report is sent, to copy it (*p*).

Packets of ballot papers, &c., to be forwarded to clerk of crown.

Lastly, the returning officer must forward to the clerk of the Crown in Chancery (in the manner in which the poll books are by any existing enactment required to be forwarded to such clerk, or as near thereto as circumstances admit) all the packets of ballot papers in his possession, together with the said reports, the ballot paper accounts, tendered votes lists, list of votes marked by the presiding officer, statements relating thereto, declarations of inability

(*o*) Ballot Act, 1872, sch. 1, s. 36.
(*p*) *Ibid.*, s. 37.

to read, and packets of counterfoils, and marked copies of registers, sent by each presiding officer, endorsing on each packet a description of its contents and the date of the election to which they relate, and the name of the county or borough for which such election was held; the term poll book in any such enactment is, further, to be construed to include any document forwarded in pursuance of this rule (*q*).

Meaning of poll book.

Return of member to be by certificate under hand of returning officer.

The return of a member or members elected to serve in Parliament for any county or borough is to be made by a certificate of the names of such member or members, under the hand of the returning officer, endorsed on the writ of election for such county or borough, and such certificate is to have effect and be dealt with in the same manner as the return under the existing law, and the returning officer may, if he think fit, deliver the writ with such certificate endorsed, to the postmaster of the principal post office of the place of election, or his deputy, and in that case he must take a receipt from the postmaster or his deputy for the same; such postmaster or his deputy must then forward the same by the first post, free of charge, under cover, to the clerk of the Crown, with the words "election writ and return" endorsed thereon (*r*).

Public announcement of elected candidates.

The returning officer must, as soon as possible, give public notice of the names of the candidates elected, and in the case of a contested election, of the total number of votes given for each candidate, whether elected or not (*s*).

By advertisements, &c.

Where the returning officer is required or authorised by this act to give any public notice, he must carry such requirements into effect by advertisements, placards, handbills, or such other means as he thinks best calculated to afford information to the electors (*t*).

(*q*) Ballot Act, 1872, sch. 1, s. 38.
(*r*) *Ibid.*, s. 44.
(*s*) *Ibid.*, s. 45.
(*t*) *Ibid.*, s. 46.

Returning officer may himself preside at polling station,

The returning officer may, if he think fit, preside at any polling station, and the provisions of this act relating to a presiding officer are to apply to such returning officer, with the necessary modifications as to things to be done by the returning officer to the presiding officer, or the presiding officer to the returning officer (*u*).

and may appoint assistants in counting,

In the case of a contested election for any county or borough, the returning officer may, in addition to any clerks, appoint competent persons to assist him in counting the votes (*x*).

who must not be interested.

No person may be appointed by a returning officer for the purposes of an election who has been employed by any other person in or about the election (*y*).

Clerks assisting cannot order arrest, &c.

The presiding officer may do, by the clerks appointed to assist him, any act which he is required or authorised to do by this act at a polling station, except ordering the arrest, exclusion, or ejection from the polling station of any person (*z*).

Candidate may be his own agent.

A candidate may himself undertake the duties which any agent of his if appointed might have undertaken, or may assist his agent in the performance of such duties, and may be present at any place at which his agent may, in pursuance of this act, attend (*a*).

Names of agents to be sent to returning officer one day before poll.

The name and address of every agent of a candidate appointed to attend the counting of the votes must be transmitted to the returning officer one clear day at the least before the opening of the poll; the returning officer may refuse to admit to the place where the votes are counted any agent whose name and address has not been so transmitted, notwithstanding that his appointment may be otherwise valid; any notice, moreover, required to be given to an agent by the returning officer may be delivered at or sent by post to such address (*b*).

(*u*) Ballot Act, 1872, sch. 1, s. 47.
(*x*) *Ibid.*, s. 48.
(*y*) *Ibid.*, s. 49.
(*z*) *Ibid.*, s. 50.
(*a*) *Ibid.*, s. 51.
(*b*) *Ibid.*, s. 52.

Substituted agent.

If any person appointed an agent by a candidate for the purposes of attending at the polling station, or at the counting of the votes, dies, or becomes incapable of acting, during the time of the election, the candidate may appoint another agent in his place, and must forthwith give to the returning officer notice in writing of the name and address of the agent so appointed (*c*).

Acts in presence of agents.

Where in this act any expressions are used requiring or authorising or inferring that any act or thing is to be done in the presence of the agents of the candidates, such expressions are to be deemed to refer to the presence of such agents of the candidates as may be authorised to attend, and as have in fact attended at the time and place where such thing is being done, and the non-attendance of any agents or agent at such time and place is not, if such thing be otherwise duly done, in any way to invalidate the thing done (*d*).

Public holidays and *dies non* to be excluded in reckoning time.

In reckoning time for the purposes of this act, Sunday, Christmas Day, Good Friday, and any day set apart for a public fast or public thanksgiving are to be excluded; and where anything is required by this act to be done on any day which falls on the above-mentioned days, such thing may be done on the next day, unless it is one of the days excluded as above-mentioned (*e*).

Meaning of district borough.

The expression "district borough" means the borough of Monmouth and any of the boroughs specified in schedule E to the Act of the Session of the second and third years of the reign of King William the Fourth, chapter forty-five, intituled "An Act to Amend the Representation of the People in England and Wales" (*f*).

Meaning of polling place.

The expression "polling place" means, in the case of a borough, such borough or any part thereof in which a separate booth is required or authorised by law to be provided (*g*).

(*c*) Ballot Act, 1872, sch. 1, s. 53.
(*d*) *Ibid.*, s. 55.
(*e*) *Ibid.*, s. 56.
(*f*) *Ibid.*, s. 57.
(*g*) *Ibid.*

Meaning of agents of candidates.

The expression "agents of the candidates," used in relation to a polling station, means agents appointed in pursuance of section eighty-five of the 6 & 7 Vict. c. 18 (*h*).

Adjournment of poll in case of riot.

By the 5 & 6 Will. 4, c. 36 (*i*), amending the 2 Will. 4, c. 45, in case the proceedings, whether the nomination of candidates, or the polling, generally or only at a particular place, be interrupted, the returning officer or deputy, or "presiding" officer (35 & 36 Vict. c. 33, s. 10) may adjourn the proceedings at such place *de die in diem* till the interruption ceases. Any day whereon the poll shall have been so adjourned shall not as to such place or places be reckoned the day of polling within the meaning of the Act (*k*).

Adjourned day not to be reckoned.

Return not to be altered.

When a return has once been made, no person is to presume to make any alteration in it without the express order of the House of Commons (*l*), but in the event of a petition complaining of an undue return, or undue election, being presented to the Queen's Bench Division, and a trial taking place, the judge who tries the petition will determine whether the member, whose return or election is complained of, was duly returned or elected, and failing the confirmation of the election of the member complained of, will determine if any other person has been elected, and will certify in writing his determination to the speaker; upon the certificate being given, the determination will be final, and the House of Commons, upon being informed by the Speaker of such certificate, will give the necessary directions for confirming or altering the return, or for issuing a writ for a new election, or for carrying the determination into execution, as circumstances may require (*m*).

In event of election petition, judge to determine validity of return, and report to the speaker.

House of Commons to confirm or alter return.

Election expenses.

By the fourth section of the 26 & 27 Vict. c. 29, a detailed statement of election expenses is to be transmitted

(*h*) Ballot Act, 1872, sch. 1, s. 57.
(*i*) S. 8.
(*k*) Rog. El., 12th ed., 322.
(*l*) 7 & 8 Will. 3, c. 7, s. 5.
(*m*) 31 & 32 Vict. c. 125, ss. 11—13.

Statement to be sent in within two months.

by the agents of the respective candidates, duly signed, &c., to the returning officer, within two months after the election, together with the bills and vouchers relating thereto. Of this statement the returning officer for the time being is, within fourteen days, at the expense of the candidate, to insert "an abstract," "with the signature of the agent thereto, in some newspaper, published or circulating in the county or place where the election was held."

He is further to keep the bills and vouchers, and for six months after their delivery to him to permit any voter to inspect the same, on payment of 1*s.*

Expenses of returning officer,

By the 38 & 39 Vict. c. 84, s. 2, the returning officer at an election is entitled to his reasonable charges, not exceeding the sums mentioned in the first schedule to that act, in respect of services and expenses of the several kinds mentioned in the same schedule, properly rendered or incurred by him for the purposes of the election.

paid by candidates.

The amount of such charges is to be paid, in equal shares, by the candidates at the election.

Expenses of candidate nominated without consent.

If a candidate be nominated without consent, the persons by whom his nomination is subscribed are jointly and severally liable for the charges for which he would have been liable had his nomination been with his consent.

Returning officer may require security from candidates.

The returning officer may, if he think fit, require security to be given for the charges which would become payable under the provisions of the above act (*n*). The total amount of security which may be required is not to exceed the sums prescribed in the third schedule of that act.

Apportionment of security.

Where security is required by the returning officer, it must be apportioned as follows:—

1. At the end of the two hours appointed for the election the returning officer is forthwith to declare the number of the candidates who then stand nominated, and if there be

(*n*) 38 & 39 Vict. c. 84, s. 3.

more candidates than there are vacancies, to apportion the total amount of required security equally among them (*o*).

Security to be given within one hour.

2. Security must be given within one hour after the two hours aforesaid, by or in respect of each candidate then nominated, for the amount so apportioned to him (*p*).

Where security not given.

3. If, in the case of any candidate, security is not given or tendered as herein mentioned, he is to be deemed withdrawn, within the provisions of the Ballot Act, 1872 (*q*).

4. A tender of security in respect of a candidate may be made by any person (*r*).

How security to be tendered.

5. Security may be given by deposit of any legal tender, or of notes of any bank being commonly current in the county or borough for which the election is held, or, with the consent of the returning officer, in any other manner (*s*).

Balance of deposit to be repaid.

6. The balance, if any, of a deposit, beyond the amount to which the returning officer is entitled in respect of any candidate, is to be repaid to the party by whom the deposit was made (*t*).

Accounts of the returning officer.

Within twenty-one days after the day on which the return is made of the persons elected, the returning officer must transmit to every candidate or other person from whom he claims payment, either out of the deposit money or otherwise, or to the agent for election expenses of any such candidate, a detailed account of all charges claimed by him in respect of the election, and the share of the person to whom the account is transmitted (*u*). A notice of the place where the vouchers relating to the account may be inspected must be annexed to the account (*x*), and facilities must be allowed for the party from whom payment is sought, or his agent, to inspect or take copies of such vouchers (*y*). The returning officer is not to be entitled to

Notice of place where vouchers may be seen to be annexed.

(*o*) 38 & 39 Vict. c. 84, s. 3.
(*p*) *Ibid.*
(*q*) *Ibid.*
(*r*) *Ibid.*
(*s*) *Ibid.*
(*t*) *Ibid.*
(*u*) S. 4.
(*x*) *Ibid.*
(*y*) *Ibid.*

payment for any charges (except for publication of accounts) not included in such account (*z*).

Account may be taxed.

If the person from whom payment is claimed objects to any part of the claim, he may, within fourteen days from the date of the transmission of the account to him, apply to the Court prescribed by that act for taxation of the account (*a*).

To what courts application to be made.

The Court for the purposes of the act is, in the city of London, the Lord Mayor's Court, and elsewhere in England, the county Court, and the Court may depute any of its powers or duties to the registrar or other principal officer of the Court (*b*).

Claims against returning officer.

Every person having any claim against a returning officer, for work, labour, materials, services, or expenses in respect of any contract made with him, by or on behalf of the returning officer, for the purposes of the election, except for publication of accounts of election expenses, must transmit to the returning officer the detailed particulars of such claim, in writing, within fourteen days after the day on which the return is made of the persons elected (*c*).

The returning officer is not liable for anything not duly stated in such particulars (*d*).

(*z*) 38 & 39 Vict. c. 84, s. 4.
(*a*) *Ibid.*
(*b*) *Ibid.*
(*c*) S. 5.
(*d*) *Ibid.*

CHAPTER IX.

WRIT OF INQUIRY.

A WRIT of inquiry is a process directed to the sheriff of the county where an action is to be tried, or is being tried, or where the subject matter in respect of which the action is brought is situate, to inquire by a jury what damages the plaintiff has sustained by means of the premises mentioned in the writ.

Sheriff to summon a jury.

On this writ the sheriff is to summon a jury of twelve men, who are to find such damages, and the sheriff must return the writ, and the inquisition so found, to the Court.

Assessments of damages. How made formerly.

Before the statute 3 & 4 Will. 4, c. 42, all assessments of damages in actions upon bonds, or for any penal sum for non-performance of any covenants or agreements, in any deed or writing under the statute 8 & 9 Will. 3, c. 11, in cases where there was judgment for the plaintiff on default, or by demurrer, could be made only before the judges of assize, or *nisi prius*, for the county in which the venue was laid, for which purpose a writ issued to the sheriff of that county to summon a jury to appear before the judges of assize, or *nisi prius*, of that county, to inquire into the truth of the several breaches suggested on the roll, and to assess the damages that the plaintiff had sustained thereby (*a*).

By 3 & 4 Will. 4, c. 42, inquiries to be made before

But by the 16th section of the 3 & 4 Will. 4, c. 42, after reciting that if writs of inquiry were executed before sheriffs, instead of in the manner then existing, it would lessen the expense of trials and prevent delay, it was

(*a*) S. 8.

sheriffs, unless the court or judge otherwise orders.

provided that all writs issued by virtue of the statute of 8 & 9 Will. 3, c. 11, should, unless the Court where such action was pending, or a judge of one of the superior Courts, otherwise ordered, direct the sheriff of the county where the action was to be brought, to summon a jury to appear before him, to inquire of the truth of the breaches suggested, and to assess the damages thereby sustained by the plaintiff, and command the sheriff to make return thereof to the Court from whence the writ issued, on a certain day, in term or vacation, mentioned in the writ; such proceedings, moreover, were to take place after the return of the writ, as are provided in the former statute, in the same manner as if the writ had been executed before a judge of assize or *nisi prius*.

Formerly a sheriff might try actions.

Formerly, by the 17th section, the Court might direct issue joined in certain actions to be tried before the sheriff, but that section was repealed by 30 & 31 Vict. c. 142, s. 6, and no action where issue is joined may now be tried before a sheriff.

By C. L. P. Act, 1852, not necessary to issue writ of inquiry where the amount of damages is merely matter of calculation.

By the Common Law Procedure Act, 1852, section 94, in all actions in which it appears to the Court or a judge that the amount of damages sought to be recovered by the plaintiff is substantially a matter of calculation, it is not necessary to issue a writ of inquiry, but the Court or a judge may direct that the amount for which final judgment is to be signed, be ascertained by a master of the Court, and the attendance of witnesses and the production of documents before the master may be compelled by *subpœna*, in the same manner as before a jury, upon a writ of inquiry; the master may adjourn the inquiry from time to time as occasion may require; the master must, further, indorse upon the rule or order for referring the amount of damages to him the amount found by him, and must deliver the rule or order, with such indorsement, to the plaintiff. Proceedings as to taxation of costs, signing judgment, &c., will be the same as on the finding of a jury on a writ of inquiry.

Judicature Act, 1875.

The Judicature Act, 1875, has introduced several

changes in the matter of writs of inquiry, which it will be useful to state.

Claim for detention, damages, &c.

By Order 13, Rule 6, where the defendant fails to appear to the writ of summons, and the plaintiff's claim is not for a debt or liquidated demand only, but for detention of goods and pecuniary damages, or either of them, no statement of claim need be delivered, but interlocutory judgment may be entered, and a writ of inquiry then issue to assess the value of the goods and the damages, or the damages only, as the case may be, in respect of the causes of action disclosed by the indorsement on the writ of summons. But the Court or a judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way in which any question arising in any action may be tried.

Assessment of damages.

Old practice under the C. L. P. Act, 1852, s. 28.

This, it will be observed, alters the old practice under the 28th section of the Common Law Procedure Act, 1852, which was that the plaintiff, in the case provided for by this rule, filed a declaration, and then, if no plea were pleaded, signed interlocutory judgment for want of a plea. Then a writ of inquiry issued to assess the damages; or, if the amount of damages was merely a matter of calculation, it might be referred to a master, under the 94th section, as mentioned above. Under the present rule, it will be seen, interlocutory judgment may be entered immediately upon default of appearance, and the indorsement on the writ will be sufficient to govern the inquiry as to damages, without any pleadings (*b*).

Present practice under the Judicature Act, 1875.

Where assessment of damages involves difficult questions of law, &c.

A far more important change is made by the last sentence of this rule. The assessment of damages often involves questions both of law and of fact, as difficult as any that can possibly arise. It will be found of great advantage, that, for the future, questions of damages may be ordered to be tried by a judge, or a judge and jury, or a judge with assessors, or a referee, official or special (*c*).

(*b*) Wil. Jud. Act, 2nd ed., 167.
(*c*) *Ibid.*

Claim for detention, damages, &c.

By Order 29, Rules 4 and 5, if the plaintiff's claim be for detention of goods and pecuniary damages, or either of them, and the defendant makes default, as mentioned in rule 2, (rule 2 provides for default in delivery of defence in liquidated claims), the plaintiff may enter an interlocutory judgment against the defendant, and a writ of inquiry then issue to assess the value of the goods and the damages, or the damages only, as the case may be; but the Court or a judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way in which any question arising in an action may be tried.

Procedure in lieu of writ of inquiry.

This, it will be seen, dispenses, at the discretion of the judge, with the services of the sheriff and jury.

Where there are several defendants.

Rule 5 provides that when, in any such action as in the previous rule mentioned, there are several defendants, if one of them make default, as mentioned in rule 2, the plaintiff may enter an interlocutory judgment against the defendant so making default, and proceed with his action against the others; in such case, damages against the defendant making default shall be assessed at the same time with the trial of the action or issues therein against the other defendants, unless the Court or a judge shall otherwise direct.

This would, in the case mentioned, dispense with the writ of inquiry to assess damages against the defaulter, and is in accordance with the old practice.

Venue. Old practice.

Whilst considering the question of the place of the inquiry, it may be as well to observe that formerly it was the custom for the sheriff to execute the writ in the place where the action was laid, but venues being abolished by the Judicature Act, 1875 (*d*), it is apprehended that the inquiry might be held, at the discretion of the judge, guided by the convenience of the parties, either at the place where the action is tried, or where the right of action accrued, or in any other place that appeared to the Court most fitting.

Local venues abolished.

(*d*) Ord. 36, rr. 1, 6.

Return of writ.

The Court out of which the writ issues will make it returnable by a certain day (*e*). The inquest may be held at any time after the delivery of the writ to the sheriff, and before or on the return day (*f*), and it has been held sufficient when a writ was returned after the rising of the Court on the return day (*g*).

Where writ appoints time or place.

Where the writ appoints that the inquest is to be taken at any fixed time or place, the sheriff must return as to time and place, and must in all things be guided by the terms of the writ.

Where the sheriff held an inquest on the return day of the writ, but the jury did not give their verdict until two or three days afterwards, the writ was held to be well executed (*h*).

Notice of executing writ.

Eight days' notice should be given of executing the writ; but where a defendant was master of a vessel, on board of which he slept, and had no other home, he was deemed to be resident where his ship was registered, and that being more than forty miles from London, he was held to be entitled to fourteen days' notice of executing the writ (*i*); for where the execution of the writ is to be in London or Middlesex, and the defendant lives at a greater distance than forty miles, he is entitled to fourteen days' notice. The notice should be served on defendant's solicitor (*k*).

If it is irregular, it should be returned, and the objection stated (*l*).

An undertaking to accept short notice of trial does not entitle the plaintiff to give short notice of executing the writ (*m*). Short notice of inquiry must in all cases be taken to mean four days (*n*).

The notice should state the hour at which the inquiry will

(*e*) 2 & 3 Will. 4, c. 39, s. 15.
(*f*) Bugberd's case, Cro. Eliz. 180. Gaven *v.* Ludlow, *ibid.*, 468.
(*g*) Maud *v.* Bernard, 2 Burr. 812.
(*h*) Dyke *v.* Blakston, 2 Ld. Raym. 1449; Rol. Abr. Process (G) 5.
(*i*) Blaaw *v.* Chaters, 6 Taunt. 458.
(*k*) Brookes *v.* Till, 2 Y. & J. 276.
(*l*) Stevens *v.* Till, 2 C. & M. 421.
(*m*) Blaaw *v.* Chaters, 6 Taunt. 458.
(*n*) R. G. H. T., r. 35; see also as to notice, rr. 36, 40.

be held and the place, but the notice of continuance need not state these particulars (*o*). It appears that punctuality is not necessary, and a defendant has no right to leave the Court till the sheriff or undersheriff comes (*p*). Countermand of notice should be given four days before date of inquiry mentioned in the notice, unless short notice has been given, and then two days before such day (*q*).

Notice in replevin proceedings.

Fifteen days' notice of the execution of a writ of inquiry in replevin was held to be requisite, after judgment on demurrer for the avowant (*r*), but replevin proceedings have now passed out of the sheriff's hands.

Before whom inquiry held.

The inquest is generally held before the undersheriff himself, but a deputy may be appointed by the sheriff for the purpose of executing it, and such deputy should be regularly appointed by a written authority under the seal of office (*s*). In London the deputy is the secondary.

Appointment of deputy.

The sheriff can only make one deputy to hold an inquest; where two were appointed, the inquisition was set aside, as the undersheriff was the proper person to hold the inquest (*t*), and, where the undersheriff lives in the town, it is always irregular to appoint any one else (*u*). The writ may not be executed by a deputy appointed by the undersheriff (*x*).

Jurors on a writ of inquiry.

The jurors on a writ of inquiry will be governed by the same regulations as jurors on an issue tried in the superior Courts at Westminster (*y*).

"Good jury."

It seems that where a judge's order for a "good jury" is obtained, on a writ of inquiry, a special jury may be summoned, for, in a case where this was done, and the jurors were paid one guinea each, the master on taxation allowed the payment, and a rule *nisi* was obtained to

(*o*) Jones *v.* Chune, 1 B. & P. 363.
(*p*) Williams *v.* Frith, Dougl. 198.
(*q*) R. G. H. T., r. 37.
(*r*) Burton *v.* Hickey, 6 Taunt. 57.
(*s*) Davis *v.* Skyllins, Barnes, 232. 19 & 20 Vict. c. 108, s. 63.
(*t*) Denny *v.* Trapnell, 2 Wils. 378.
(*u*) *Ibid.*
(*x*) Jones *v.* Williams, 2 Dowl. N. S. 938.
(*y*) County Juries Act, 1825 (6 Geo. 4, c. 50), s. 52.

review the taxation, on the ground, *inter alia*, that the payment of twelve guineas to the jury was excessive, and ought not to have been allowed; the Court, however, held that such payment was reasonable and sanctioned by practice, and that it was properly allowed by the master (*z*).

Fine for non-attendance.

By 6 Geo. 4, c. 50, s. 53, "if any man duly summoned and returned as a juror on such inquest, shall not, after being three times openly called, appear and serve as such juror, every such sheriff, or, in his absence, the undersheriff, or secondary, are authorised and required (unless some reasonable excuse shall be proved on oath or *affidavit*) to impose such fine upon every man so making default as they shall respectively think fit, not exceeding £5."

Fines, how estreated.

The sheriff or undersheriff certifies in writing the christian and surname, residence and calling of the defaulter, with the amount of the fine, and sends it to the clerk of the peace of the county, riding, or division in which the defaulter resides, on or before the first day of Quarter Sessions next ensuing. The fine must be enrolled amongst the fines imposed at Quarter Sessions, and levied and applied in the manner of the other fines imposed at Quarter Sessions (*a*).

Qualifications of jurors on inquiries.

No one is liable to be summoned or impanelled to serve as a juror upon any inquest or inquiry before any sheriff or coroner, by virtue of any writ of inquiry, who is not duly qualified to serve as a juror upon trials at *nisi prius*, under the 6 Geo. 4, c. 50. This provision only extends to inquests under writs of inquiry, and not to inquests taken before a coroner by virtue of his office, or before sheriffs of liberties, cities, or towns, or towns which are counties, otherwise than by writ of inquiry; when acting otherwise than by writ of inquiry, jurors may be chosen as before the 6 Geo. 4, c. 50 (*b*).

Witnesses

Witnesses must be sworn in the usual way by the

(*z*) Vickery *v.* London, Brighton & S. C. R. Co., L. R. 5 C. P. 165.
(*a*) County Juries Act, 1825, s. 53.
(*b*) *Ibid.*, s. 52.

on a writ of inquiry. Evidence.

undersheriff or deputy, and the rules with regard to witnesses and evidence admissible on a writ of inquiry are the same as at *nisi prius*.

Misdirection. Verdict against weight of evidence.

If the direction by the undersheriff to the jury, as to the criterion by which the jury are to assess the damages, be wrong (*c*), or the jury find a verdict contrary to the weight of evidence (*d*), the Court out of which the record issues will set aside the inquisition, and grant a new writ of inquiry.

Where sheriff and jury are in doubt.

If any doubt should arise, the sheriff may return that he and the jury were in doubt, and after stating wherein, may pray the advice of the Court (*e*).

Return generally.

When the jury have agreed upon the damages, the undersheriff fills up the inquisition, reads it to the jury, and signs it in the name of the high-sheriff, and the jury sign it opposite to their seals. This the sheriff keeps, and makes out another on parchment, sealed with the seal of office, and signed with the sheriff's name, and to this the seals of the jury are affixed, but they do not sign it. The inquisition on parchment is then annexed to the writ of inquiry, and the return is indorsed on the back of the writ, "the execution of this writ appears in a certain inquisition hereunto annexed" (*f*).

Taxation of costs, and signing of judgment.

At the return of writs of inquiry, costs may be taxed, judgment signed, and execution issued forthwith, unless the sheriff or his deputy certify, under his hand upon such writ, that judgment ought not to be signed until the defendant has had an opportunity of applying to the Court for a new inquiry, or a judge shall order that judgment or execution be stayed till a day named in such order (*g*).

Liability of the sheriff.

The liability of a sheriff to attachment or an action for misconduct on a writ of inquiry is on the same footing as in the case of other writs. It is laid down that if the sheriff return that the inquest or jury found no damages,

(*c*) Gainsford *v.* Carroll, 2 B. & C. 624; 4 D. & R. 161, S. C.
(*d*) Woodford *v.* Eades, Stra. 425; Wat. Sh., 2nd ed., 327.
(*e*) Dalt. 260.
(*f*) Wat. Sh., 2nd ed., 328.
(*g*) 3 & 4 Will. 4, c. 42, s. 18.

the sheriff is not to be held responsible for the default of the jury, for the sheriff is only liable for his own false or insufficient return, whereas here he returns it truly and as sufficiently as the circumstances permit (*h*). Under this writ the plaintiff has merely to prove the *quantum* of damages, and the defendant cannot go into that which is practically a defence, which he might have pleaded (*i*). And though the plaintiff brings forward no evidence to support his claim he is yet entitled at least to nominal damage.

(*h*) Bro. Retorne de briefe, part 2, fol. 219. Fitz. Retorne, 66. 5 Rep. 32, 33. Wat. Sh., 2nd ed., 330.
(*i*) Speck *v.* Phillips, 5 M. & W. 279.

CHAPTER X.

THE COMPENSATION COURT.

Court for assessing compensation where lands are required for public undertakings.

THE statute 8 & 9 Vict. c. 18 (*a*), after reciting, in the first section, that it is expedient to comprise in one general act, provisions as to the acquisition of lands required for works or undertakings of a public nature, and as to the compensation to be made for them, proceeds to provide for the establishment of a Court by which such matters may be decided.

Purchase of lands by agreement.

With respect to the purchase of lands by agreement, we have nothing to do, but it may briefly be said, that promoters of any undertaking for which lands are authorised by any special act of Parliament to be taken, may agree with the owners of the land, and with all parties having any estate or interest in such land for its purchase (*b*).

Parties under disability.

Special provisions are made to enable persons labouring under disabilities to convey and to exercise other powers with regard to such lands (*c*).

Compensation to parties under disabilities.

The amount of compensation payable to parties under disabilities is not, except where such amount has been determined by the verdict of a jury, or by arbitration, or by the valuation of a surveyor appointed by two justices under the act, to be less than shall be determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party, and if such two surveyors cannot agree, then by such third surveyor as the two justices

(*a*) Lands Clauses Consolidation Act, 1845.
(*b*) 8 & 9 Vict. c. 18, s. 6.
(*c*) Ss. 7, 8.

above mentioned shall appoint, on the application of either party, after notice to the other party (*d*).

Notice by promoters of intention to take lands.

The promoters of the undertaking are required to give notice of their intention to take lands to all parties interested, or to such parties as shall, after diligent inquiry, be known to them, and to demand from such parties the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof. Such notice must state the particulars of the lands so required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage sustained by them in the execution of the works (*e*).

Failure of parties to treat, or in case of dispute.

If for twenty-one days after the service of such notice any such party shall fail to state the particulars of his claim in respect of the land required, or to treat with the promoters of the undertaking in respect to his claim, or if such party and the promoters cannot agree as to the amount of compensation to be paid, then the amount must be settled in the manner indicated below.

Claim not exceeding £50.

Disputes as to compensation, where the total amount claimed does not exceed £50, are to be settled by two justices (*f*).

Claim exceeding £50.

If the compensation claimed or offered exceeds £50, and if the party claiming compensation desires to have the same settled by arbitration, and signifies such desire, by notice in writing, to the promoters of the undertaking, before they have issued their warrant to the sheriff to summon a jury in respect of such matter, stating in such notice the nature of the interest in respect of which he claims compensation, and the amount of the compensation so claimed, then the matter is to be settled by arbitration accordingly, but unless such desire shall be signified in the manner stated above, or if, after the matter has been referred to arbitration, the arbitrators or their umpire fail to

(*d*) 8 & 9 Vict. c. 18, s. 9.
(*e*) Ss. 18—20.
(*f*) S. 22.

make an award within three months, then the question of compensation is to be settled by the verdict of a jury (*g*).

Questions of compensation under the Lands Clauses Consolidation Act, 1845.

Whenever, in the case of lands purchased or taken, otherwise than by agreement, for the purposes of any public railway, any question of compensation in respect of such taking, or any question of compensation in respect of lands injuriously affected by the execution of the works of any public railway, is, under the provisions of the Lands Clauses Consolidation Act, 1845 (*h*), to be settled by the verdict of a jury, as in that act mentioned, the company or the party entitled to the compensation may, at any time before the issuing by the company of a warrant to the sheriff to summon a jury, apply to a judge of any one of the superior Courts at Westminster, who will, if he thinks fit, make an order for trial of the question in one of the superior Courts, upon such terms and in such manner as shall seem fit to him (*i*), but the jury must, where the issue relates to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to lands held with them, deliver their verdict, assessing sums to be paid for purchase of lands, and sums paid for damage, separately (*k*).

Jury to assess purchase money and damages separately.

Notice by promoters before summoning a jury.

Before the promoters of the undertaking issue their warrant for summoning a jury for settling any case of disputed compensation, they must give not less than ten days' notice to the other party of their intention to cause such jury to be summoned, and must state in such notice what sum of money they are willing to give for the interest in such lands, and for the damage sustained by the execution of the works (*l*). When the verdict of a jury is required, the promoters must issue their warrant to the sheriff, requiring him to summon a jury for that purpose; and such warrant must be under the common seal of the promoters, if they be a corporation, or if not a corporation,

(*g*) 8 & 9 Vict. c. 18, ss. 23, 68.
(*h*) 8 & 9 Vict. c. 18.
(*i*) S. 49, and 31 & 32 Vict. c. 119, s. 41.
(*k*) *Ibid.*
(*l*) 8 & 9 Vict. c. 18, s. 37.

then under the hands and seals of them all, or any two of them (*m*).

If sheriff be interested party.

If the sheriff be interested in the matter in dispute, their application should be made to some coroner of the county in which the lands in question, or some portion of them, are situate. If all the coroners in the county be interested, then the application should be addressed to some person who has filled the office of sheriff or coroner in such county, who shall then be living there, and who shall not be interested, preference being given to the one who has most recently served either of the offices (*n*).

Appointment of deputy.

Every ex-sheriff, coroner, or ex-coroner, is to have the power, if he thinks fit, of appointing a deputy or assessor (*o*).

All provisions relating to the reference to a jury, which control the sheriff, are equally applicable to the coroner, or other person acting in the place of the sheriff (*p*).

Sheriff to hand over jurors' book, &c., to person acting in his place.

In every case where a warrant has been directed to any other person than the sheriff, in the manner above described, the sheriff must, immediately on receiving notice of the delivery of the warrant, deliver over, on application for that purpose, to the person to whom the warrant or application has been directed, or to any person appointed by him to receive them, the jurors' book and special jurors' list belonging to the county where the lands in question are situate (*q*).

Sheriff to summon jurors.

Upon the receipt of the warrant, the sheriff must summon a jury of twenty-four indifferent persons, duly qualified to act as common jurymen in the superior Courts, to meet at a convenient time and place to be appointed by him for that purpose, such time not being less than fourteen nor more than twenty-one days after the receipt of the warrant, and such place not being more than eight miles distant from the lands in question, unless by consent of

(*m*) 8 & 9 Vict. c. 18, s. 39.
(*n*) *Ibid.*
(*o*) *Ibid.*
(*p*) S. 40.
(*q*) *Ibid.*

Notice to promoters.

the parties interested, and he must give notice, forthwith, to the promoters of the works, of the time and place appointed (*r*).

Challenge of jurors.

Out of the jurors appearing upon such summons a jury of twelve persons is to be drawn by the sheriff, in such manner as juries for trials of issues joined in the superior Courts are drawn, and, if a sufficient number of jurymen do not appear in obedience to such summons, the sheriff must return other duly qualified and indifferent men from among the bystanders, or others that can be speedily procured, to make up the jury to the proper number, and all parties concerned may have their lawful challenges against any of the jurors, but no such party may challenge the array (*s*).

Sheriff to preside.

The sheriff must preside on the inquiry, and the party claiming compensation is to be deemed the plaintiff, and is to have all rights and privileges which a plaintiff is entitled to in the trial of actions at law, and if either party so request in writing, the sheriff must summon before him any person considered necessary to be examined as a witness with reference to the matters in question (*t*).

View by jury.

Upon a similar request, the sheriff must order the jury, or any six or more of them, to view the place or matter in controversy, in the same way as views may be had in the trial of actions in the superior Courts (*u*)

Penalty on the sheriff for default.

If the sheriff makes default in his duties upon any such inquiry, he is liable to a penalty of £50 for each offence, the penalty to be recoverable by the promoters of the undertaking by action in any of the superior Courts (*x*).

Penalty on the jury for default.

If any person summoned or returned on the jury, whether common or special, does not appear, or refuses on appearing to take the oath, or in any other way unlawfully neglects his duty, he is to forfeit a sum not exceeding £10, unless he shows reasonable excuse to the

(*r*) 8 & 9 Vict. c. 18, s. 41.
(*s*) S. 42.
(*t*) S. 43.
(*u*) *Ibid.*
(*x*) S. 44.

satisfaction of the sheriff (*y*). In addition to such penalty, every juryman is subject to the same regulations, pains and penalties, as if such jury had been returned for the trial of an issue joined in any of the superior Courts (*z*).

Penalties, how applied.

Every such penalty payable by a sheriff or a juryman is to be applied in satisfaction of the costs of the inquiry, so far as it will go (*a*).

Penalty on witnesses making default.

If any person duly summoned to give evidence on such inquiry, to whom a tender of his reasonable expenses has been made, fails to appear at the time and place mentioned in the summons, without sufficient cause, or if any person, whether summoned or not, who appears as a witness, refuses to be examined on oath touching the subject matter in question, the person so offending is to forfeit to the party aggrieved a sum not exceeding £10 (*b*).

Notice of inquiry by promoters.

Not less than ten days' notice of the time and place of the inquiry is to be given by the promoters of the undertaking to the other party (*c*).

Non-appearance of party claiming compensation.

If the party claiming compensation does not appear at the time appointed for the inquiry, the inquiry must not be further proceeded in, but the compensation to be paid must be ascertained by a surveyor appointed by two justices in the manner provided by the act (*d*).

Jury to be sworn.

Before proceeding with the inquiry and assessing the compensation the jury must take an oath that they will truly and faithfully inquire and assess such compensation, and the sheriff must administer the oaths to the jury and the oaths to the witnesses (*e*).

Verdict and judgment.

The sheriff must give judgment for the purchase-money or compensation assessed by the jury, and the verdict and judgment must be signed by the sheriff, and being so signed must be kept by the clerk of the peace

(*y*) 8 & 9 Vict. c. 18, s. 44.
(*z*) *Ibid.*
(*a*) *Ibid.*
(*b*) S. 45.
(*c*) S. 46.
(*d*) S. 47.
(*e*) S. 48.

among the records of the General or Quarter Sessions of the county in which the lands or any part of them are situate (*f*).

Such verdicts and judgments are to be deemed records, and copies of them, or the originals themselves, are good evidence in all Courts and elsewhere; all persons may inspect such verdicts and judgments, and may have copies or extracts from them, on paying for each inspection one shilling, and sixpence for every hundred words copied or extracted, which copies or extracts the clerk of the peace is required to make out and sign and certify as true copies (*g*).

Costs of inquiry.

Where the verdict of the jury is for a greater sum than the sum previously offered by the promoters of the undertaking, all the costs of the inquiry are to be borne by the promoters of the undertaking, but if the verdict of the jury is for the same, or a less sum than the sum previously offered by the promoters of the undertaking, or if the owner of the lands fails to appear at the time and place appointed for the inquiry after receiving due notice, one-half of the costs of summoning, impanelling and returning the jury, and of taking the inquiry, and recording the verdict and judgment, if a verdict be taken, will have to be paid by the owner of the lands, and the other half by the promoters of the undertaking, and each party will bear his own costs other than those mentioned above (*h*).

In case of difference, costs to be settled by a master.

The costs of any inquiry, in case of difference, are to be settled by one of the masters of the Queen's Bench Division in England or Ireland, according as the lands are situate (*i*).

Special jury.

Notice.

If either party desire to have the question of compensation tried before a special jury, the question is to be so tried, provided that notice of such desire, if coming from the other party, be given to the promoters of the unde

(*f*) 8 & 9 Vict. c. 18, s. 50.
(*g*) *Ibid.*
(*h*) S. 51.
(*i*) S. 52.

taking before they have issued their warrant to the sheriff, and for that purpose the promoters of the undertaking must require the sheriff by their warrant to summon a special jury for the trial (*k*).

Nomination of special jury.

The old practice was, for the sheriff, after receipt of the warrant, to summon both parties to appear before him, either by themselves or their attornies, at some convenient time and place appointed by him, for the purpose of nominating a special jury, such time not being less than five or more than eight days from the service of the summons (*l*).

At the time and place appointed, the sheriff proceeded to nominate and strike a special jury in the manner usual in the superior Courts, and he then appointed a day, not later than the eighth day after striking such jury, for the parties or their agents to appear before him, to reduce the number of such jury, of which he gave four days' notice to the parties; on the day appointed, he proceeded to reduce the special jury to the number of twenty, in the manner usual in the superior Courts (*m*).

Number of jury.

The special jury on such inquiry consisted of twelve of the twenty who first appeared, on the names being called over, the parties having their lawful challenges against any of the jurymen (*n*).

Deficiency of special jurors.

If a full jury did not appear, or if, after the challenges, a full jury did not remain, then, upon the application of either party, the sheriff added to the list of such jury the names of any other disinterested persons, qualified to act as special or common jurymen, who had not been previously struck off the list, and who might then be attending in Court, or could be speedily procured, so as to complete the jury, all parties having their lawful challenges against such persons (*o*).

(*k*) 8 & 9 Vict. c. 18, s. 54.
(*l*) *Ibid.*
(*m*) *Ibid.*
(*n*) S. 55.
(*o*) *Ibid.* This method of summoning special jurors still prevails in the compensation Court, though not on writs of inquiry.

Trial.

The sheriff must then proceed to the trial and adjudication of the matters in question, with the jury, and the trial must be attended in all respects with the same incidents and consequences, and the same penalties will be applicable, as in the case of a trial by a common jury (*p*).

Other inquiries before the same jury.

Any other inquiry than the one for which the special jury has been struck and reduced may be tried by the same jury, provided the parties respectively give their consent (*q*).

No juryman is to be summoned, or required to attend any such proceeding, more than once in any year without his consent (*r*).

Compensation to absent parties.

The purchase-money, or compensation, to be paid to any party who, by reason of absence from the kingdom, is prevented from treating, or who cannot, after diligent inquiry, be found, or who does not appear at the time appointed for the inquiry, after due notice, must be determined by an able practical surveyor nominated for that purpose by two justices (*s*).

Promoters may obtain judge's order instead of issuing warrant.

Whenever the promoters of an undertaking are called upon, or are liable, under the "Lands Clauses Consolidation Act, 1845" (*t*), to issue their warrant to the sheriff in the case of any disputed compensation, and they obtain a judge's order under the statute 31 & 32 Vict. c. 119, s. 41, the obtaining of such order and notice thereof to the opposite party will be a satisfaction of the promoters' duty in respect of the issue of the warrant (*u*).

Effect of verdict and judgment.

The verdict of the jury and judgment of the Court will, as regards costs and all other matters incident thereto, have the same operation, and be entitled to the same effect, as if that verdict and judgment had been the verdict of a jury, and judgment of a sheriff, upon an inquiry conducted

(*p*) 8 & 9 Vict. c. 18, s. 55.
(*q*) S. 56.
(*r*) S. 57.
(*s*) S. 58.
(*t*) 8 & 9 Vict. c. 18.
(*u*) 31 & 32 Vict. c. 119, s. 42; *ante*, p. 112.

upon a warrant to the sheriff issued by the promoters, under the "Lands Clauses Consolidation Act, 1845" (*x*).

Fees to masters.

Wherever under the provisions of the Lands Clauses Consolidation Act, 1845, or of any act incorporating, altering, or amending it, the costs of any proceedings for determining a question of disputed compensation are settled by one of the masters of the Queen's Bench Division in England or Ireland, the master may take a fee of one shilling, and no more, in respect of each folio in length, of every bill of costs so settled, such fee to be taken in money and not in stamps (*y*).

Lands in Westminster.

Wherever any lands authorised to be taken are situate within the city and liberty of Westminster, then in any case where a question of disputed compensation is required, under the Lands Clauses Consolidation Act, 1845, or any act amending it, to be determined by the verdict of a jury, the high bailiff of the city and liberty of Westminster, or his deputy, is to be substituted for the sheriff, throughout all the requirements of that act, or the amendments of it (*z*).

Miscarriage of justice at inquiry by sheriff.

By a *dictum* of Ryder, C.J., it is laid down that the Queen's Bench Division has, by the Common Law in general, a right to bring before it all records, in order to rectify wrong ones, if rectifiable, and if not, to quash them (*a*).

It is presumed, therefore, that upon a sheriff's exceeding or refusing to perform his duty, or in the event of other miscarriage of justice, the remedy would be by motion in the Queen's Bench Division, and injunction, mandamus, or other order of the Court would issue (*b*).

Where warrant is issued by promoters to the sheriff, one

Where a warrant was issued to a sheriff to summon a jury, by a party claiming compensation from the promoters of an undertaking, and the promoters, after verdict, objected that the sheriff was a shareholder in this company,

(*x*) 31 & 32 Vict. c. 119, s. 43.
(*y*) S. 45.
(*z*) 32 & 33 Vict. c. 18, s. 3.
(*a*) Rex *v.* Berkley, 1 Ken. 99.
(*b*) See Walker *v.* London and Blackwall Ry. Co., 3 Ad. & El. 744.

of their own shareholders.

and sought on that ground, *inter alia*, to set aside the verdict, it was held that the promoters were too late in seeking to invalidate the proceedings on this ground, after verdict; moreover, had the objection been a good one, if made in proper time, the objection was waived by their appearing before the sheriff and jury, and allowing the inquisition to proceed, and judgment to be given, as their books would have told them that the sheriff was a shareholder, and they could not therefore, when they appeared, have been ignorant of the fact (*c*). The same could not be said of the party claiming compensation, who could not have known that the sheriff was a shareholder, and he could therefore invalidate the proceedings upon discovering it (*d*).

Compensation to persons whose land has not been taken.

The Lands Clauses Consolidation Act and the Railways Clauses Consolidation Act do not contain any provisions, under which a person whose land has *not* been taken for the purposes of a railway can recover statutory compensation from a railway company, in respect of damages, or annoyance, arising from vibration, occasioned (without negligence) by the passing of trains, after the railway is brought into use, even though the value of the property has been actually depreciated thereby (*e*).

Lord Cairns, &c., dissenting.

Against this remarkable ruling, however, is arrayed the formidable authority of Lord Cairns, and the following Common Law Judges, Willes, Keating, and Lush, J.J., and Bramwell and Pigott, B.B., to whom the following question was proposed by the Lord Chancellor (*f*): "Were the defendants in error entitled to have compensation made to them by the plaintiffs in error for the vibration, of which damages were assessed by the jury, as mentioned in the special case?" This question was answered in the affirmative by the judges named.

(*c*) Corrigall *v.* London and Blackwall Ry. Co., 6 Scott, N. R. 241.

(*d*) *Ibid.*

(*e*) Hammersmith and City Ry. Co. *v.* Brand, L. R. 4 H. L. 71.

(*f*) Lord Cairns.

CHAPTERS XI—XXIII.

THE SHERIFF'S MINISTERIAL DUTIES.

We now come to the ministerial duties of the sheriff, which consist of:—

(1.) His duties at assizes, trials of election petitions, and Quarter Sessions.
(2.) The summoning of juries for the trial of civil and criminal causes.
(3.) His presence at and superintendence of the execution of criminals condemned to death.
(4.) His duties as to interpleader.
(5.) His duties in the execution of writs.

CHAPTER XI.

THE SHERIFF'S DUTIES AT ASSIZES.

It is the sheriff's duty to proclaim the assize, which is generally done by inserting advertisements in the county newspapers, though in some counties the practice still prevails of placarding printed proclamations in the principal towns and villages throughout the county (*a*). Sheriff to proclaim the assize.

The sheriff must, during the whole of the assizes, be in constant attendance on the judges, accompanying them to and from the Court, as must also the undersheriff. He Sheriff to attend judges, and pro-

(*a*) Wat. Sh., 2nd ed., 390.

vide lodgings.

must provide the judges with lodgings, unless lodgings are provided by the custom of the county, or borough, in some other way, in which case the sheriff is responsible for their being in suitable condition.

Sheriff to meet the judges in state.

The sheriff must go in state to meet the judges at the usual place, in the manner best according with the customs of the county. He must also provide a sufficient retinue. The burden of expense placed upon the sheriff, in respect of the assizes, was formerly so onerous that a statute was passed in the reign of Charles II., which is still unrepealed, to relieve him of some of his liabilities (*b*). We may presume the nature of his burden from the sections of the act which relieved him.

Sheriff relieved from keeping open house at assizes.

The 1st section provided that "no person or persons being duly sworn into the office of sheriff for any county or shire within this your Majesty's realm, shall from and after the first day of February next ensuing, in the time of the assizes held for the said county or shire during his or their shrievalty, keep or maintain, or cause to be kept or maintained, one or more table or tables, for receipt or entertainment of any person or persons resorting to the said assizes, other than those that shall be of his own family or retinue; nor shall make or send in any present to any judge or judges of assize for his or their provision, nor give any gratuity to his or their officers or servants, or any of them; also, that no sheriff shall, after the said first day of February, have more than forty men-servants with liveries attending upon him in the time of the said assizes, nor under the number of twenty men-servants, in any county whatsoever within the kingdom of England, nor under the number of twelve men-servants in any county within the dominion of Wales: upon pain that every sheriff offending in any of the premisses contrary to the true meaning hereof, shall forfeit for every default the sum of two hundred pounds."

Presents to judges.

Number of sheriff's servants.

The 2nd section provided that "nothing before in this act contained shall in any wise extend unto, or any ways

(*b*) 14 Car. 2, c. 21, s. 1.

concern, the sheriffs of the city of London and Middlesex, and the sheriff of Westmoreland, or either of them, or any of the sheriffs of or belonging to any city and county, or town and county within this realm; but that the same sheriff or sheriffs shall or may do as heretofore hath been used or accustomed within the said county of Middlesex and cities of London and Westminster, and such other cities and counties, or towns and counties aforesaid; any thing hereinbefore contained to the contrary in any wise notwithstanding."

The 6th section provided as follows, "to the end that all new debts arising and coming into the Exchequer for the future may be sent forth in process within convenient time, be it also enacted and declared, that the aforesaid several Remembrancers do forthwith inrol and certify to the said ingrosser of the great roll, all such debts as any sheriff or sheriffs of this realm are or hereafter shall be charged withal, either by virtue of their respective returns made to the barons of the said Exchequer upon his Majesty's writs of *fieri facias, levari facias, capias* or other process; (2) and also of all fines and amercements which are or shall be set and imposed by the Court of Exchequer upon any sheriff or sheriffs for his or their contempts or neglects; (that is to say) that all and every such debts, fines and amercements, as now are returned, set or imposed in any of the said offices, shall be delivered as aforesaid, before the first day of February next ensuing; (3) and all such debts, fines and amercements as shall hereafter be returned, set or imposed in any of the respective offices, shall be also delivered by the first day of the next term after such returns made, or such fines and amercements so set or imposed; (4) that so they may be all charged in the sheriff's accounts respectively, and comprehended within his or their *quietus est;* (5) upon pain that every officer or officers in the said Exchequer, who shall in any thing offend contrary to this present act, shall forfeit the sum of forty pounds for every such offence; whereof one moiety shall be to the king, his heirs and

successors, and the other moiety to the party or parties who shall be thereby aggrieved, to be recovered by action of debt, bill, plaint or information in any of his Majesty's Courts at Westminster, wherein no *essoin*, protection, privilege or wager of law shall be allowed or admitted."

Limitation of act.

As the act was not to extend to London and Westminster, nor to any cities or towns which were counties, we may presume that the burdens only fell upon the county sheriff (*c*).

Sheriff formerly required to keep the court.

The sheriff was formerly required to keep the Court at assizes, by means of his servants and javelin-men, &c.; but the justices of the peace of any county may now at General or Quarter Sessions, if they think fit, direct that a sufficient staff of the county police shall be employed to keep order at the Courts of assize, and, in cases where this is done, it is not necessary for the high sheriff to provide or maintain any javelin-men or other men-servants with liveries, at the assizes (*d*). It may be added that the police are now usually employed in the performance of this duty, their experience in the management of crowds enabling them to keep order with less difficulty than usually arises in those counties where the former custom prevails, the antiquity and picturesqueness of which are its chief recommendation.

Under-sheriff to pay criers, &c.

The undersheriff must make the payments to the criers, attendants on the judges, javelin-men, &c., which are mostly regulated by custom. He should take receipts for all fees directed by act of Parliament to be paid by the sheriff, and these will be allowed him in passing his accounts (*e*).

Sheriff formerly required to deliver calendar of prisoners to judges, &c.

The sheriff was formerly required to deliver to the judges of assize, and to the justices in Quarter Sessions assembled, a calendar of all prisoners in custody for trial at such assizes or gaol Sessions; but the sheriff is no longer required to deliver this calendar, as that duty was handed over to the gaoler by the statute 28 & 29 Vict

(*c*) *Vide* s. 2, p. 123.
(*d*) 22 & 23 Vict. c. 32, s. 18.
(*e*) Wat. Sh., 2nd ed., 392.

c. 126, s. 62 (*f*), which act also removed the liability of the sheriff for the escape of any prisoner other than a debtor.

Trial of election petition.

As the trial of election petitions are now conducted before puisne judges of the High Court of Justice it will be necessary to consider the nature of the sheriff's duties at the trial of an election petition.

Reception of judge.

These duties are very similar in nature to his duties at assize, and the judge must be received, so far as circumstances permit, with the same state and dignity as a judge of assize is received.

County election petition.

Borough election petition.

There is, however, this difference, that, in the case of a petition relating to a county election, the judge must be received by the sheriff, but in the case of a borough election the mayor must receive the judge, if the borough has a mayor, and, if the borough has not a mayor, then the sheriff of the county in which the borough is situate, or some person named by the sheriff, must receive the judge (*g*).

Expenses of judge, sheriff, &c.

The travelling and other expenses of the judge, and all expenses properly incurred by the sheriff, or by the mayor, or by the person named as above mentioned, in receiving the judge, and providing him with necessary accommodation, and with a proper Court, will be defrayed by the commissioners of the Treasury, out of money to be provided by Parliament (*h*).

Power of judge.

On the trial of an election petition the judge will have the same powers, jurisdiction, and authority, as a judge of one of the superior Courts, and as a judge of assize and *nisi prius*, and the Court held by him will be a Court of record (*i*).

Attendance on judge.

The judge must be attended, on the trial of an election petition, in the same manner as if he were a judge sitting at *nisi prius*, and the expenses of such attendance will be deemed part of the expenses of providing a Court (*k*).

(*f*) Prisons Act, 1865.
(*g*) 31 & 32 Vict. c. 125, s. 28.
(*h*) *Ibid.*
(*i*) S. 22, and see Judicature Act, 1873, s. 38.
(*k*) 31 & 32 Vict. c. 125, s. 30.

Duties at Quarter Sessions.

The sheriff's duties at Quarter Sessions are now chiefly nominal; for though the sheriff receives from the clerk of the peace of the county a precept directing him to proclaim the Quarter Sessions, yet, as a matter of practice, this is invariably done by the clerk of the peace himself, by advertising them in the county and provincial papers, and the sheriff does not attend the Quarter Sessions in person; the undersheriff, however, usually does, though even this is sometimes omitted.

CHAPTER XII.

THE DUTIES OF THE SHERIFF IN THE SUMMONING OF JURIES.

Summoning juries.

THE duties of the sheriff under this heading are often of a very complicated nature.

Writ of *venire facias juratores* abolished.

Formerly the sheriff received a writ of *venire facias juratores*, directing the return of jurors, but this was abolished by the 104th section of the Common Law Procedure Act, 1852, in company with the writs of *distringas juratores*, *habeas corpora juratorum*, and the entry *jurata ponitur in respectu*.

Precept now issued by judges of assize.

At the present time, therefore, the precept is issued by the judges of assize, a sufficient time before the circuit, to the sheriff, to summon jurors for the assizes; the precept directs that the jurors be summoned for the trial of all issues, whether civil or criminal, which may come on for trial at the assizes (*a*).

Where sheriff was a party to an action, writ how formerly issued.

Where a sheriff was a party to an action to be tried, the *venire* was formerly directed to the coroner; which was permitted by the words "sheriff or other minister" in the 15th section of the County Juries Act, 1825 (*b*); but by the 59th section of the Common Law Procedure Act, 1854, the several Courts, or any judge of any of the Courts, may make all rules or orders upon the sheriff or *other person*, that may be necessary to produce the attendance of a special or common jury for the trial of any cause or matter which may be pending in such Courts, at any

(*a*) C. L. P. Act, 1852, s. 105.
(*b*) 6 Geo. 4, c. 50.

time and place, and in any manner that they or he may think fit. The sheriff's return to the assize precept consists of four panels. On the back of the precept the sheriff endorses the reference to the panels, viz., "the return of this precept appears in certain panels hereto annexed," and that he has made proclamation.

Sheriff's return to assize precept.

Panels.

The panels are—

Names of magistrates, mayors, &c.

1. The names of the magistrates, mayors, bailiffs of liberties, &c., and sheriff's officers of the different hundreds.

The names of the magistrates he will obtain from the clerk of the peace. The other lists he will find in the undersheriff's office.

Names of grand jurors.

2. The names of persons summoned to serve on the grand jury.

Names of petty jurors.

3. The names of persons summoned to serve on the petty juries.

These panels are written on parchment, and should be tied to the precept, and delivered by the sheriff himself to the judge (*c*).

Grand and *nisi prius* juries.

The sheriff will have to summon the grand jury, and the *nisi prius* juries, in addition to the special juries, if any are required.

Qualification of grand jury.

The qualification of grand jurors is not defined by statute, but the sheriff should summon all gentlemen of position in the county, below the rank of peers. A list will have been kept by the preceding undersheriffs, of the names of those usually summoned on the grand jury (*d*).

Petty and special jurors.

The sheriff will also have to summon special and petty jurors, and we will now proceed to consider this most important branch of his duties.

Qualification of jurors in England.

The qualifications, in England, of jurors in superior Courts, assizes, and Sessions of the peace, are regulated by the first section of the County Juries Act, 1825 (*e*), which enacts, that every man (except those exempt from

(*c*) The above list of panels, &c., is abstracted from Wat. Sh., 2nd ed., 391.

(*d*) Wat. Sh., 2nd ed., 391.

(*e*) 6 Geo. 4, c. 50.

serving on juries) between the ages of twenty-one and sixty, residing in any county in England, who has in his own name, or in trust for him, within the same county, £10 a year, above reprizes (or deductions in the shape of rent-charges or annuities), in lands or tenements, whether of freehold, copyhold, or customary tenure, or of ancient demesne, or in rents issuing out of any such lands or tenements, or in such lands, tenements and rents taken together, in fee simple, fee tail, or for the life of himself or some other person, or who has, within the same county, £20 a year above reprizes, in lands or tenements, held by lease or leases for the absolute term of twenty-one years, or some longer term, or for any term of years determinable on any life or lives, or who, being a householder, is rated or assessed to the poor rate, or to the inhabited house duty in the county of Middlesex, on a value of not less than £30, or, in any other county, on a value of not less than £20, or who occupies a house containing not less than fifteen windows, is qualified and liable to serve on juries for the trial of all issues joined in any of the king's Courts of record at Westminster, and in the superior Courts both civil and criminal of the three counties palatine, and in all Courts of assize, *nisi prius*, oyer and terminer, and gaol delivery, such issues being respectively triable in the county in which every man so qualified respectively resides; and is also qualified and liable to serve on grand juries in Courts of Sessions of the peace, and on petty juries, for the trial of all issues joined in such Courts of Sessions of the peace, and triable in the county, riding or division, in which every man so qualified respectively resides. The qualifications of jurors in England and jurors in Wales, which by 6 Geo. 4, c. 50, s. 1, were different, are by the Juries Act, 1870 (*f*), assimilated.

Qualification of jurors in England and Wales.

With regard to the qualification of special jurors, it is provided by the 6th section of the Juries Act, 1870, that every man whose name shall be in the jurors' book for any county in England or Wales, or for the county of the city

Qualification of special jurors.

(*f*) 33 & 34 Vict. c. 77.

of London, and who shall be legally entitled to be called an esquire, or shall be a person of higher degree, or shall be a banker or merchant, or who shall occupy a private dwelling house rated or assessed to the poor rate, or to the inhabited house duty, on a value of not less than £100 in a town containing, according to the census next preceding the preparation of the jury list, twenty thousand inhabitants and upwards, or rated or assessed to the poor rate or to the inhabited house duty on a value of not less than £50 elsewhere, or who shall occupy premises other than a farm rated or assessed as aforesaid on a value of not less than £100, or a farm rated or assessed as aforesaid on a value of not less than £300, shall be qualified and liable to serve on special juries in every such county in England and Wales, and in London respectively.

Churchwardens to make lists of jurors.

The County Juries Act, 1825, after providing that churchwardens and overseers are to make out lists of persons qualified to serve on juries, with their residences, &c. (*g*), goes on to provide that the justices of the peace are to hold petty sessions in the last week in September, at which these lists are to be produced, revised, &c., and certified by the magistrates (*h*).

The Juries Act, 1862, requires that this list shall be forwarded by the justices' clerk to the clerk of the peace (*i*).

Lists to be kept by clerk of peace, &c.

The clerk of the peace is to keep the lists of jurors forwarded to him by the justices' clerk, among the records of the Sessions, arranged with every hundred in alphabetical order, and every parish or township within such hundred likewise in alphabetical order, and must have them fairly and truly copied in the same order, in a book provided by him for that purpose, at the expense of the county, or division, with proper columns for making the register, and must deliver the book to the sheriff of the county

(*g*) S. 8.
(*h*) S. 10, and Juries Act, 1870, s. 14.
(*i*) S. 9 (25 & 26 Vict. c. 107).

or his undersheriff, within six weeks after the close of the Sessions.

The book is to be called "The Jurors' Book for the year " (inserting the number of the year), and every sheriff, on quitting the office, must deliver the book to the succeeding sheriff, and every jurors' book, so prepared, is to be brought into use on the first day of January next ensuing, after it has been delivered by the clerk of the peace to the sheriff or undersheriff, and is to be used for the following year (*k*). The "jurors' book."

By the statute 9 & 10 Vict. c. 95 (*l*), the sheriff of every county, and the high bailiffs of Westminster and Southwark, must cause to be delivered to the clerks of the county Courts, of their respective districts, lists of persons qualified and liable to serve as jurors in the Courts of assize and *nisi prius*, for their counties, cities, and boroughs respectively, within fourteen days from the receipt of the jury book from the clerk of the peace of the county, or other officer, each list containing only the names of persons residing within the jurisdiction of the Court, for which list the sheriff and bailiffs are entitled to receive a fee at the rate of twopence for every folio of seventy-two words. Sheriff must deliver lists of jurors to clerks of county courts.

The method of summoning jurors, if the summons be sent by bearer, is by showing to the man to be summoned, or, in case he shall be absent from his usual place of abode, by leaving with some person living there, a note in writing, under the hand of the sheriff, or other proper officer, containing the substance of such summons (*m*). But now the more usual method is for all jurors to be summoned by post (*n*). How jurors to be summoned. Summons by post.

The costs incurred by the sheriff in summoning jurors by post may be included in his ordinary bill of cravings, and should be allowed, within proper limits, by the commissioners of her Majesty's Treasury (*o*). Sheriff to be allowed costs of summons.

(*k*) County Juries Act, 1825, s. 12.
(*l*) S. 72.
(*m*) County Juries Act, 1825, s. 25.
(*n*) Juries Act, 1862, s. 11.
(*o*) *Ibid.*

The section allowing the costs of the sheriff for summonses by post speaks of the costs incurred by the sheriff, "so far as the same shall not exceed the sum allowed to such sheriff or his predecessor in office, *on that account*, in any one year within the three years immediately preceding the passing of this act." Now as the section is inserted clearly with the object of allowing a sheriff to recover costs for the performance of a duty which was then for the first time made legal, it is difficult to understand how a sheriff could, prior to the passing of that act, have had any sum allowed to him or his predecessors *on that account*, *i.e.*, on account of summoning jurors by post. The result of the latter part of the section, if taken to mean anything, would be to neutralize the effect of the first part; taking, therefore, into consideration, first, what was the state of affairs before the passing of the act; secondly, what was the intention, so far as we can judge, of the legislature, and, thirdly, the means by which the legislature proposed to carry out their intention, it is submitted that the latter part of the section is mere surplusage, and should not be taken to neutralize the effect of the first part, which would be a great hardship on the sheriff. This, however, does not appear to be the view of the commissioners.

Intention of section.

Effect of section.

How summons by post to be conducted.

The sheriff, or his proper officer, should make out a summons and affix to it the seal of his office, and this summons, having the words "jury summons" legibly printed or written on the same side as the address, may be sent open by the post, prepaid, and directed to the person required to serve as juror, at his place of abode as described in the jurors' book (*p*).

Summons and a duplicate, how sent.

This summons, together with a duplicate endorsed with the name and address of the juror to whom the original summons is directed, must be taken to the postmaster at any post office where money orders are received or paid within such hours as have been previously agreed upon

(*p*) Juries Act, 1862, s. 11.

such post office, and under such regulations with respect to the registration of the summons, and the fee to be paid for registration (the fee in no case to exceed by more than twopence the ordinary rate of postage), as are made from time to time by the Postmaster-General (*q*). In all cases, where the fee has been paid, it is the duty of the postmaster to compare the address of the summons with the duplicate, and, on ascertaining that they are both alike, to forward the summons by post to its address, and to return the duplicate to the party bringing it, and the production of the stamped duplicate, by the party posting the summons, is evidence of the delivery of the summons on the day on which it would have arrived in the ordinary course of the post, unless the summons be returned by the post as undelivered (*r*).

Additional notice.

When a summons is delivered by post, two additional days are to be allowed for the transmission of the summons by post, over and above the number of days required by law for the service of a summons, before the day on which the juror is required to attend (*s*).

Fine for non-attendance.

The Court may, by the 38th section of the County Juries Act, 1825, fine jurors for non-attendance; such fine to be £10 at least.

When a juror is fined for non-attendance, after being duly summoned, the fine must not be estreated until after the expiration of fourteen days, in order that the proper officer of the Court by which the fine was imposed may write and require an *affidavit* of the cause, if any, of the juror's non-attendance (*t*).

Remission of fines.

The officer, on receipt of the *affidavit*, must submit it to the Court, or the judge or chairman presiding at the Court when the fine was imposed, who may, if he pleases, remit the fine (*u*).

(*q*) Juries Act, 1862, s. 11.
(*r*) *Ibid.*
(*s*) *Ibid.*
(*t*) *Ibid.*, s. 12.
(*u*) *Ibid.*

Sheriffs, coroners, and commissioners may also fine jurors for non-attendance at their inquiries (*x*).

Juries to be returned from the jurors' book.

The sheriff, upon receipt of the precept from the judges of assize directing him to summon jurors, must return the names of men contained in the jurors' book for the then current year, and no others; where precept for returning a jury is directed to any coroner or elisor, &c., he must be allowed free access to the jurors' book for the current year, and must also return the names of those found there, and no others; provided that, if there be no jury book for the current year, jurors may be returned from the jury book of the preceding year (*y*).

Sheriff indemnified for returning any person whose name is in the list.

The sheriff, or other minister to whom the return of juries belongs, is indemnified for impanelling and returning any man named in the jurors' book, although such person may not be qualified or liable to serve on juries (*z*). But if any sheriff or other minister wilfully impanels and returns any man to serve on any jury (except the grand jury), such man's name not being inserted in the jurors' book for the current year, (or, if the book for the current year has not been delivered, then in the jurors' book last delivered), the Court will fine the sheriff, or other officer, in such way as it sees fit.

Sheriff, &c., to register names of jurors summoned.

The sheriff, or undersheriff, must from time to time register alphabetically, in proper columns to be prepared in the jurors' book for that purpose, the services of such jurors as are summoned to serve on trials at *nisi prius*, assizes or gaol delivery, and attend, and the times of their services; every man so summoned, and having served until discharged by the Court, is entitled to receive (on application to the sheriff or undersheriff, before departure from the place of trial) a certificate testifying such service, which the sheriff is required to give, on payment of one shilling (*a*).

Certificates of attendance.

(*x*) County Juries Act, 1825, s. 53.
(*y*) *Ibid.*, s. 14.
(*z*) *Ibid.*, s. 39.
(*a*) *Ibid.*, s. 40.

This does not apply to grand or special jurors (*b*).

Grand and special jurors.

The clerk of the peace is required to make out a list of jurors summoned and attending at Sessions, on grand or petty juries, and their places of abode, &c., and the date of their services, and to transmit the list to the sheriff, or undersheriff, for registration within twenty days after the close of every such Sessions; certificates of attendance or service are to be given by the clerk of the peace, upon application made to the clerk of the peace before departure from the place where the Sessions are held, and on payment of one shilling (*c*).

Certificates of attendance.

Jurors for trials of capital offences.

No man is to be impanelled or returned to serve on any jury for the trial of any capital offence, unless he is qualified to serve as a juror in civil causes (*d*).

Panel of jurors annexed to sheriff's return.

The panel of jurors annexed to the sheriff's return should contain the names alphabetically arranged, with the places of abode, &c. The number of jurors is not in any county to be less than forty-eight, nor to exceed seventy-two, unless by the direction of the judges appointed to hold the assizes, or one of them, who can, by order under his hand, direct a greater or less number, and then the number so directed will be the number to be returned (*e*).

In cases of high treason.

When any person is indicted for high treason or misprision of treason, in any Court other than the Queen's Bench Division, a list of the petty jury, mentioning the names, professions, and places of abode of the jurors, is to be delivered to the party indicted, at the same time that the copy of indictment is delivered, which must be ten days before the arraignment, and in the presence of two or more credible witnesses (*f*).

The difference, when the indictment is in the Queen's Bench Division, is, that the list of the petty jury may be delivered to the party indicted at any time after the arraignment, so long as it is ten days before the trial (*g*).

(*b*) County Juries Act, 1825, s. 40.
(*c*) *Ibid.*, s. 41.
(*d*) *Ibid.*, s. 50.
(*e*) *Ibid.*, s. 15.
(*f*) *Ibid.*, s. 21.
(*g*) *Ibid.*

Exceptions.

Acts against the person of the sovereign, and the counterfeiting of coin, &c., where the procedure is governed by other acts now in force, are excepted (*h*).

Jurors at assizes.

The judge of assize, &c., may direct one number of jurors to be impanelled, not exceeding one hundred and forty-four, as he shall think fit, to serve indiscriminately on the civil and criminal sides; where the judge so directs, the sheriff must divide the jury into two sets, the first set to attend and serve for so many days at the beginning of the assize, as the judge shall direct, and the second set to attend and serve for the remainder of the assize (*i*).

Proviso as to summons.

In this event the sheriff must specify in his summons to the jurors, whether the juror is in the first or second set, and at what time the attendance of such juror will be required (*k*).

Printed panel of jurors for inspection.

A printed panel of the jurors summoned must be made by the sheriff seven days before the commission day, and kept in the office for inspection, and a printed copy of the panel must be delivered by the sheriff to any party who requires it, on payment of one shilling, and such copy must be annexed to the *nisi prius* record (*l*).

Views in local actions.

The sheriff has also to grant views or inspections of real or personal property, if such be required, to jurors in local actions, where the question is one of injury to house or property, &c., and in these cases the sheriff has to officiate as an officer in charge of the jury, to prevent any tampering or improper interference with the jury.

Where a view is required, a judge's order directing the view is sufficient (*m*).

The sheriff must, upon request, furnish either party with the names of jurors who have viewed, and return their names to the associate that they may be called as jurors at the trial (*n*).

(*h*) County Juries Act, 1825, s. 21.
(*i*) *Ibid.*, s. 22.
(*k*) *Ibid.*
(*l*) Common Law Procedure Act, 1852, s. 106.
(*m*) *Ibid.*, s. 114.
(*n*) *Ibid.*

The old process of obtaining a writ of view is now obsolete (*o*). Writ of view.

Either party may apply to the Court or the judge for a rule or order for such view or inspection, by the jury or by himself, or by his witnesses, of real or personal property, if the inspection of property be material to the proper determination of the question in dispute, and the Court or judge may, if they or he think fit, make the rule or order upon such terms, as to costs and otherwise, as shall seem fit (*p*). Either party may apply for view. Costs of view.

The summons to persons to serve as jurors at an assize must be made by the sheriff or proper officer, and was required by the County Juries Act, 1825 (*q*), to be ten days, but is now by the Juries Act, 1870, six days before the day on which such juror is to attend, and, by the same section, no juror is liable to any penalty for non-attendance, unless his summons has been served six days at least before his attendance is required (*r*). This notice is requisite also for special jurors, although the notice required by the County Juries Act, 1825 (*s*), was only three days, and that section has never been repealed in terms, though its effect has been altered by the section of the Juries Act, 1870, referred to above (*t*). Although the notice required by the Juries Act, 1870, is six days, yet the practice is to give much shorter notice in the Courts at Westminster, and jurors are summoned upon receipt by the sheriff of an informal note from the associate requesting so many jurors on a certain day. The practice as by law established, however, still prevails at assizes. Notice to jurors at assizes. Notice to special juries. Present practice as to notice.

The name of each person to be summoned and impanelled in any Court of assize or *nisi prius*, with the place of his abode, &c., must be written on a distinct Names of jurors in civil courts to

(*o*) Common Law Procedure Act, 1852, s. 114.
(*p*) Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), s. 58.
(*q*) S. 25.
(*r*) Juries Act, 1870, s. 20.
(*s*) S. 25.
(*t*) S. 20.

be delivered to associate.

piece of parchment or card, such pieces of parchment or card being as nearly as possible of equal size, and delivered to the associate or prothonotary of such Court, by the undersheriff of the county, or the secondary of the city of London (*u*).

Counties palatine, so far as the issue of commissions of assize is concerned, have ceased to exist (*v*).

Sheriffs of London and Middlesex to summon common jurors, and prepare a panel, to be annexed to the record.

With regard to common juries in London and Middlesex, the 107th section of the Common Law Procedure Act, 1852, enacts that "the sheriffs of London and Middlesex respectively shall, pursuant to a precept under the hand of a judge of any of the said superior Courts, and without any other authority, summon a sufficient number of common jurors for the trial of all issues in the superior Courts of Common Law, in like manner as before this act; and seven days before the first day of each sittings a printed panel of the jurors so summoned for the trial of causes at such sittings shall be made by such sheriffs, and kept in their offices for public inspection; and a printed copy of such panel shall be delivered by the said sheriffs to any party requiring the same on payment of one shilling, and such copy shall be annexed to the *nisi prius* record; and the said precept shall and may be in like form as the precept issued by the judges of assize, and one thereof shall suffice for each term, and for all the superior Courts; and it shall be the duty of the sheriffs respectively to apply for and procure such precept to be issued in sufficient time before each term to enable them to summon the jurors in manner aforesaid; and it shall be lawful for the several Courts, or any judge thereof, at any time to issue such precept or precepts to summon jurors for disposing of the business pending in such Courts, and to direct the time and place for which such jurors shall be summoned, and all such other matters as to such judge shall seem requisite."

Fee for panels.

For the printed panel, therefore, the fee is now one-

(*u*) County Juries Act, 1825, s. 26.
(*v*) Judicature Act, 1873, s. 99.

shilling to any party requiring one; formerly it was fifteen shillings and sixpence per panel, which was the "ancient legal fee" referred to in the County Juries Act, 1825 (*x*).

Special jurors, how ascertained.

With regard to special jurors, it should be mentioned, that the sheriff had formerly to keep a special jury list, but now, by the Juries Act, 1870 (*y*), it is provided, that, in making out the list of persons within their respective parishes and townships qualified to serve as jurors, the overseers are to specify which of such persons are, in the judgment of the overseers, qualified to serve as special jurors, and the overseers are further to specify, in every case, the nature of the qualification, and also the occupation, and the amount of rating, or assessment, of every such person.

According to law, therefore, all persons, without exception, who are qualified to serve on juries, whether common or special, are equally liable to serve on the common jury; *i.e.* the jury for common or ordinary cases, civil as well as criminal; certain other persons who are presumed to be better educated, and to have a wider experience in the affairs of life, are made liable in addition to serve on the special juries; *i.e.* juries which under the old law were to be summoned specially to try particular cases, but, as the law now stands, juries summoned specially to try a particular class of cases. A practice, however, has grown up which is distinctly contrary to the law. It was probably founded on a misapprehension of section 31, which directs the sheriff "to take from the jurors' book the names of men described as esquires, or persons of higher degree, or as merchants or bankers," and to make out a separate list. The undersheriffs and their deputies, in lieu of merely copying the names of such persons out of the jurors' book, and thus forming another list, which is clearly what was intended, struck out of the jurors' book the names of the persons qualified to serve on special juries, and only summoned the remainder on the common juries. This practice

(*x*) S. 15.
(*y*) S. 11.

has been frequently and pointedly condemned by judges of the highest position, and very recently by the now Lord Chief Justice of England (then Lord Chief Justice of the Common Pleas Division). Legally, the sheriffs of the different counties are responsible to the judges and magistrates for the due execution of the precepts issued by them for the summoning of juries. The sheriffs, however, necessarily leave the execution of duties such as these with their undersheriffs; and, therefore, the real responsibility for, and the real power to rectify, the practice, lies with those who, from time to time, undertake the office of undersheriff (*z*).

Present practice as to special jurors.

The special jurors' names are retained, in the manner above indicated, in the jurors' book, with a mark opposite their names to indicate that they are fitted for special jurors; their names are expressly forbidden to be removed from the jurors' book by reason of their being qualified to serve as special jurors in the manner prescribed by the County Juries Act, 1825, s. 31 (*a*).

Special jurors not exceeding 48 in number to be summoned to try all special jury causes at assizes.

The 108th section of the Common Law Procedure Act, 1852, enacts that "the precept issued by the judges of assize shall direct the sheriff to summon a sufficient number of special jurymen, to be mentioned therein, not exceeding forty-eight in all, to try the special jury causes at the assizes; and the persons summoned in pursuance of such precept shall be the jury for trying the special jury causes at the assizes, subject to such right of challenge as the parties are now by law entitled to; and a printed panel of the special jurors so summoned shall be made, kept, delivered, and annexed to the *nisi prius* record in like time and manner and upon the same terms as hereinbefore provided with reference to the panel of common jurors; and upon the trial the special jury shall

(*z*) In charging a grand jury, on a recent occasion, Lord Coleridge, C.J., referred to the practice existing among undersheriffs of separating jurors into two classes, special and common, with the result that special jurors rarely serve in criminal cases. This practice he declared to be contrary to the constitution and to law.

(*a*) Juries Act, 1870, s. 15.

be balloted for and called in the order in which they shall be drawn from the box, in the same manner as common jurors: provided that the Court or a judge, in such case as they or he may think fit, may order that a special jury be struck according to the present practice, and such order shall be a sufficient warrant for striking such special jury, and making a panel thereof for the trial of the particular cause."

There is no right of peremptory challenge of special jurors summoned under this section (*b*).

Nomination of special juries.

When a special jury has to be nominated, the old way (which was followed in the Tichborne case) was, for the officer of the Court to appoint a time and place for the nomination. A copy of the rule of Court and of such officer's appointment had to be served on the undersheriff of the county in which the trial was to take place, or on the secondary of the city of London, if the trial had to take place there.

Time and place.

Undersheriff or his agent to attend.

The undersheriff or his agent had to attend the officer with the special jurors' list, and all the numbers, as mentioned above; the officer had then to put all the numbers in a box, and draw out forty-eight, and check them with the numbers and names in the list. When any name was objected to by a party, or his attorney, and the objection permitted by the officer, after cause stated, another had to be drawn out in the place of the name objected to. If the whole number of forty-eight could not be obtained, then the deficiency had to be supplied from the general jurors' book (*c*).

Officer to deliver list of the names to each party, &c.

The officer must afterwards make out a list of the forty-eight names for each party, with their addresses, &c, and, after having made out such list, must return the numbers drawn out, and the numbers remaining undrawn, to the sheriff, or his agent, to be kept for future use (*d*).

(*b*) Day. C. L. Prac., 4th ed., 132. Creed *v.* Fisher, 9 Exch. 472.

(*c*) County Juries Act, 1825, s. 32.

(*d*) *Ibid.*

Jurors to be reduced to 24, &c.

The number had then to be reduced to twenty-four, from which a jury of twelve was selected.

More usual method now, as to special juries.

It is, however, not usual, now, to go through the old formalities of nominating a special jury, although this method may still be adopted in important cases; the more usual method is for the sheriff to send a list of special jurors to the associate, in an informal way; cases are then put down for trial before a special jury, without any of the tedious formalities recorded above.

Special juries for London and Middlesex.

In London and Middlesex, on the occasion of any sittings of the superior Courts, for the trial of issues, a sufficient number of special jurymen, not less than thirty for each Court, must be summoned, to try the special jury causes triable at such sittings.

The said jurymen must be summoned in pursuance of a precept under the hand of any one of the judges of the said superior Courts, in the same manner, in all respects, in which special jurymen are summoned in pursuance of precepts issued by the judges of assize.

Right of challenge.

The persons summoned in pursuance of such precept must be the jury for the trial of special jury causes at such sittings, in the Courts respectively, subject to such right of challenge as the parties are entitled to.

A printed panel of the jurors so summoned must be made and kept, and a copy delivered and annexed to the *nisi prius* record at the same time, in the same manner, and upon the same terms, as are prescribed with reference to the panel of common jurors in the case of London and Middlesex.

Special jury to be balloted for.

Upon the trial the special jury must be balloted for, and called, in the order in which they are drawn from the box, in the same manner as common jurors.

Any special juryman, summoned to serve in any one of the superior Courts, will be qualified and liable, in case of necessity, to serve in any other of the Courts, as if he had been originally summoned as one of the jurymen for the trial of special jury causes in such Court (*e*).

(*e*) Juries Act, 1870, s. 16.

Either party to an action may demand special jury.

Subject to any rules that may be made from time to time by any of the superior Courts, *any* party to an action triable at any of the sittings of the superior Courts is entitled to have the cause tried by a special jury. This provision of the 18th section of the Juries Act, 1870, extends the Act of Geo. 4, for that act only allowed a special jury upon the consent of both parties, signed by each party or his attorney; it is also an extension of the 109th section of the Common Law Procedure Act, 1852, which allowed *the plaintiff* in any county, except *London and Middlesex*, in any action, except replevin, to have the cause tried by a special jury on giving notice in writing to the defendant, at such time as would be necessary for a notice of trial, of his intention that the cause shall be so tried; and the *defendant or plaintiff in replevin* was so entitled, on giving the like notice, within the time then limited for obtaining a rule for a special jury. The Court or judge might, however, by the 109th section of the Common Law Procedure Act, 1852, at any time, order that a cause should be tried by a special jury, upon such terms as appeared fit to the Court or judge.

Payment of costs of special jury.

The party who demands, or gives notice of his intention, to try the cause by a special jury, has to pay the costs of the special jury, and is not to have any allowance for it, on taxation of costs, further than he would have been entitled to if the cause had been tried by a common jury, unless the judge, before whom the cause is tried, *shall*, immediately after the verdict, certify under his hand, upon the back of the record, that the cause was a *proper* one to be tried by a special jury (*f*). "Immediately after the verdict" has been held to mean a *reasonable time* after the verdict (*g*).

The following regulations are required to be observed, in summoning jurors—

No juror to be summoned

1. No person is to be summoned to serve on any jury or inquest, (except a grand jury), more than once

(*f*) County Juries Act, 1825, s. 34.
(*g*) Christie *v.* Richardson, 2 Dowl. N. S. 503.

more than once a year;

in any one year, unless all the jurors upon the list have been already summoned to serve during such year.

Nothing contained in this section is to prejudice the operation of any certificate granted under the County Juries Act, 1825, ss. 41 and 42.

nor exempt by being a special juror, &c.

2. No person is to be exempted from serving as a common juror by reason of his being on any special jurors' list, or being qualified to serve as a grand juror.

3. No person is to be summoned or liable to serve as a juror, in more than one Court on the same day (*h*).

Sheriff to make regulations as to attendance.

The sheriff or other officer, to whom the precept for summoning juries is addressed, may make regulations as to the attendance of jurors during the time for which they are summoned, and, in particular, as to the days on which they are to attend (*i*).

Regulations to be sent with summons.

These regulations may be sent to any juror with his summons, and when so sent constitute a part of the summons (*k*).

Taking bribes to excuse attendance on juries.

The taking of money to excuse persons from serving as jurors, is, by the 42nd section of the County Juries Act, 1825, to be visited, on examination and proof of the offence, in a summary way, by such a fine as the Court shall think fit. In a case where a summoning officer had received bribes to excuse persons from serving, and had too often summoned those who refused to pay, the Court imposed a fine of £200 (*l*).

Summoning without proper notice, &c.

The same proviso is made with regard to bailiffs and other officers who summon jurors not specified in the sheriff's warrant, or without proper notice (*m*), and although the summoning of jurors at Westminster is at the present day conducted in such a very informal way,

(*h*) Juries Act, 1870, ss. 19 and 20.
(*i*) *Ibid.*, s. 21.
(*k*) *Ibid.*
(*l*) Rex *v.* Whittaker, Cowp., 752.
(*m*) County Juries Act, 1825, s. 43.

it is by no means to be presumed that the offence of giving undue notice would be very leniently dealt with.

Jurors to be allowed a fire and refreshment.

Jurors may now, in the discretion of the judge, be allowed, at any time before giving their verdict, the use of a fire when out of Court, and reasonable refreshment at their own expense (*n*).

Payment of jurors abolished.

Formerly both special and common jurors were paid for their services; the Juries Act, 1870, makes special provision for their payment, in the 22nd section, but this section was repealed by an act passed in the following year (*o*), and common juries do not now receive any remuneration for their services.

Fees to special jurors.

No juror serving upon any special jury is allowed to take, for serving on any such jury, more than such sum of money as the judge who tries the issue shall think just and reasonable, such sum not to exceed one guinea, except in causes wherein a view is directed, and has been had by the juror, in which case, a reasonable charge for expenses will be allowed by the Court (*p*). This, it will be observed, is a return to the old practice, before the practice under the County Juries Act, 1825, was altered (*q*).

Exceptions.

An exception will, however, be made in cases of unusual length, as in the instance of the Tichborne Case, in which case an application was made to the Treasury for an increase of fees, and was granted.

Jury "*de medietate linguæ*."

It may be mentioned here, that, before the "Naturalization Act, 1870" (*r*), it was competent for an alien, if he wished it, to be tried by a jury "*de medietate linguæ*," as it was called, that is, by a jury one half of whom were competent aliens, or by as many aliens as could be procured, if there were not sufficient aliens, in the town or place where the trial was held, to make up the moiety. The idea was, no doubt, to give the alien the advantage of a

(*n*) Juries Act, 1870, s. 23.
(*o*) 34 Vict. c. 2.
(*p*) Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), s. 58.
(*q*) County Juries Act, 1825, s. 35.
(*r*) 33 Vict. c. 14.

community of language with some of those who were to try him; but this privilege was taken away by the 5th section of the Naturalization Act, 1870, and an alien is now triable in the same manner as if he were a natural born subject.

Naturalization Act, 1870, s. 5.

Disqualification or exemption when claimed.

No person can be excused from attendance as a juror, except for illness, on the ground of any disqualification or exemption, which was not claimed by him at or before the revision of the list by the justices (*s*).

A notice to this effect must be printed at the bottom of every Jury List (*t*).

We will now consider the question of exemptions from serving on juries.

Exemptions from serving on juries.

The exemptions are very numerous, and are given by various statutes, some granting exemptions *en masse*, and some granting, in detail, to certain branches of the public service.

The most important statute, on this point, that we have to consider, is the Juries Act, 1870 (*u*).

Persons exempt by Juries Act, 1870.

By the schedule of that act, the following persons are declared exempt from serving on juries:—

1. Peers.
2. Members of Parliament.
3. Judges.
4. Clergymen.
5. Roman Catholic priests.
6. Ministers of any congregation of Protestant dissenters, and of Jews, whose place of meeting is duly registered, provided they follow no secular occupation, except that of a schoolmaster.
7. Serjeants, barristers-at-law, certificated conveyancers, and special pleaders, if actually practising.
8. Members of the Society of Doctors of Law, and advocates of the civil law, if actually practising.
9. Attornies, solicitors, and proctors, if actually practising,

(*s*) Juries Act, 1870, s. 12.
(*t*) *Ibid.*
(*u*) 33 & 34 Vict. c. 77.

and having taken out their annual certificates, and their managing clerks, and notaries public in actual practice.

10. Officers of the Courts of law and equity, and of the Admiralty and Ecclesiastical Courts, including therein the Courts of Probate and Divorce, and the clerks of the peace, or their deputies, if actually exercising the duties of their respective offices.

11. Coroners.

12. Gaolers and keepers of Houses of Correction, and all subordinate officers of the same.

13. Keepers in public lunatic asylums.

14. Members and licentiates of the Royal College of Physicians in London, if actually practising as physicians.

15. Members of the Royal Colleges of Surgeons in London, Edinburgh, and Dublin, if actually practising as surgeons.

16. Apothecaries certificated by the court of examiners of the Apothecaries Company, and all registered medical practitioners, and registered pharmaceutical chemists, if actually practising as apothecaries, medical practitioners (*x*), or pharmaceutical chemists respectively.

17. Officers of the navy, army, militia, and yeomanry, while on full pay.

18. The members of the Mersey Docks and Harbour Board.

19. The master, wardens, and brethren of the Corporation of Trinity House of Deptford Strond.

20. Pilots licensed by the Trinity House of Deptford Strond, Kingston-upon-Hull, or Newcastle-upon-Tyne, and all masters of vessels in the buoy and light service employed by either of those corporations, and all pilots licensed under any act of parliament, or charter, for the regulation of pilots.

21. The household servants of her Majesty, her heirs and successors.

22. Officers of the post office, commissoners of customs, and officers, clerks, or other persons acting in the manage-

(*x*) Previously exempt by 21 & 22 Vict. c. 90, s. 35.

ment or collection of the customs, commissioners of Inland Revenue, and officers or persons appointed by the commissioners of Inland Revenue, or employed by them, or under their authority or direction, in any way relating to the duties of Inland Revenue.

23. Sheriffs' officers.

24. Officers of the rural and metropolitan police.

25. Magistrates of the metropolitan police courts, their clerks, ushers, doorkeepers, and messengers (*y*).

26. Members of the council of the municipal corporation of any borough, and every justice of the peace assigned to keep the peace therein, and the town clerk and treasurer, for the time being, of every such borough, so far as relates to any jury summoned to serve in the county where such borough is situate.

27. Burgesses of every borough in and for which a separate Court of Quarter Sessions shall be holden, so far as relates to any jury summoned for the trial of issues joined in any Court of General or Quarter Sessions of the peace in the county wherein such borough is situate.

28. Justices of the peace, so far as relates to any jury summoned to serve at any Sessions of the peace, for the jurisdiction of which he is a justice (*z*).

29. Officers of the Houses of Lords and Commons.

Commissioners and officers of excise, &c., exempt.

No commissioner or assistant commissioner of excise, or officer of excise, or person employed in the collection, or management of, or accounting for, the revenue of excise, or any part of it, is to serve on any jury or inquest during the time of his occupying such office or being so employed (*a*).

Officers of inland revenue exempt.

This exemption was afterwards extended to officers and persons appointed by the commissioners of Inland Revenue, or employed by them, or under their authority or direction, in any way relating to any of the duties under their care

(*y*) Also by 2 & 3 Vict. c. 71, s. 4.
(*z*) Also by County Juries Act, 1825, s. 48,
(*a*) 7 & 8 Geo. 4, c. 53, s. 11.

or management, so long as they continue in and exercise their office or employment (*b*).

Commissioners and officers of customs exempt.

In addition to those above-mentioned, exemption is now extended to commissioners, officers, clerks, and other persons acting in the management or service of the customs, and section 12 of the Juries Act, 1870 (*c*), is not to apply to them (*d*).

Section 12 requires disqualification or exemption to be pleaded before the revision of the list.

Post-office officials exempt.

No Postmaster-General nor any officer of the post-office can be compelled to serve on any jury or inquest (*e*).

Income tax commissioners exempt.

Every person acting as a commissioner in the execution of the income tax acts, to whom a certificate thereof has been granted by the commissioners of Inland Revenue, under the thirty-fifth section of the 5 & 6 Vict. c. 35, is exempt, so long as such certificate continues in force, from serving on juries in the county where he dwells (*f*).

Army reserve exempt.

Men enrolled, and officers, and non-commissioned officers, appointed under the Reserve Force Act, 1867, are also exempt from serving on juries (*g*).

Aldermen of London.

By a charter of Edward the 4th, aldermen of the city of London are exempt from serving on juries out of London.

Aliens exempt with exceptions.

Aliens who have been domiciled in England or Wales for ten years or upwards, if in other respects duly qualified, are qualified and liable to serve on juries and inquests, but otherwise no man who is not a natural born subject is qualified to serve on juries (*h*).

Inhabitants of Westminster

The inhabitants of the city and liberty of Westminster are exempt from serving on juries at the sessions of the county of Middlesex (*i*).

Convicts

Convicts, unless they have obtained a free pardon, and

(*b*) 16 & 17 Vict. c. 59, s. 17, and Juries Act, 1870, s. 12.
(*c*) 33 & 34 Vict. c. 77.
(*d*) 39 & 40 Vict. c. 36, s. 9.
(*e*) 7 Will. 4 & 1 Vict. c. 33, s. 12. This section is in effect re-enacted in the Juries Act, 1870.
(*f*) 34 & 35 Vict. c. 103, s. 30.
(*g*) 30 & 31 Vict. c. 110, s. 17.
(*h*) 33 & 34 Vict. c. 77, s. 8.
(*i*) *Ibid.*, s. 9.

disqualified.

outlaws, are also disqualified from serving on juries or inquests in any Court whatsoever (*k*).

Inquest on prisoner dying in prison.

No officer of the prison, nor any prisoner confined therein, can be a juror on an inquest upon the body of any prisoner dying in such prison (*l*).

Juries in Ripon.

Juries in Ely.

Juries in Ripon, which were formerly governed by the laws and regulations of that liberty, which was in the secular jurisdiction of the archbishop of York, and juries in Ely, which were in the secular jurisdiction of the bishop of Ely, were, by 6 & 7 Will. 4, c. 87 (*m*), brought within the jurisdiction of the counties in which they are respectively situate.

Where full jury does not appear, number to be made up out of bystanders.

Where a full jury does not appear before any Court of assize or *nisi prius*, &c., or where, after the appearance of a full jury, by challenge of the parties, the jury is likely to remain untaken for default of jurors, every such Court, upon request made for the Crown by any one authorised or assigned by the Court, or by the parties or their attornies, must command the sheriff, or other officer to whom the return belongs, to name and appoint, as often as need be, so many other able men of the county, then present, as shall make up a full jury (*n*).

Tales men.

The surplus jurors taken from the bystanders are called "*tales*" men, and the name is derived from "*tales de circumstantibus.*"

Tales men in special juries.

Tales men, in case of special juries, must be taken from the common jury panel if possible (*o*).

(*k*) 33 & 34 Vict. c. 77, s. 10.
(*l*) 28 & 29 Vict. c. 126 (Prisons' Act, 1865), s. 48.
(*m*) Ss. 11, 15, and County Juries Act, 1825, s. 3.
(*n*) County Juries Act, 1825, s. 38.
(*o*) *Ibid.*

CHAPTER XIII.

DUTIES OF SHERIFF AT EXECUTION OF CRIMINALS.

Execution of criminals.

The duties of the sheriff in the superintendence of the execution of criminals are now regulated by the Capital Punishment Amendment Act, 1868 (*a*).

Execution within prison walls.

This act requires the sentence of death to be carried into effect within the walls of the gaol where the prisoner is confined (*b*), and that the sheriff, the gaoler, the chaplain, the surgeon, and such other officers of the prison as the sheriff may require, shall be present at the execution (*c*).

Justices of peace, &c., may be present.

Any justice of the peace for the county, borough, or other jurisdiction, to which the prison belongs, and such relatives of the prisoner, or other persons, as it seems to the sheriff or the visiting justices of the prison proper to admit within the prison for the purpose, may also be present at the execution (*d*).

Surgeon to certify death, and declaration to be signed by sheriff, &c.

As soon as may be, after the sentence of death has been executed, the surgeon of the prison must examine the body of the prisoner, and ascertain the fact of death, and ign a certificate of the fact, and deliver such certificate) the sheriff (*e*). The sheriff, and the gaoler and chaplain the prison, and such justices and other persons present, any), as the sheriff may require or allow, must also

(*a*) 31 Vict. c. 24.
(*b*) *Ibid.*, s. 2.
(*c*) *Ibid.*, s. 3.
(*d*) *Ibid.*
(*e*) *Ibid.*, s. 4.

sign a declaration, to the effect that the sentence of death has been executed on the prisoner (*f*).

Coroner's inquest on the body.

The coroner of the jurisdiction to which the prison belongs, where the sentence of death has been executed on any prisoner, must, within twenty-four hours after the execution, hold an inquest on the body of the prisoner; the jury, at the inquest, must inquire into and ascertain the identity of the body, and whether the sentence of death was duly executed on the prisoner; the inquisition must be in duplicate, and one of the originals must be delivered to the sheriff (*g*).

No officer of the prison, nor any prisoner therein confined, may in any case be a juror on the inquest (*h*).

Secretary of state to make rules, &c.

One of her Majesty's principal Secretaries of State must, from time to time, make such rules and regulations as he may think fit, for the control of executions of the sentence of death, and for the guarding against abuse, &c., as well as for making known outside the prison that the execution is taking place (*i*).

Regulations issued by Home Office.

In fulfilment of the requirements of the 7th section, the effect of which is given above, the following regulations are now in force, but are subject at any time to revision, if any alteration should seem advisable.

1. All executions must take place at 8 a.m. on the Monday following the third Sunday after sentence.
2. A black flag must be hoisted at the moment of execution on a conspicuous part of the prison, and remain there one hour.
3. The prison, parish, or other bell, must toll a quarter of an hour before, and a quarter of an hour after, the execution.

Formerly executions were fixed as early as the second day after the conviction, or any other time fixed by the

(*f*) 31 Vict. c. 24, s. 4.
(*g*) *Ibid.*, s. 5.
(*h*) *Ibid.*
(*i*) *Ibid.*, s. 7.

judge. In the case of Rex *v.* Antrobus (*k*), it is recorded that two prisoners were convicted on Wednesday, the 6th of August, and then and there sentenced to be executed on Friday, the 8th (*l*).

Penalty for signing false certificate, &c.

If any person wilfully signs a false certificate or declaration, under this act, he will be guilty of a misdemeanour, and, on conviction, liable, at the discretion of the Court, to imprisonment for any term not exceeding two years, with or without hard labour, and with or without solitary confinement (*m*).

Certificate to be sent to secretary of state, &c.

Every certificate and declaration, and the duplicate of the inquisition under this act, must be sent, with all convenient speed, by the sheriff, to one of her Majesty's principal Secretaries of State; printed copies of the same must as soon as possible be exhibited, and kept exhibited for twenty-four hours at least, on or near the principal entrance of the prison, where the sentence of death was executed (*n*).

Undersheriff, &c., may act for sheriff, &c.

The duties and powers under the act imposed on, or vested in, the sheriff, may be performed by, or vested in, the undersheriff, or other lawful deputy, acting in his absence and with his authority, and any other officer charged in any case with the execution of the sentence of death (*o*).

Warrant to sheriff to execute sentence.

If the prisoner is in the custody of the sheriff, the sheriff's authority to execute the sentence of the Court is contained in the open pronouncing and entering of the judgment, without any formal writ or precept, and, although a calendar of prisoners, with a minute of the sentence in the margin, is signed by the judge, this is merely to be regarded as a memorandum, and not as a

(*k*) 2 Ad. & E. 786.

(*l*) It is related of a late judge of the superior Courts at Westminster, who was of Irish extraction, that, a few years ago, in sentencing a prisoner, he observed, "Had you been convicted of this offence *five and twenty years ago*, you would have been hanged *to-morrow morning!*"

(*m*) 31 Vict. c. 24, s. 9.

(*n*) *Ibid.*, s. 10.

(*o*) *Ibid.*, s. 11.

Not necessary for calendar to be signed.

warrant to the sheriff (*p*). It is recorded of one learned judge that he would never sign any calendar, but gave his orders openly in Court, with a charge to the sheriff and gaoler to take notice of them (*q*).

Proper officer to execute sentence.

Formerly the proper officer, in default of an express order of the judge, to execute the sentence, was the officer who had the legal custody of the prisoner, but the judge might authorise another officer to execute, such authority being given by express order, directing the second officer to execute, and sufficiently explicit for the first officer to be bound by it to surrender the custody of the prisoner to the second (*r*). By the Capital Punishment Amendment Act, 1868, the question of the person to execute sentence is not touched, and would therefore remain as before; but, though the legal custodian of the prisoner is the sheriff, the actual execution of the sentence is performed by a hired executioner, for whom the sheriff is responsible.

The city of Chester.

Persons sentenced to death in the city of Chester were formerly executed by the city sheriff, although, prior to this jurisdiction being assumed by the city sheriff, the county sheriff had performed the duty; but by the 30 & 31 Vict. c. 36, s. 4, this duty was again laid upon the county sheriff, and the statute which conferred this power upon the city sheriff (*s*) has since been repealed (*t*).

Reprieve in case of pregnant woman.

The execution of a sentence of death is sometimes suspended, and, in obedience to that common ordinance of all civilized law which refuses to put to death a creature who in dying would not die alone, but "bears within a second principle of life," is always suspended in the case of a woman who pleads that she is quick with child, until it has been proved whether her plea is, or is not, a true one. In such a case, a jury of matrons, or discreet women is sworn to ascertain the truth or falsity of her plea. It is not, however, sufficient that she should be pregnant, and

Jury of matrons.

(*p*) See Rex v. Antrobus, 2 Ad. & E. 788.
(*q*) *Ibid.*
(*r*) *Ibid.*
(*s*) 5 & 6 Will. 4, c. 1.
(*t*) Stat. Law Rev. Act, 1874.

in a recent case (*u*) the judge refused to allow a jury of matrons to be sworn except on the distinct allegation that the prisoner was quick with child. Should they find by their verdict that she is quick with child, which, from merciful considerations, they frequently do on very slender evidence, the execution is stayed until the birth of the child, or until the plea is disproved by lapse of time; as time generally brings mercy in such cases, the sentence of death is, more often than not, commuted by the Crown. In this case, it is perhaps to be regretted, that the course which is now invariably pursued in the case of the issue of the writ *de ventre inspiciendo*, of obtaining a surgeon's certificate, is not substituted for the present method. Quite recently, upon a verdict in the negative found by the jury of matrons, certain members of the faculty were called in by the proper authorities, and upon their certificate that the convict was *enceinte*, execution of the sentence was respited.

Writ "*de ventre inspiciendo.*"

The expenses of the execution of the sentence of death will be defrayed by the treasurer of the county, or place, in which the crime was committed, and this would apparently be the case where the indictment has been removed, by writ of *certiorari*, into the Queen's Bench Division (*v*).

Expenses of execution of sentence of death.

(*u*) Reg. *v.* Catherine Webster.
(*v*) 19 & 20 Vict. c. 16, s. 28.

CHAPTER XIV.

SHERIFF'S DUTIES AS TO INTERPLEADER PROCEEDINGS.

Inter-pleader proceed-ings.

It very often happens that difficulties arise in the execution of process against goods and chattels, as in several cases previously cited, by reason of claims made to such goods and chattels by trustees of bankrupts, and other persons who are not the parties against whom the process has issued, whereby the sheriff was formerly exposed to the hazard and expense of an action.

Relief of sheriffs and other officers in execution of process against goods and chattels.

The statute 1 & 2 Will. 4, c. 58, s. 6, after reciting the above reason, proceeds to state that it is reasonable to afford relief and protection, in such cases, to sheriffs and other officers, and goes on to provide "that when any such claim shall be made to any goods or chattels taken or intended to be taken in execution, under any such process, or to the proceeds or value thereof, it shall and may be lawful to and for the Court from which such process issued, upon application of such sheriff, or other officer, made before or after the return of such process, and as well before as after any action brought against such sheriff, or other officer, to call before them, by rule of Court, as well the party issuing such process as the party making such claim, and thereupon to exercise for the adjustment of such claims, and the relief and protection of the sheriff, or other officer, all or any of the powers and authorities herein-before contained" (*i.e.*, staying proceedings in the action and ordering another action or trial, or, with consent, deciding the matter in a summary way, or, in the event of the non-appearance of the third party claiming the goods,

barring his claim against the original defendant, and making an order between the parties, or, if the judge should think the matter more fit for the decision of the Court, referring it), "and make such rules and decisions as shall appear to be just, according to the circumstances of the case; and the cost of all such proceedings shall be in the discretion of the Court."

Rules, orders, &c., made in pursuance of this act may be evidence.

The 7th section goes on to provide that all rules, orders, matters, and decisions, made and done in pursuance of this act, except only the *affidavits* to be filed, may, together with the declaration in the cause (if any), be entered of record, with a note in the margin stating the true date of such entry, that they may be evidence in future if required, and to secure and enforce the payment of costs directed by any such rule or order; every such rule or order so entered is to have the force and effect of a judgment, except only as to becoming a charge on any lands, tenements, or hereditaments (*a*); in case any costs shall not be paid within fifteen days after notice of the taxation and amount, given to the party ordered to pay them, his agent or attorney, execution may issue for them by *fi. fa.*, together with the costs of entry and execution; such writ or writs may bear *teste* on the day of issue, whether in term or vacation; the sheriff or other officer executing any such writ will be entitled to the same fees, and no more, as upon any similar writ grounded upon the judgment of the Court.

Provision as to costs.

Execution may issue on non-payment.

Sheriff's fees.

The statutes 1 & 2 Vict. c. 45, the Common Law Procedure Act, 1854 (*b*), and the Common Law Procedure Act, 1860 (*c*) (more especially the first and last of these statutes), extend the provisions of the 1 & 2 Will. 4, c. 58.

Any judge may exercise powers for relief of sheriffs.

The 2nd section of the 1 & 2 Vict. c. 45, provides that any judge may exercise such powers for the relief of sheriffs, &c., as may by virtue of the 1 & 2 Will. 4, c. 58, s. 6, be exercised by the several Courts.

(*a*) This exception is omitted in the Common Law Procedure Act, 1860, s. 18.

(*b*) 17 & 18 Vict. c. 125.

(*c*) 23 & 24 Vict. c. 126.

When interpleader may be granted.

The 12th section of the Common Law Procedure Act, 1860, allows an interpleader to be granted, although the titles of the claimants to the money, goods, &c., in question have not a common origin, but are adverse to and independent of each other.

Court may direct sale of goods seized in execution.

The 13th section provides that when goods or chattels have been seized in execution by a sheriff, or other officer, under process of the Courts, and some third person claims to be entitled, under a bill of sale or otherwise, to such goods and chattels, by way of security for debt, the Court or a judge may order a sale of the whole or part of them, upon such terms as to payment of the whole or part of the secured debt, or otherwise, as they or he may think fit, and may direct the application of the proceeds of such sale, in such manner and upon such terms as may seem just.

Court to decide summarily in certain cases.

The 14th section gives power to the Court or judge, wherever, from the smallness of the amount in dispute, or of the value of the goods seized, it appears desirable to do so, at the request of either party, to determine the merits of the case, and the respective claims of the parties, in a summary manner, upon such terms as appear just, with rules and orders as to costs. Previous to this enactment, the consent of both parties was required to give a Court summary jurisdiction.

Special case.

By the 15th section, in all cases of interpleader proceedings, where the question is one of law, and the facts are not in dispute, the judge may decide the question, without directing an action or issue, or may order that a special case be stated for the opinion of the Court.

Proceedings on special cases.

By the 16th section, proceedings on special cases are to be as nearly as possible the same as upon a special case stated under the Common Law Procedure Act, 1852 (*d*), as to the proceedings in the Court below (*e*), and under the Common Law Procedure Act, 1854, as to appeal (*f*).

(*d*) 15 & 16 Vict. c. 76.
(*e*) Common Law Procedure Act, 1852, ss. 46—48.
(*f*) *Ibid.*, 1854, s. 32.

The judgment in any such action as may be directed by the Court or judge, in any interpleader proceedings, and the decision of the Court or judge in a summary manner, are, by the 17th section, (which is a re-enactment of the 1 & 2 Will. 4, c. 58, s. 2), to be final and conclusive against the parties and all persons claiming by, from, or under them. Judgment and decision, when final.

The Court had no power under the statute 1 & 2 Will. 4, c. 58, to dispose summarily of the matter in dispute between the parties who appeared on the sheriff's rule, without the consent of both the plaintiff and the claimant (*f*).

The Court has jurisdiction to review an interpleader order made by a judge, under 1 & 2 Vict. c. 45, s. 2 (*g*).

Where, however, a judge disposes summarily of an interpleader order, *by consent of the parties*, under 1 & 2 Will. 4, c. 58, s. 6, and 1 & 2 Vict. c. 45, s. 2, the Court has no jurisdiction to review its decision (*h*).

Goods of a debtor seized by a sheriff under an execution having been claimed by a third party, the sheriff brought the plaintiff and the claimant before a judge, who decided that the property belonged to the claimant, and ordered the plaintiff to pay the costs of the claimant and of the sheriff, the goods to be delivered up to the claimant. The order was not stated on the face of it to have been made by consent, but was, in fact, so made, and the plaintiff paid the costs accordingly; having, however, discovered that there was other property in the debtor's possession, not belonging to the claimant, he ruled the sheriff to return the writ, and on his returning *nulla bona*, brought an action for a false return. Here it was held that the judge had no power under 1 & 2 Will. 4, c. 58, 1 & 2 Will. 4, c. 58, s. 6, requires consent in summary cases.

(*f*) Curlewis *v.* Pocock, 5 Dowl. 381. Harrison *v.* Wright, 13 M. & W. 816; 2 D. & L. 695; 14 L. J. Exch. 196.

(*g*) Teggin *v.* Langford, 2 D., N. S., 467; 10 M. & W. 556; 12 L. J. Exch. 76. See, however, p. 193.

(*h*) Shortridge *v.* Young, 12 M. & W. 5; 1 D. & L. 416; 7 Jur. 996; 13 L. J. Exch. 30.

s. 6, to make such an order, without the consent of the parties (*i*).

Although, however, the order was bad, as no consent appeared on the face of it, it was still held to be binding on the parties, as a decision of the judge in the nature of an award, and made by consent (*k*).

Rules, orders, &c., made in interpleader proceedings, may, by the 18th section of the Common Law Procedure Act, 1860, be entered of record and made evidence, as by the 7th section of the 1 & 2 Will. 4, c. 58, enacted.

By Order I., r. 2, of the Judicature Act, 1875, it is provided: "With respect to interpleader, the procedure and practice now used by Courts of Common Law under the Interpleader Acts, 1 & 2 Will. 4, c. 58, and 23 & 24 Vict. c. 126, shall apply to all actions and all the Divisions of the High Court of Justice, and the application by a defendant shall be made at any time after being served with a writ of summons and before delivering a defence.

Common law courts formerly had no equitable jurisdiction.

In cases of interpleader for the relief of sheriffs, where the claim was equitable, the Common Law Courts had formerly no jurisdiction (*l*).

Thus, in the case of Roach or Rouch *v.* Wright (*m*), the Court refused to grant an interpleader rule on behalf of a sheriff who had been served with notice of a claim to goods taken in execution, made by a party who claimed a share in them as one of the next of kin to a person deceased, to whom the defendant had taken out administration, and who had previously obtained an injunction in Equity against the defendant's disposing of the property taken in execution. In recent cases, however, this rule has been disregarded.

Rusden *v.* Pope.

Thus, in the case of Rusden *v.* Pope (*n*), Martin, B., observes, "the other question is a formal one, whether the

(*i*) Harrison *v.* Wright, 13 M. & W. 816; 2 D. & L. 695; 14 L. J. Exch. 196.
(*k*) *Ibid.*
(*l*) See Roach or Rouch *v.* Wright, 8 M. & W. 155; 1 D., N. S., 56; 5 Jur. 755.
(*m*) *Ibid., supra.* (*n*) L. R. 3 Exch. 269.

plaintiff is to be driven into Equity to establish his right? I agree that he could not maintain an action, but the money is in Court, and the question is, who is lawfully and equitably entitled to receive it? And this question I will not refuse to try when it is submitted to us for decision." This principle was, with one dissentient, accepted and adopted by the Court. Equitable jurisdiction claimed.

In the case of Duncan *v.* Cashin (*o*), too, where furniture had been settled upon a married woman to her separate use, and she had renewed from time to time such as had become worn out, with money also her separate property, and the sheriff seized the whole for a debt of her husband, it was held that as a Court of Equity would, under the circumstances, have restrained the sheriff from selling the accretions as well as the original furniture, a Court of law, upon an interpleader summons, must take notice of the equitable claim of the wife's trustee, and direct the sheriff to withdraw. Duncan *v.* Cashin.

This ruling was further followed in a later case (*p*), where it was held, that, in a case where a Court of Equity would decree goods to be the goods of an execution creditor, the same result must follow upon an interpleader issue in a Court of law. Engelback *v.* Nixon.

But, by the 24th section of the Judicature Act, 1873, which confers upon the Common Law Courts the right to give equitable relief in all cases where the Courts of Equity had previously exclusive jurisdiction, the question was finally set at rest. Judicature Act, 1873, s. 24.

It was formerly held that a judge in chambers had no power to grant relief (*q*), but the cases in which this restriction was laid down have been impliedly overruled by subsequent decisions in which the application has been permitted, or if refused, has not been refused on the ground of a want of power in a judge at chambers to grant relief (*r*).

(*o*) L. R. 10 C. P. 554.
(*p*) Engelback *v.* Nixon, L. R. 10 C. P. 645.
(*q*) Brackenbury *v.* Laurie, 3 Dowl. 180, per Alderson, B.
(*r*) Webster *v.* Delafield, 7 C. B. 187.

Application, how made.

The application for relief might formerly be to the Court, or a judge in chambers, but by Rule IV. of the Supreme Court, November, 1878, masters may exercise all such authority and jurisdiction, as may be exercised by a judge at chambers, in respect of interpleader, except where all parties concerned consent to a final determination of the questions in dispute without a jury or special case, and except where the sum in dispute is under £50, and one of the parties desires such a determination. In such cases the question shall be determined by the judge, unless the parties agree to refer it to the master. A master had no jurisdiction before this rule. A district registrar has the same powers as a master (*s*).

Affidavit.

The application should be accompanied by an *affidavit* setting forth the facts of the case, *i.e.*, the seizure of the goods, the fact that they or the money are or is in the possession of the sheriff, and that a claim has been made to the goods (*t*).

Affidavit need not deny collusion.

Formerly the *affidavit* was required to deny collusion (*u*), but now, in a number of cases, it has been laid down that no affidavit in support of an application for relief, by a sheriff, or other officer, need deny collusion (*x*).

An *affidavit* to ground an interpleader rule should show that the application is made before plea, but the objection may be waived, or the *affidavits* amended (*y*).

An *affidavit* is not, however, indispensable, by a claimant himself, in support of his claim (*z*), and where a sheriff having seized goods under a *fi. fa.*, and a claim having

(*s*) R. S. C., 1875, Order XXXV. r. 4.

(*t*) See Webster *v.* Delafield, 7 C. B. 187; 6 D. & L. 597; 13 Jur. 635; 18 L. J. C. P. 186; see further, Powell *v.* Locke, 8 Ad. & E. 315; 1 H. & W. 281; 4 N. & M. 852.

(*u*) Bond *v.* Woodhall, 4 Dowl. 351—Parke, B.; 2 C. M. & R. 601; 1 Tyr. & G. 11.

(*x*) Donniger *v.* Hinxman, 2 Dowl. 424. Dobbins *v.* Green, 2 Dowl. 509. Bond v. Woodhall, 2 C. M. & R. 601; 4 Dowl. 351; 1 Tyr. & G. 11.

(*y*) Frost *v.* Heywood, 2 D., N. S., 801; 7 Jur. 179; 21 L. J. Exch. 242.

(*z*) Webster *v.* Delafield, 7 C. B. 187; 6 D. & L. 597; 13 Jur. 635; 18 L. J. C. P. 186.

been made on behalf of A., who was resident in Paris, upon an interpleader summons, A.'s attorney made an affidavit that he had been informed, and, from documents, vouchers, and receipts in his possession, believed, that the goods seized were the *bonâ fide* property of A., it was held that this was a sufficient maintaining of the claim to justify the judge, (or the Court, on the judge's refusal), in directing an issue (*a*). From this judgment V. Williams, J., dissented, but mainly on the ground that the statute requires that the claimant shall state his claim sufficiently (which he distinguished from stating a sufficient claim), and it did not appear to him that the judge whose order was called in question (*b*) had been satisfied that the claim was sufficiently stated.

In an elaborate judgment in the same case, Maule, J., observed that the statute nowhere says that the *claim* shall be made by *affidavit*. "This," said the learned judge, "was an application made on behalf of the sheriff under section 6 (*c*), but I do not think that the power of the judge to bar the claimant differs in the case of the sheriff from that of any other person." The 1st section (*d*) enacts that upon application made by or on behalf of any defendant, such application being made after declaration, and before plea, "by *affidavit* or otherwise," showing that such defendant does not claim any interest in the subject matter of the suit, but that the right thereto is claimed or supposed to belong to some third party, who has sued, or is expected to sue for the same, and that such defendant does not in any manner collude with such third party, but is ready to bring into Court or to pay or dispose of the subject matter of the action in such manner as the Court may direct. Then the statute proceeds to enact that it shall be lawful for the Court, &c., to call upon such third party to appear and to state the nature and particulars of

Judgment of Maule, J.

(*a*) Webster *v.* Delafield, 7 C. B. 187; 6 D. & L. 597; 13 Jur. 695; 18 L. J. C. P. 186.
(*b*) Coltman, J.
(*c*) 1 & 2 Will. 4, c. 58.
(*d*) *Ibid.*

his claim, and to maintain or relinquish his claim, &c., the Court meanwhile to stay proceedings in such action, and finally to order such third party to make himself defendant in the same or some other action, or to proceed to trial on one or more feigned issues, &c. There may also be a decision by consent of the parties. "It seems," continued Mr. Justice Maule, "to have been held, though I think that doubtful, that the appearance and statement of nature of claim must be by *affidavit*.

"The power of barring applies only if the party shall not appear, or, appearing, shall refuse or neglect to comply with the rule made after appearance.

"Here there has been no decision by consent upon the merits, and no order after appearance. Therefore no case has arisen in which a judge had power to bar the claimant.

"The case of Powell *v.* Locke has been mentioned. In that case it was decided that an *affidavit* was necessary; nothing, however, was said as to the claimant's being barred. I do not think the Court at all intended to go into the consideration of whether, contrary to the words and spirit of the act, they should take away from the party a right she had, and subject her to a jurisdiction which there was no necessity to subject her to.

"Even assuming that I am wrong in considering that no *affidavit* at all is necessary, there is certainly nothing in the act which requires the *affidavit* to be made by the claimant in person."

Procedure. Upon a motion in an interpleader rule, the *affidavits* should be entitled in the original cause, and not in the names of the parties to the interpleader rule (*e*).

Appearance without copies of *affidavit*. When, further, the sheriff obtains a rule for relief, the claimants may appear, without taking office copies of the *affidavits*, on which the rule was obtained (*f*), and it is not necessary for an execution creditor, appearing upon a motion, to produce an *affidavit* (*g*).

(*e*) Pariente *v.* Pennell, 7 Scott. N. R. 834. Levi *v.* Coyle, 2 D., N. S., 932; 7 Jur. 725—B. C.—Wightman.

(*f*) Mason *v.* Redshaw, 2 Dowl. 595.

(*g*) Angus *v.* Wootton, 3 M. & W. 310; 1 H. & H. 46.

When the sheriff applies for protection, no one has a right to be heard against the rule, unless he is called upon by the rule, though he is in fact a claimant; and if he is called on in one character, he cannot appear in another (*h*). No one to be heard against the sheriff.

Where there are conflicting claimants to property seized under a *fi. fa.*, the defendant having become bankrupt, the Court will interfere and protect the sheriff (*i*). Relief in bankruptcy.

Where the sheriff is not relievable under the statute, there is nothing in the act to prevent him from moving the Court to enlarge the time for making his return to the writ. Where sheriff not relievable.

The sheriff should be in possession of the matter in dispute, in order that he may be able to obey the order of the Court made with regard to it; so where goods have been seized and sold under an execution, and the proceeds paid over to the execution creditor, the sheriff is not entitled to relief under the Interpleader Acts, although he may have had no notice of the claim until after the sale (*k*). This would be the case even where the sheriff is willing to bring a similar amount into Court (*l*). The reason of this is obvious: the granting of a rule under the Interpleader Act will only bar the claimant as to the money in Court, and if the money has been already paid over to another, the sheriff cannot bring it into Court; the bringing of a similar amount into Court will not improve his position with regard to the money previously paid. Sheriff to be in possession of goods, &c. Reason of this.

It would of course follow, for similar reasons, that, where the sheriff has gone to the defendant's premises to take the goods under a *fi. fa.*, but has withdrawn without

(*h*) Clarke *v.* Lord, 2 Dowl. 55.

(*i*) Parker *v.* Booth, 1 M. & Scott, 156. Northcote *v.* Beauchamp, 1 M. & Scott, 158.

(*k*) Inland *v.* Bushell, 5 Dowl. 147; 2 H. & W. 118. Anderson *v.* Calloway, 1 Dowl. 636; 1 C. & M. 182. S. C. *nom.* Chalon *v.* Anderson, 3 Tyr. 237.

(*l*) Scott *v.* Lewis, 4 Dowl. 259; 2 C. M. & R. 289; 1 Gale, 204; 5 Tyr. 1083. See also the judgment of Blackburn, J., in Cooper *v.* Asprey, 3 B. & S. 932 (1863), where he says, "In order to exercise this jurisdiction, it is necessary that the Court should have control over the fund." The contrary case of Day *v.* Carr, 7 Exch. 883, is referred to in every judgment in this case, and practically overruled.

seizing them, upon receiving notice of an adverse claim, and has not the goods in his possession when he applies to the Court, the Court will not entertain his application for relief (*m*).

Where property would be injured by seizure.

But it may be that the property is of such a nature that it might be injured by seizure, and in this case the sheriff would be right in applying for the order before seizure. An actual seizure of goods by the sheriff is, therefore, not necessary; in order to give the Court jurisdiction, an intended seizure will be sufficient. In the case of Day v. Carr (*n*), Pollock, C.B., says: "I do not assent to the doctrine that the sheriff must seize before he makes the application. The language of the 6th section is, 'When any claim shall be made to any goods or chattels taken, or intended to be taken in execution,' &c. In the case of Holton v. Guntrip the sheriff did not mean to seize, for he withdrew upon the claim being set up." Such jurisdiction will be rarely exercised (*o*).

Sheriff to retain the whole property.

The sheriff, to be entitled to the interference of the Court, ought, further, to retain possession of *all* the property, until the Court has directed how it is to be disposed of, as, by parting with a portion of the goods, the object of the act might be as much defeated as by parting with the whole (*p*).

Sheriff to be a disinterested party.

In order to obtain relief under the Interpleader Acts, the sheriff should be a disinterested party; when the sheriff is placed in circumstances which give him an interest on either side, the Court will not relieve him (*q*). Where, therefore, the undersheriff's partner appeared to be concerned for some of the parties, the Court refused to

(*m*) Holton v. Guntrip, 3 M. & W. 145; 6 Dowl. 130; M. & H. 324.

(*n*) 7 Exch. 883.

(*o*) Lea v. Rossi or Rossay, 11 Exch. 13; 1 Jur. N. S. 334; 24 L. J. Exch. 280.

(*p*) Braine v. Hunt, 2 Dowl. 891; 2 C. & M. 418.

(*q*) Duddin v. Long, 1 Scott. 281; 1 Bing. N. C. 299; 3 Dowl. 139. Braddick v. Smith, 9 Bing. 84. Smith v. Wheeler, 3 Dowl. 431. Grant v. Fry, 4 Dowl. 135. Ostler v. Bower, 4 Dowl. 605; 1 H. & W. 653.

interfere in favour of the sheriff (*r*). So, too, if the undersheriff is the execution creditor, or the partner in business of the execution creditor, he is not entitled to relief (*s*). But the fact that a sheriff had, down to the seizure of the execution debtor's goods, acted as the attorney of a claimant, and had given him notice of the execution, is not alone sufficient to prevent his calling on the parties to interplead (*t*), so long as he has not acted dishonestly, nor his conduct prejudiced either party (*u*).

Sheriff having been attorney to one of the parties.

Nevertheless, where an undersheriff, who was acting as attorney for certain creditors of the defendant, informed them of a *fi. fa.*, at the suit of the plaintiff, having been placed in his hands to execute, by which means the issuing of a *fiat* in bankruptcy against the defendant was accelerated, and the plaintiff's execution thereby defeated, the Court refused to grant the sheriff relief (*x*).

When the sheriff has taken an indemnity from the plaintiff, he is not entitled to relief; where, therefore, the undersheriff was himself thought to be the plaintiff, although the sheriff had made an *affidavit* denying collusion with either party, it was held that the sheriff, being indemnified against default by the undersheriff, was not entitled to relief; this judgment was maintained when it transpired that the son of the undersheriff was the plaintiff, and not the undersheriff himself, for the sheriff could not be considered to be without bias (*y*).

When sheriff is indemnified he is not entitled to relief.

Where a sheriff seized goods in execution which were under distress for rent due to the landlord, the Court refused to grant him relief, though he had applied for indemnity to the execution creditor, which had been refused. The sheriff should have inquired whether rent was due, and if due, should have satisfied it (*z*).

Where sheriff seizes goods under distress for rent.

(*r*) Duddin *v.* Long, 1 Scott, 281; 1 Bing. N. C. 299; 3 Dowl. 139.
(*s*) Ostler *v.* Bower, 4 Dowl. 605; 1 H. & W. 653.
(*t*) Holt *v.* Frost, 3 H. & N. 821; 28 L. J. Exch. 55.
(*u*) *Ibid.*
(*x*) Cox *v.* Bahne, 2 D. & L. 718; 9 Jur. 182; 14 L. J. Q. B. 95—B. C.—Williams. See also Tucker *v.* Morris, 1 Cr. & M. 73.
(*y*) Ostler *v.* Bower, *vide supra.*
(*z*) Haythorn *v.* Bush, 2 Dowl. 641; 2 C. & M. 689.

Indemnity to sheriff.

The sheriff may take an indemnity, but he is not bound to do so; he may also, if he please, where he has seized goods, and a claim to them is put in by a third party, obtain relief instead of accepting an indemnity (*e*).

Sheriff need not wait for action to be brought.

The sheriff need not wait for an action to be brought against him, before he makes an application to the Court for relief, the words of the 6th section of the 1 & 2 Will. 4, c. 58, being "upon application of such sheriff, or other officer, made before or after the return of such process, and as well before as after any action brought against such sheriff, or other officer," &c. (*f*).

Claimant an infant.

The Court has power to give the sheriff relief, although the claimant is an infant (*g*).

Married women as claimants.

A married woman may also be a claimant in an interpleader issue (*h*). On an interpleader at the instance of the sheriff, an issue was tried, whether certain goods seized were the property of the claimant as against the execution creditor, when it appeared that the claimant was a married woman living apart from her husband in adultery with the execution debtor, and the goods were seized in a house in which they were living together. The judge told the jury that the question was whether, looking at the subject as if the claimant had been a single woman as between her and the execution debtor, the goods belonged to him. The jury found a verdict for the claimant, and this verdict was held to be right, notwithstanding that the claimant was a married woman (*i*).

Where goods had been purchased by a married woman out of the produce of her separate estate, which goods had been seized by the sheriff under an execution against her husband, and an issue had been directed between the execution creditor and the trustees under the marriage

(*e*) Levy *v.* Champneys, 2 Dowl. 454.
(*f*) Green *v.* Brown, 3 Dowl. 337.
(*g*) Claridge *v.* Collins, 7 Dowl. 698; 3 Jur. 894.
(*h*) Shingler *v.* Holt, 7 H. & N. 65; 30 L. J. Exch. 322; 9 W. R. 871; 7 Jur. N. S. 866; 4 L. T. N. S. 76. Bird *v.* Holt, 7 Jur. N. S. 866; 30 L. J. Exch. 318; 5 L. T. N. S. 76.
(*i*) *Ibid.*

dement, for the purpose of trying their respective hts, but the form of the issue was whether the goods question were the goods of the husband, the Court uld not allow the trustees to give in evidence that the sband had become a bankrupt a second time, and had t paid fifteen shillings in the pound, for the purpose of owing that the property in the goods was not in him, t in his assignees (*k*).

Where sheriff exercises his discretion the Court will not relieve him.

But a sheriff is not entitled to call upon parties to nterplead where he has already exercised a discretion in he matter. Thus, a sheriff, on the 20th of May, entered for the purpose of making a levy upon the goods of B., under a *fi. fa.* at the suit of A., and, finding that B.'s person and property were protected by an order of a commissioner in bankruptcy, under the 7 & 8 Vict. c. 96, withdrew. On the 21st, C. purchased the goods from the official assignee. On the 3rd of June, B.'s petition having been dismissed, the sheriff, who had been ruled to return the writ, entered a second time for the purpose of making a levy, and being then met by C.'s claim, obtained a judge's order directing an interpleader issue, to try whether or not the goods seized by him, were, *at the time of the second levy*, the property of C. The Court (upon a rule obtained by A., the plaintiff, calling upon the sheriff and C. to show cause why that order should not be set aside, on the ground that the sheriff had, by his laches in not applying on the 20th of May, precluded himself from the benefit of the Interpleader Act, or why the order should not be amended, by substituting the date of the *first* for that of the *second* levy) made the rule absolute for setting aside the order; but directed that A. should pay C.'s costs of appearing on the rule, inasmuch as the appearance of C. was necessary for the purpose of opposing an amendment, the effect of which would have been to require him to sustain a title he had never set up (*l*).

Sheriff may, by his own laches, defeat his claim to relief.

(*k*) Carne *v.* Brice, 7 M & W. 183; 1 H. & W. 23; 8 Dowl. 834.

(*l*) Crump *v.* Day, 4 C. B. 760.

Liability for neglect.

Where it appears that the sheriff has been guilty of neglect, the Court will refuse to relieve him from any liability incurred thereby (*m*).

Where a sheriff applies too late, he must pay the costs of both parties.

The sheriff ought to apply within such time as shall enable the parties to show cause in the term, if in term time, or, if in vacation, in the following term (*n*). Thus, where a sheriff took possession under a *fi. fa.* on the 25th of November, and on the 28th had notice that the goods belonged to a trustee, yet kept possession until the 28th of January, and did not apply to the Court till Easter term, the Court held that the sheriff had come too late, as he ought to have applied at such a time in Hilary term as to have enabled the parties to have shown cause in that term; he was therefore ordered to pay the costs of both parties (*o*).

Time of application.

In the same case it was held that a sheriff will not be safe unless he applies within the first four days of term, where he receives notice of a claim in vacation.

Necessity of prompt application.

Where a *fi. fa.* came to the sheriff's hands on the 17th of March, and he seized and sold on the 21st, and notice of the bankruptcy of the defendant, and claim to the goods seized, were given and made on the same day, an application was made to the sheriff by the assignees in June, which elicited no reply; an action was commenced by the assignees in September; the sheriff applied for relief in November; here the rule was discharged, the sheriff paying the costs of all parties (*p*).

Where sheriff is hindered by a rule.

Where goods were taken in execution by the sheriff, and, a claim being made to them, the sheriff was prevented from applying for an interpleader, by a rule to set aside the proceedings for irregularity, which rule was only discharged on the 23rd of January, it was held that the sheriff was too late in applying on the 31st of January,

(*m*) Brackenbury *v.* Laurie, 3 Dowl. 180.
(*n*) Beale *v.* Overton, 5 Dowl. 599; 2 M. & W. 534; M. & H. 172; 1 Jur. 544.
(*o*) *Ibid.*
(*p*) Devereux *v.* John, 1 Dowl. 548.

though he was in Suffolk, and the *affidavit* was sworn there on the 30th (*q*).

It was further held that he should have applied within four days after the discharge of the rule, as that would have enabled the other parties to have appeared in the same term.

Laches in the sheriff by delaying his application.

On the 16th of January, 1847, a sheriff seized the goods and monies of the defendant, under a *fi. fa.*, the net proceeds of which he handed over to the plaintiffs in part satisfaction of their judgment. He at the same time seized bills of exchange and a promissory note, which, not being due, he retained. On the 3rd of February he received a notice that a *fiat* in bankruptcy had issued against the defendant; on the 4th he was ruled to return the writ, and on the 11th he returned what he had done under the writ. On the 18th he received notice that assignees had been appointed, and the bills and note were claimed on their behalf. After some negotiation with the solicitor to the *fiat*, the sheriff took out an interpleader summons on the 29th of April. Here it was held that he had, by his *laches*, disentitled himself to relief (*r*).

A late application will, under special circumstances, be allowed.

But a late application is not of necessity fatal, and will be allowed under special circumstances; consequently, where an execution took place on June 12, and a claim under a bill of sale was made on July 25, notice of a *fiat* in bankruptcy given on September 17, and an application made on January 22, in the following year, and even then the *affidavits* were ordered by the Court to be amended for the purpose of denying collusion, so that the rule was not obtained till April 16, and a long correspondence was proved to have been going on between the parties, particularly in Michaelmas term, there the Court held that, under the special circumstances, the application was not too late (*s*).

(*q*) Cook v. Allen, 2 Dowl. 11; 3 Tyr. 586; 1 C. & M. 542.
(*r*) Mutton v. Young, 4 C. B. 371; 11 Jur. 414; 16 L. J. C. P. 309.
(*s*) Dixon v. Ensell, 2 Dowl. 621.

Costs in case of delay.

But, in the same case, the execution creditor having afterwards abandoned his claim, the Court refused to make him pay costs, and ordered each party to pay his own costs.

Where an action in trover was commenced on the 29th of December, and the declaration was delivered on the 12th of January, after which the defendant twice obtained leave to plead, it was held that a rule obtained by the defendant on the 23rd was not too late (*t*).

Affidavit accounting for delay.

Where there is delay, or any circumstance to be accounted for, the sheriff must make a special *affidavit*, stating the facts, and no supplemental *affidavit* will be allowed (*u*).

The Court will relieve the sheriff, though the claim is only in the nature of a *lien*.

Though the act of Will. 4, from its language, would seem to have in view only those cases in which the entirety of the property is claimed, yet the letter of the act will comprehend cases of *lien* as well as of absolute property. Where A. had sent two horses and two servants to the house of B., an innkeeper, and afterwards a *fi. fa.* issued against A.'s goods, the sheriff seized one horse in B.'s stables, but B. refused to permit the horse to be removed, claiming a *lien* on it for the keep of the two horses and the board and lodging of the two servants; there the Court, as the sum in dispute was small, decided that the rule should be enlarged, until the innkeeper was paid for the keep of the horses, and when that was done, that the rule should be discharged, without costs (*x*).

Claim must be actually made.

The Court will not interfere on behalf of the sheriff, *quia timet*, if a claim to the goods has not been actually made (*y*).

Where defendant

Where the sheriff distrains upon goods which the defendant holds, as executor, in trust for others, and not

(*t*) Barnes *v.* Bank of England, 1 W. W. & H. 50.
(*u*) Cook *v.* Allen, 2 Dowl. 11; 3 Tyr. 586; 1 C. & M. 542.
(*x*) Ford *v.* Baynton, 1 Dowl. 357.
(*y*) Isaac *v.* Spilsbury, 10 Bing. 3; 3 M. & Scott. 341; 2 Dowl. 211.

his own right, the sheriff will be allowed to apply for holds goods as executor.
i interpleader rule, nothwithstanding the 6th section of
e 1 & 2 Will. 4, c. 58, expressly refers to claims made
r persons "not being the parties against whom such
ocess has issued," and the judgment debtor who holds
e goods distrained in his capacity as executor, and not
his private capacity, is to be considered as "not being
e party against whom such process issued" (z).

The Court will not grant a rule for the protection of a Claim set up in respect of partnership interest.
eriff who has levied under a *fi. fa.*, merely because a
rtner of the debtor has given notice to the sheriff to
it possession on the ground that the goods are partner-
ip property, and that the debtor has no beneficial
terest in them, being indebted to the firm beyond the
nount of his share in the effects. The sheriff's duty is
sell the share, though he may not be able to ascer-
in the amount of actual interest. But the Court will,
the above case, interfere, under the act, for the sheriff's
otection, if the creditor disputes the partnership. If the
editor appears under the interpleader rule and does not
ntest the partnership, so that the rule is dismissed, but
terwards refuses to admit it, and rules the sheriff to
turn the writ, the Court will enlarge the latter rule till
e creditor indemnifies the sheriff (a).

Where the sheriff has levied under a *fi. fa.*, and while Where sheriff has had notice of a claim the Court will not relieve him, as of course.
possession receives a notice that other writs of execu-
on have been issued against the defendant's goods, and
at the first execution creditor is not entitled to the
hole proceeds of the levy, he is not entitled to relief (b).
he reason of this is that the writ will be a sufficient
stification to him for paying over the proceeds of the
vy to the first execution creditor.

A mere struggle for precedence between two execution editors is not sufficient to induce the Court to relieve the

(z) Fenwick v. Laycock, 1 G. & D. 532; 2 Q. B. 108; 6 Jur. 341.
(a) Holmes v. Mentze, 4 Ad. & E. 127; 5 N. & M. 563; 4 Dowl. 0; 1 H. & W. 608.
(b) Salmon v. James, 1 Dowl. 369.

sheriff, and so, where a sheriff seizes under one *fi. fa.*, and a question arises as to whether or not that writ ought to have precedence of another, or where, as in the preceding case, a sheriff, having levied, receives notice that other writs have been issued against the defendant's goods, and that the first execution creditor is not entitled to the whole proceeds, in neither of these cases will the Court relieve the sheriff (*c*).

Sheriff to inquire into nature of claims.

Before the sheriff applies, he is bound to inquire into the nature of the claims set up; for, if he brings parties before the Court in consequence of a claim which is clearly bad on the face of it, in point of law, he will have to pay the costs (*d*).

Costs of frivolous application.

In a somewhat similar case, where goods were taken in execution, and a claim was set up under a bill of sale, which bore date *after* the levy, the Court discharged the sheriff's application for relief, and made him pay the costs of the execution creditor (*e*).

Notice to judgment creditor.

A sheriff who had seized under a *fi. fa.* issuing out of Chancery, when the goods were claimed by a third party, could not file a bill of interpleader until he had given notice to the judgment creditor of the adverse claims to the goods seized (*f*).

Where sheriff has been ordered to withdraw from possession, upon security being given, &c.

By an interpleader order, the sheriff was ordered to withdraw from possession of goods seized under a *fi. fa.* upon payment into Court, by the claimant, of £50, or upon his giving security for that amount to the satisfaction of the master. On the last day for giving security, the claimant's attorney, without giving notice to the execution creditor, tendered to the master a bond with two sureties, at the same time untruly informing him that the sureties were approved by the execution creditor. The

(*c*) Day *v.* Waldock, 1 Dowl. 523. Salmon *v.* James, 1 Dowl. 369.

(*d*) Bishop *v.* Hinxman, 2 Dowl. 166.

(*e*) *In re* Oxfordshire (sheriff), 6 Dowl. 186.

(*f*) Dalton *v.* Furness, 35 Beav. 461. The law of interpleader is now not twain, but one, for the High Court; Judicature Acts, Ord. 1, rule 2.

master accepted the security, and the claimant's attorney, on the same day, gave the sheriff notice to withdraw, as security had been given, pursuant to the interpleader order. The sheriff immediately withdrew from possession. It was afterwards, on the same day, discovered that the bond was not stamped, and notice of that fact was at once given to the claimant's attorney, and he, on the following morning, accompanied a messenger from the master's office to Somerset House, with the bond, and got it stamped. Here it was held, that, as between the sheriff and the execution creditor, the sheriff was justified in withdrawing from possession (*g*).

Where the sheriff, acting in obedience to the order of the Court or judge, under the Interpleader Act, which directed that the goods should be sold by the sheriff, and the money paid into Court to abide the event of an issue to be tried between the claimant and the execution creditor, carried out the orders of the Court, and, upon the trial of the issue, a verdict was found for the claimant, the Court, in an action of trespass by the claimant against the sheriff, for obeying the order of the Court, made absolute a rule for striking out so much of the declaration as charged the seizure and conversion of the goods; two learned judges were, further, of opinion that the rule did not go far enough, and that the proceedings ought in such case to have been stayed altogether (*h*). It certainly appears unreasonable, and a grievous injustice to the sheriff, that after he has obeyed the order of a Court which has power to order him to sell goods, he should afterwards be held responsible in an action for selling them under that order, and it is hardly conceivable that proceedings would not now be stayed altogether.

Relief of sheriff, despite

The Court, where goods have been seized and sold under a *fi. fa.*, will relieve the sheriff, in spite of an allegation

(*g*) Darby v. Waterlow, 3 L. R. C. P. 453; 37 L. J. C. P. 203; 16 W. R. 864; 18 L. T. N. S. 523.

(*h*) Abbott v. Richards, 15 M. & W. 194; 3 D. & L. 487; 15 L. J. Exch. 350.

allegation of improvident sale, &c.

that the sheriff had sold the goods improvidently, and in the face of a notice from the owner, another *fi. fa.* having issued meanwhile against the same goods, and a third party also claiming the goods, as against the sheriff and the defendant and the other parties (*i*).

Court cannot try upon *affidavit*.

Where an application is made to the Court by a sheriff, under the Interpleader Act, the Court cannot try the rights of the different claimants upon *affidavit*, but must direct an issue (*k*).

Goods in hands of a third party.

The circumstance of the goods seized being in the possession of a stranger, at the time of seizure, and not of the defendant against whom the execution issued, does not prevent the sheriff applying for relief under the act (*l*).

On refusal of claimant to take an issue.

Where A. issued a *fi. fa.* against B., and the sheriff seized, and before sale a notice was served on the sheriff, on behalf of C., who claimed the goods, the sheriff took out a summons, and a judge refused to compel the parties to interplead, with costs against the sheriff. On motion to review this, the Court, on C. declining to take an issue, barred his claim, and ordered that he should pay the costs of the other claimants, but left the sheriff to bear his own costs (*m*).

Where defendant becomes bankrupt.

Where the defendant becomes bankrupt, and there are conflicting claims to the property seized under a *fi. fa.*, the Court will, on the application of the sheriff, interfere for his protection (*n*).

Under a *fi. fa.* obtained by A. in Chancery, the goods of B. were seized by the sheriff and advertised for sale; pending the sale, B. became bankrupt, and, thereupon, the sheriff received notice from the official assignee in the bankruptcy not to remove or sell the goods. Shortly

(*i*) Slowman *v.* Back, 8 B. & Ad. 103.
(*k*) Bramidge *v.* Adshead, 2 Dowl. 59. Allen *v.* Gibbon, 2 Dowl. 292.
(*l*) Allen *v.* Gibbon, *vide supra*.
(*m*) Hoban *v.* Munro, 1 Ir. R. C. L. 596, Exch.
(*n*) Parker *v.* Booth, 1 M. & Scott. 156. Northcote *v.* Beauchamp, 1 M. & Scott. 158.

afterwards the sheriff was ordered to make a return to the writ; accordingly the sale took place. Subsequently, the sheriff filed an interpleader against A. and the assignee in bankruptcy, alleging that both were threatening proceedings against him for the amount realized by the sale, and praying to be allowed to pay it into Court, and for costs. It was held that it was a proper case for an interpleader, and that the sheriff was entitled to his costs (*o*).

Appearance of assignees in bankruptcy.

A sheriff, having levied on the goods of the defendant, received notice of his bankruptcy, and of a claim by the provisional assignee, "or of any other persons who might be appointed assignees;" after the assignees were appointed, the sheriff obtained an interpleader rule calling on the provisional assignee only to appear, but it was held that the assignees were entitled to appear on that rule (*p*).

Bankruptcy.

Giving a notice of bankruptcy is not equivalent to a claim by the assignees of the goods sold (*q*).

Extent of relief granted.

It was formerly held that the Court would not stay proceedings against a sheriff, where an action of trespass for breaking and entering the apartments of the plaintiff was brought against the sheriff, on the ground that the Interpleader Act of 1 & 2 Will. 4, c. 58, s. 6, only applied to claims for goods, and that the Court had no jurisdiction, under that statute, to stay proceedings in such action (*r*).

Actions of trespass.

The accuracy of this decision was, however, called in question in a subsequent case, and it was laid down that the power of the Court, or a judge, under the Act of 1 & 2 Will. 4, c. 58, to stay proceedings in actions against the sheriff, is not confined to disputed claims to the goods seized, but extends to actions of trespass against him for breaking and entering the house of the claimant (*s*).

(*o*) Child *v.* Mann, 16 L. T. N. S. 49; 3 L. R. Eq. 806, V. C. S.
(*p*) Ibbotson *v.* Chandler, 9 Dowl. 250,—Rolfe, B.
(*q*) Bentley *v.* Hook, 2 Dowl. 339; 2 C. & M. 426; 4 Tyr. 229.
(*r*) Hollier *v.* Laurie, 15 L. J. N. S. C. P. 294; 3 C. B. 334; 4 D. & L. 205; 10 Jur. 360.
(*s*) Winter *v.* Bartholomew, 25 L. J. N. S. Exch. 62; 11 Exch. 704.

In a still later case, it was held that a judge at chambers has authority, on an interpleader order, to restrain an action against the execution creditor, as well as against the sheriff (*t*).

Nature of relief.

Where a sheriff acted in obedience to a judge's order which directed the sale of goods and payment of the money into Court to abide the event of an issue between the claimant and the execution creditor, the Court interfered, when the successful claimant brought an action against the sheriff for breaking and entering his house and seizing and converting his goods, to the extent of striking out of the declaration the charge of seizing and converting the claimant's goods (*u*).

Ordering sale of goods seized.

By the Common Law Procedure Act, 1860 (*x*), s. 13, where goods or chattels have been seized in execution by a sheriff or other officer under process from the Superior Courts, or Courts of Common Pleas at Lancaster or Durham, and a third party sets up a claim to the goods under a bill of sale, by way of security for a debt, the Court or a judge may order a sale of the whole or part of the goods, upon such terms as to payment of the whole or part of the secured debt, or otherwise, as shall seem fit, and may, similarly, direct the application of the proceeds; but an order will not be made for the sale of goods under this provision, except under special circumstances (*y*).

Sale of goods.

Dis-obedience to inter-pleader order.

Thus, where, after an interpleader order directing a sheriff to sell goods, the execution debtor was adjudicated a bankrupt, on his own petition, before the time limited by the order for the sale, and upon the messenger entering, the sheriff withdrew, leaving him in possession, the Court refused to issue an attachment against the sheriff at the suit of the execution creditor, for contempt of Court in not proceeding to a sale pursuant to the interpleader order (*z*).

Bank-ruptcy.

(*t*) Carpenter *v.* Pearce, 27 L. J. N. S. Exch. 143.
(*u*) Abbott *v.* Richards, 15 M. & W. 194; 3 D. & L. 487; 15 L. J. Exch. 330. See further, p. 175.
(*x*) 23 & 24 Vict. c. 126.
(*y*) Pearce *v.* Watkins, 2 F. & F. 377,—Bramwell.
(*z*) Collins *v.* Cliff, 8 L. T. N. S. 466, Exch.

Effect of interpleader order.

The effect of an interpleader order is to exonerate the sheriff and other parties from responsibility for acts done under the authority of the order. Thus, where a plaintiff's goods had been wrongfully seized by the defendants under a *fi. fa.* directed against the goods of the execution debtor, and, in default of payment of their value, or security for the amount, by the plaintiff (the claimant), had been sold by the sheriff under an interpleader order, the proceeds being paid into Court to wait the result of an interpleader issue, which was subsequently determined in the plaintiff's favour, it was held that he was entitled to recover from the execution creditors damages up to the time of the interpleader order only, and that they were not liable for any loss or damage resulting from the sale or any proceedings subsequent to the order (*a*).

Operation on bankruptcy.

Formerly, where an execution was levied by seizure, but the sale was suspended by an interpleader order, and, before sale, a petition for adjudication of bankruptcy was filed against the execution debtor, on which he was afterwards adjudged bankrupt, the case was within 12 & 13 Vict. c. 106, s. 184 (now repealed), and the execution creditor was deprived of the benefit of his execution (*b*): but now an execution creditor, under whose *fi. fa.* the sheriff has seized, but not sold, prior to any act of bankruptcy to which the title of the trustee relates, is a creditor holding security, unless the debtor is a trader, and the execution for more than £50 (*b*); but a mere delivery to the sheriff without seizure, though by the Statute of Frauds it binds the goods, does not make the execution creditor a creditor holding security (*c*).

Contempt

Where a sheriff's officer went to the house of a defend-

(*a*) Walker *v.* Olding, 1 H. & C. 621; 32 L. J. Exch. 142; 7 L. T. N. S. 633; 11 W. R. 186.

(*b*) Slater *v.* Pinder, L. R. 6 Exch. 228; 7 Exch. 95; 40 L. J. Exch. 146. *Ex parte* Rocke, *re* Hall, L. R. 6 Ch. 795; 40 L. J. Bktcy. 70. *Ex parte* Bailey, *re* Jecks, L. R. 13 Eq. 314; 41 L. J. Bktcy. 1. *Ex parte* Lovering, *re* Peacock, L. R. 17 Eq. 452; 43 L. J. Bktcy. 58.

(*c*) *Ex parte* Williams, *re* Davies, L. R. 7 Ch. 314; 41 L. J. Bktcy. 39.

of Court under Interpleader Act.

ant to execute a *fi. fa.* and took possession of his goods, an auctioneer and others claimed them under a bill of sale, and proceeded to sell them notwithstanding the resistance of the officers (whom they treated with considerable violence); whereupon the sheriff took out and served an interpleader summons, which, however, the auctioneer disregarded, and completed the sale, removing the goods: this was held to be a contempt of Court, both at Common Law and under 1 & 2 Will. 4, c. 58 (*d*).

Non-appearance of execution creditor. Misconduct of sheriff.

In a case where the execution creditor did not appear, and it was doubtful whether the sheriff, who had acted under his express direction, had not misconducted himself subsequently to the seizure, the Court made an order that the execution creditor should be barred against the claimant, and the goods restored to the latter; the claimant to be at liberty to bring an action against the sheriff for misconduct, provided it should turn out that he had been guilty of any; if, further, there had been any misconduct in the execution creditor, in giving directions to the sheriff, to bring an action against him (*e*).

Non-appearance of execution creditor.

But when an execution creditor does not appear on being served with the sheriff's rule, the Court cannot, *ipso facto*, bar his claim (*f*). In a case where goods had been seized by the sheriff under a *fi. fa.* and were claimed adversely to the execution creditor, on an interpleader rule obtained by the sheriff, the claimant and the sheriff appeared, but not the execution creditor, and the claimant supported his title by *affidavit;* the Court refused to order generally that the execution creditor should be barred of his demand, but made a rule that the sheriff should withdraw from possession, and that the execution creditor should take no proceedings against him in respect of the goods non-claimed (*g*).

An execution creditor served with a sheriff's rule is not

(*d*) Cooper *v.* Asprey, 3 B. & S. 932.
(*e*) Lewis *v.* Jones, 2 M. & W. 203; 2 Gale, 211.
(*f*) Donniger *v.* Hinxman, 2 Dowl. 424.
(*g*) Doble *v.* Cummins, 7 Ad. & E. 580; 2 N. & P. 575; W. W. & D. 682.

bound to appear when there are no goods liable to his execution (*h*).

Court will sometimes order sheriff's name to be struck out, in an action against the sheriff.

The Court will sometimes substitute another course instead of directing an issue; thus, a horse pointed out by A., an execution creditor, as the property of B., the execution debtor, having been seized under a *fi. fa.*, C., claiming the horse as his property, brought trespass against the sheriff, who applied for relief. The Court, instead of directing an issue, ordered that the action should proceed, and that A.'s name should be substituted for that of the sheriff, subject to the terms usually imposed where an issue is directed (*i*).

Varying the order.

In another case, a judge's order was obtained, by consent of all parties, referring the cause, on certain terms, to a barrister, instead of an issue being directed. In that case, the Court refused to grant a rule *nisi* for varying the order, by introducing a fresh term into the reference, in consequence of information which one of the parties (an administratrix) had received since the hearing at chambers (*k*).

Mistake as to the statute.

A mistake appearing on the face of the interpleader issue, as to the statute under which it is directed, does not invalidate the issue (*l*).

Cestui que trust may be party to interpleader rule.

A *cestui que trust* who is in possession of goods under a settlement by virtue of an authority from the trustees, is entitled to the same as against the sheriff seizing them for the execution creditor of a debtor living in the house wherein such goods are, and it is not necessary for the trustees to be parties to an interpleader issue directed in order to determine the right of possession (*m*).

Where new claim is raised after interpleader rule.

Where a new claim is raised after a rule *nisi* has been obtained, the sheriff may make the new claimant a party to the rule (*n*).

(*h*) Glazier *v.* Cooke, 5 N & M. 680.
(*i*) Brown *v.* Ludham, 6 M. & G. 169; 6 Scott, N. R. 934.
(*k*) Drake *v.* Brown, 2 C. M. & R. 270; 5 Tyr. 1067.
(*l*) Saunderson *v.* Perrin, 22 L. T. N. S. 419,—Lush.
(*m*) Shroeder *v.* Hanrott, 28 L. T. N. S. 704, C. P.
(*n*) Kirk *v.* Clarke, 4 Dowl. 363.

Where an interpleader rule was obtained, and afterwards a claim was made by a *curator* appointed by the Scotch law to the property of a deceased person, the Court enlarged the rule to enable the defendant to make such claimant a party thereto (*o*).

Formerly, one Court could not relieve the sheriff with respect to process issued out of another Court (*p*).

The Crown cannot be made a party to an interpleader rule (*q*), nor can a foreigner residing out of the jurisdiction be compelled to come in (*r*).

Security for costs.

The Court will compel a claimant residing out of the jurisdiction, and seeking to be made a party to an interpleader issue, to give security for costs (*s*).

Where a sheriff had paid money into Court, and the defendant had not obeyed an order of the Court to give security for costs, the defendant, who was residing abroad, was, after a lapse of six months, ordered to give security for costs within fourteen days, otherwise the claimant to be allowed to take the money paid in out of Court (*t*).

Security for costs will be required of a claimant residing in Scotland.

This rule applies to Scotland. Where a sheriff was in possession of the goods of B. under a *fi. fa.* at the suit of A., who was resident in Scotland, and a *fiat* in bankruptcy issued against B., whose assignees claimed the goods, a judge, upon an application by the sheriff, made an order directing an issue, in which the assignees were to be the plaintiffs, and A., the execution creditor, the defendant; security for costs *not* to be required: the Court, however, amended the order by striking out the latter words, and directing that A. should give security for costs (*u*).

(*o*) Walker *v.* Ker, 7 Jur. 156; 12 L. J. Exch. 204.
(*p*) Bragg *v.* Hopkins, 2 Dowl. 151. The High Court is now o
(*q*) Candy *v.* Maughan, 7 Scott, N. R. 402.
(*r*) Patorni *v.* Campbell, 12 M. & W. 278.
(*s*) Hoban *v.* Munro, 2 Ir. R. C. L. 74—Exch. Webster *v.* De field, 7 C. B. 187; 6 D. & L. 597; 13 Jur. 635; 18 L. J. C. P. 1 The writ for service out of the jurisdiction has been introdu meanwhile.
(*t*) Melin *v.* Dumont, 17 W. R. 673; 20 L. T. N. S. 366, C. P.
(*u*) Williams *v.* Crossling, 3 C. B. 957; 4 D. & L. 660; 16 L. C. P. 112.

Claims to goods taken in execution under decree of Admiralty Court.

By 24 & 25 Vict. c. 10, s. 16, "if any claim shall be made to any goods or chattels taken in execution under any process of the High Court of Admiralty, or in respect of the seizure thereof, or any act or matter connected therewith, or in respect of the proceeds or value of any such goods or chattels, by any landlord for rent, or by any person not being the party against whom the process was issued, the registrar of the said Court, may, upon application of the officer charged with the execution of the process, whether before or after any action brought against such officer, issue a summons calling before the said Court both the party issuing such process and the party making the claim; thereupon, any action which shall have been brought in any of her Majesty's superior Courts of record, or in any local or inferior Court, in respect of such claim, seizure, act, or matter as aforesaid, shall be stayed, . . and the judge of the said Admiralty Court shall adjudicate on the claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as to him shall seem fit."

Barring claims.

Claimants neglecting to appear are precluded by the terms of the rule from enforcing their claims (*x*).

Where a claimant does not appear, the judgment creditor is entitled to have his costs from the claimant (*y*).

Liability of execution creditor.

If a sheriff's officer, without any direction from an execution creditor or any interference by him, in executing a *fi. fa.* seizes a stranger's goods, who makes a claim, and the officer takes out an interpleader summons, upon which the execution creditor appears and accepts an issue to try the ownership of the goods, the execution creditor does not thereby become liable to an action for the wrongful act of the sheriff in seizing the goods (*z*).

Sheriff's costs.

When neither the plaintiff nor claimant appears, the Court will discharge the sheriff from actions by either of

(*x*) Ford *v.* Dillon, 2 N. & M. 662; 5 B. & Ad. 885.
(*y*) Perkins *v.* Burton, 2 Dowl. 108; 3 Tyr. 51.
(*z*) Woollen *v.* Wright, 31 L. J. Exch. 513; 1 H. & C. 554; 10 W. R. 715; 7 L. T. N. S. 73, Exch. Cham.

those parties, and permit him to levy his poundage and expenses, and abandon the remainder of the levy (*a*).

Costs of sheriff where adverse claimant does not appear.

Formerly, where a claim was set up to goods seized by the sheriff, and the latter applied to the Court for relief under 1 & 2 Will. 4, c. 58, s. 6, if the claimant did not appear, the Court barred his claim as to the sheriff, and made him pay the costs of the judgment creditor for appearing to the sheriff's rule, but disallowed the sheriff's costs (*b*).

Sheriff's costs.

Similarly, where the execution creditor did not appear, upon a rule to relieve the sheriff, the Court ordered the sheriff to withdraw from possession, but did not direct the execution creditor to pay the sheriff the costs of keeping possession (*c*).

Costs of sheriff and execution creditor against a claimant not appearing.

The same rule was followed in a subsequent decision (*d*): but in a later case, where a claim was made by one, on behalf of another, to goods seized by the sheriff in execution, and, upon a rule being obtained under the Interpleader Act, neither party appeared to show cause, the plaintiff was held not entitled to receive his costs from the sheriff, but the sheriff and the plaintiff were allowed their costs from the claimant or his agent (*e*).

Where, too, a claim to goods seized by the sheriff was made by the defendant, on behalf of another, which did not appear to be well founded, the Court made the defendant pay the cost of the sheriff's application (*f*).

Philby *v.* Ikey not followed in Oram *v.* Sheldon.

This ruling, however, was not followed in a case in the Common Pleas, where a sheriff was refused his costs, though the claimant did not appear, and the above case of Philby *v.* Ikey was cited. The execution creditor was also refused costs, though the rule was made absolute to pay the money over to him. Tindal, C. J., in delivering judgment, ob-

(*a*) Eveleigh *v.* Salisbury, 5 Dowl. 369; 3 Bing. N. C. 298; 3 Scott. 674

(*b*) Bowdler *v.* Smith, 1 Dowl. 417.

(*c*) Field *v.* Cope, 2 C. & J. 480; 1 Dowl. 567; 2 Tyr. 458.

(*d*) Perkins *v.* Burton, 2 Dowl. 108; 3 Tyr. 51.

(*e*) Philby *v.* Ikey, 2 Dowl. 222.

(*f*) Lewis *v.* Eicke, 2 Dowl. 337; 2 C. & M. 321; 4 Tyr. 157.

served: "The sheriff is extremely well off in being indemnified at so cheap a rate as he is, and cannot have his costs. The Court of Exchequer has thought one way, but we think another. With respect to the plaintiff he will not be allowed costs, except in the case of extremely improper conduct in the opposite party" (*g*). In another case it was also decided, that, except under special circumstances, the Court will not allow the sheriff his costs of applying for a rule (*h*).

West *v.* Rotherham.

In a further case, the same principle was upheld, and the claimant not appearing was on that account barred, the sheriff not being allowed his costs against the claimant (*i*). This is the present practice.

Jones *v.* Lewis.

Although the sheriff is not, as a rule, allowed costs, yet, where he has retained possession of the goods seized, at the request of the execution creditor, and has sold them with the consent of all the parties, the execution creditor afterwards abandoning his claim, the sheriff has been held to be entitled to receive from him his costs of such possession and sale (*k*).

Where execution creditor abandons claim after sale.

Although, too, when a *fi. fa.* has been issued, under which goods are seized, and, an adverse claim being set up, the sheriff applies for relief, but the execution creditor does not appear to support his *fi. fa.*, the Court will sometimes order the costs of the adverse claimant's appearance to support his claim to be paid by the execution creditor, but not those of the sheriff; nevertheless, if the execution creditor afterwards appears and opens the rule, the Court will grant the sheriff the costs of his *second* appearance (*l*).

If execution creditor does not appear.

Where a plaintiff does not proceed to the trial of an

(*g*) Oram *v.* Sheldon, 3 Dowl. 640; 1 Hodges, 92. Beswick *v.* Thomas, 5 Dowl. 458.

(*h*) West *v.* Rotherham, 2 Scott, 802; 2 Bing. N. C. 527; 1 Hodges, 461.

(*i*) Jones *v.* Lewis, 8 M. & W. 264; 5 Jur. 873. See also Lambert *v.* Cooper, 5 Dowl. 547.

(*k*) Dabbs *v.* Humphries, 1 Scott, 325; 1 Bing. N. C. 412; 3 Dowl. 377; 1 Hodges, 4. It will be observed that the sheriff was only allowed his expenses incurred as agent of the parties *after* his application.

(*l*) Bryant *v.* Ikey, 1 Dowl. 428.

interpleader issue, the Court will not permit another person's name to be substituted, without making the originally appointed plaintiff a party to the rule (*m*).

Claimant's costs.

Where, an application having been made to a judge, the parties do not go before the judge, at the instance of the execution creditor, and he, having made inquiries, abandons his execution, the Court will not, of necessity, grant summarily to the claimant the costs of attending at the judge's chambers, but will leave him to his action (*n*).

But, where an issue was directed to be tried between an execution creditor and a claimant, and the *latter* refused to try, and abandoned his claim, he was held liable to pay the execution creditor's costs down to the time of his claim being abandoned, and of applying to take the money paid in by the sheriff out of Court (*o*).

Where a claimant is ordered to pay money into court.

So, too, where, in consequence of a claim made to goods seized by a sheriff in execution, the Court ordered the claimant to proceed to trial upon paying a sum of money into Court, which he neglected to do, and a rule was then obtained to compel him to pay the costs occasioned by his false claim, it was held that he was liable for those costs as well as the costs of that rule, though no previous application had been made to him (*p*).

Where claimant abandons claim.

Where a claimant abandoned his claim after an issue directed, the sheriff was held entitled to his costs from the time of directing the issue, and of the application for those costs (*q*).

Where no blame attaches to either party.

When the sheriff applies for relief, and no blame appears to attach either to the execution creditor, the claimant, or the sheriff, each party will pay his own costs (*r*).

Costs of

Where a sheriff is relieved, and an issue is directed to

(*m*) Lydal *v.* Biddle, 5 Dowl. 244; 2 H. & W. 302.
(*n*) Swaine *v.* Spencer, 9 Dowl. 347; 5 Jur. 310.
(*o*) Wills *v.* Hopkins, 3 Dowl. 346.
(*p*) Scales *v.* Sargeson, 3 Dowl. 707.
(*q*) Scales *v.* Sargeson, 4 Dowl. 231. The sheriff was only given his costs incurred *subsequently* to the order directing the trial, and not those occasioned by his previous application.
(*r*) Morland *v.* Chitty, 1 Dowl. 520.

try the rights of adverse claimants, the Court may adjudicate after the trial on the costs of appearing to the sheriff's rule, and of the issue (*s*). adverse claimants.

Where the sheriff had taken goods in execution, while there was rent due to the landlord which he claimed from the sheriff, and the latter brought the landlord, with other claimants, into Court, the Court ordered the sheriff to pay the rent, upon the landlord's giving security, and also to pay his costs; it was further held that the sheriff was liable to pay the expense of the security (*t*). Bringing landlord into court.

The sheriff's claim to poundage on an application for an interpleader rule depends on the legality of the seizure (*u*). Poundage.

The Court will, on proper grounds shown, order the sheriff, or the execution creditor, to pay a third party appearing and successfully prosecuting his claim his costs of such appearance (*x*). Costs of successful claimant.

If a sheriff, having levied under a *fi. fa.*, makes an application, and an order of a judge is obtained to pay a certain portion of the money levied into Court to abide the event, and certain other proceedings are directed, but, in consequence of an arrangement between the parties, not carried into effect, the sheriff is not entitled to his costs, unless it can be shown that the demand made by the first claimant was altogether groundless and fraudulent (*y*). Where an arrangement is come to between the parties.

No costs in matters arising out of interpleader motions are allowed until the termination of the proceedings (*z*).

Where money, the proceeds of an execution, has been paid into Court by the sheriff, and the claimant abandons his claim, the rule for paying the money out of Court to the execution creditor, together with his costs, is *nisi* in the first instance (*a*).

(*s*) Seaward *v.* Williams, 1 Dowl. 528.
(*t*) Clarke *v.* Lord, 2 Dowl. 227.
(*u*) Barker *v.* Dynes, 1 Dowl. 169.
(*x*) Ford *v.* Dillon, 5 B. & Ad. 885; 2 N. & M. 662.
(*y*) Cox *v.* Fenn, 7 Dowl. 50; 2 Jur. 945, Exch.
(*z*) Hood *v.* Bradbury, 6 M. & G. 981; 7 Scott, N. R. 892.
(*a*) Stanley *v.* Perry, 4 Dowl. 599.

Application for costs.

An application by the successful party for costs may be made before judgment actually signed, but the rule cannot be drawn up except on condition of its being signed (*b*).

Division of costs.

An issue was directed between A., the claimant, and B., the execution creditor, to try whether five horses, or one or some of them, were or was, when taken in execution, the property of A. The jury found that two horses only belonged to A. A. obtained a rule *nisi* for payment to him of the general costs of the issue, the costs of the application under the Interpleader Act, and the costs of the rule. The Court gave neither party the general costs of the issue, nor the costs of the trial, but gave to each such portion of the costs as applied to the part on which he had succeeded, and allowed A. his costs of the application under the Interpleader Act (*c*).

In an issue directed between the claimant and execution creditor (the costs of the issue to abide the order of the Court), in which the claimant claimed the whole of the goods seized, but proved his right to part only, he was held, notwithstanding, to be entitled to the general costs of the issue, as if he had been plaintiff in trover, and also to the costs of the original and subsequent applications to the Court (*d*).

Costs of mixed witnesses.

Upon the taxation of costs on an issue between the claimant of goods and an execution creditor, to try whether goods taken in execution were the property of the claimant, where the claimant succeeded as to part, and the execution creditor as to the other part, the rule as to the costs of mixed witnesses which prevails in an action was held not to apply (*e*). Thus, C. claimed property seized under a *fi. fa.* in an action of D. against A. The sheriff having applied under 1 & 2 Will. 4, c. 58, s. 6, as

(*b*) Bland *v.* Delano, 6 Dowl. 293; 1 W. W. & H. 75.
(*c*) Lewis *v.* Holding, 2 M. & G. 875; 3 Scott, N. R. 191; 9 Dowl. 652.
(*d*) Staley *v.* Bedwell, 2 P. & D. 309; 10 Ad. & E. 145.
(*e*) Davis *v.* Clifton, 6 E. & B. 392; 2 Jur. N. S. 490; 25 L. J. Q. B. 344.

judge ordered an issue to try C.'s right, C. to be the plaintiff, and D. the defendant. C.'s claim was affirmed by the verdict for more than five-sixths, but negatived as to the remainder. The Court directed the costs to be taxed upon the principle of each party having succeeded as to a part, without reference to the fact which was the plaintiff and which the defendant, ascertaining the extent to which each party had substantially succeeded (*f*).

Costs in the cause.

If a plaintiff makes default in proceeding to trial, and application is made to compel him to pay the costs of the day, and to proceed to trial, the costs of such application are costs in the cause (*g*).

If a judge has directed money to be paid into Court to abide the event of an issue, and has reserved the question of costs, it has been held that an application for payment of the money out of Court must be made to the same judge, and not to the Court (*h*).

Costs of successful party.

A party who succeeds on an issue has a right to his costs of applying to take the proceeds of the sale out of Court, although he has not applied to the opposite side for a consent to take the money out (*i*).

When money, the proceeds of an execution, has been paid into Court by the sheriff, and the claimant abandons his claim, the rule for paying the money out of Court to the execution creditor, together with his costs, is *nisi* in the first instance (*k*).

Parties.

The claimant should be the plaintiff in an interpleader issue, and the execution creditor the defendant (*l*).

Procedure.

On a feigned issue between an execution creditor and assignees in bankruptcy, the declaration reciting an execution and *fiat* in bankruptcy, and a wager on the question "whether the execution was valid against the *fiat*," the

(*f*) Davis *v.* Clifton, 6 E. & B. 392; 2 Jur. N. S. 490; 25 L. J. Q. B. 344.
(*g*) Kimberley *v.* Hickman, 1 B. C. Rep. 90—Wightman.
(*h*) Marks *v.* Ridgway, 1 Exch. 8; 16 L. J. Exch. 241.
(*i*) Meredith *v.* Rogers, 7 Dowl. 596; 2 W. W. & H. 69; 3 Jur. 1191.
(*k*) Stanley *v.* Perry, 4 Dowl. 599.
(*l*) Bentley *v.* Hook, 4 Tyr. 229; 2 Dowl. 339; 2 C. & M. 426.

plaintiff is not entitled by the terms of the issue to dispute the bankruptcy (*m*).

Enforcement of order.

Where a judge's order has been obtained, ordering the payment of a sum of money out of Court to a person claiming under an interpleader rule, the Court will not refuse to enforce the order of the judge, though a suit of a creditor against the claimant is pending in the Chancery Division; for, the right of a receiver cannot be recognised where no injunction has been served on the officers of the Court (*n*).

Interrogatories.

Interrogatories may be administered in an interpleader issue (*o*).

Property or title contested.

In a case where the sheriffs of London entered upon the premises of A. on the 4th of March under a *fi. fa.* at the suit of B., A.'s goods being then already under seizure upon an execution at the suit of C. by an officer of the Lord Mayor's Court, and the landlord of the premises being also in for rent, a *fiat* of bankruptcy was awarded against A. on the 9th. On the 6th of April the landlord sold all the goods, and, after paying C.'s execution, and retaining the amount due to himself for rent, paid the residue into Court to abide the event of an issue between A.'s assignees and B., as to whether at the date and issuing of the *fiat* the assignees were entitled to the goods as against B. It was here held that it was not competent for the assignees, under this issue, to set up either the prior execution or the distress to defeat the claim of B. (*p*).

Bills of sale.

Upon an interpleader issue whether goods and chattels seized in execution were "at the time of the seizure the goods and chattels of the plaintiff," when the plaintiff proved a bill of sale of the goods to himself, it was held that the defendant might, by way of answer, set up a

(*m*) Linnet *v.* Chaffers, 4 Q. B. 762; D. & M. 14.
(*n*) Smith *v.* Clinch, 2 D. N. S. 48; 7 Jur. 129. B. C.—Wightman.
(*o*) White *v.* Watts, 12 C. B. N. S. 267; 31 L. J. C. P. 381; 6 L. T. N. S. 387.
(*p*) Belcher *v.* Patten, 6 C. B. 608; 6 D. & L. 370; 18 L. J. C. P. 69.

prior bill of sale to a third party (*q*). But, in an interpleader issue between an assignee of goods and execution creditors, which stated the question to be "whether, at the time of the delivery of the writ to the sheriff, the goods seized by him, and claimed respectively by the claimants, were the property of the respective claimants," it was held that the meaning of the issue was, whether the assignor had any goods which the plaintiff had a right to take in execution, and that it was not competent to the defendant to defeat the plaintiff's title by showing a prior bill of sale to a third party, which was void on account of non-compliance with the statute 17 & 18 Vict. c. 36, s. 1 (*r*).

Bill of sale from sheriff, as evidence.

When the question is between a bill of sale from the sheriff and an execution creditor, the bill of sale, though it may not *per se* be sufficient *primâ facie* evidence of the title of the claimant, becomes so when coupled with some evidence of a prior seizure by the sheriff (*s*).

Goods let on hire.

In an interpleader issue, to try whether goods were the property of the plaintiff as against the execution creditor, it was proved that the goods were at the time of the seizure in the possession of the execution debtor, to whom they had been let by the plaintiff. The goods were, in fact, the property of W., who had lent them to the plaintiff, who was his agent, allowing her to let them, as owner, to whom she would. The plaintiff was held to have sustained her claim (*t*).

Question for jury.

Under a feigned issue brought to try the right of property in goods which have been seized under an execution against A., it has been held that the question for the jury is not whether the goods are the property of the plaintiff in the feigned issue, or of A., but merely whether they were or were not the property of the former (*u*).

(*q*) Gadsden *v.* Barrow, 9 Exch. 514; 2 C. L. R. 1063; 23 L. J. Exch. 134.
(*r*) Edwards *v.* English, 3 Jur. N. S. 934; 26 L. J. Q. B. 193; 7 E. & B. 564.
(*s*) Hornidge *v.* Cooper, 27 L. J. Exch. 314.
(*t*) Green *v.* Stevens, 2 H. & N. 146.
(*u*) Green *v.* Rogers, 2 C. & K. 148—Cresswell.

Railway company.

Where a railway company were sued by the assignee of a Lloyd's bond given by them, but compromised the action before judgment, by assigning their rolling stock to secure the money advanced by the assignee, and some of the rolling stock was afterwards taken in execution by another creditor of the company, it was held, in an interpleader issue between the two creditors, that evidence ought not to be admitted which tended to show that the bond was illegal, the assignee having taken it without notice of any illegality, and, whether the assignment of the rolling stock was *ultra vires* and illegal or not, still, as it was made in lieu of judgment, its legality was not in question on this issue, and the assignee was entitled to the rolling stock as against the execution creditor (*x*).

Evidence.

In a feigned issue between C. and A., to try whether goods seized by A. under a *fi. fa.* issued by A. against B., and claimed by C., were at the time of the seizure the goods of C., it is competent to A. to negative the title of C. by showing that the goods, though seized by A., and claimed by C., passed to the assignees of B., by relation to an act of bankruptcy committed by B. before the seizure, and before the conveyance under which C. claims (*y*)

Where a plaintiff claims goods against an execution creditor, under an assignment made to the claimant by the debtor as a security for previous advances, an admission of the debt made by the debtor before the assignment, in the absence of the defendant, is not receivable for the plaintiff on an interpleader issue between the plaintiff and the execution creditor (*z*).

Parol evidence.

If goods are claimed under an agreement, the terms of which are contained in a written instrument which is inadmissible by reason of its not being stamped, parol evidence cannot be received of the claimant's title to such goods (*a*).

(*x*) Blackmore *v.* Yates, 36 L. J. Exch. 121; L. R. 2 Exch. 225; 16 L. T. N. S. 288.
(*y*) Chase *v.* Goble, 2 M. & G. 930; 3 Scott. N. R. 245.
(*z*) Coole *v.* Braham, 3 Exch. 183; 18 L. J. Exch. 105.
(*a*) Smith *v.* Yorke, 16 Jur. 63; 21 L. J. Q. B. 53.

Counsel for the purchaser from the claimant will not be heard (*b*). Counsel for purchaser.

If the parties consent to the judge's disposing of the matter himself in a summary manner, the effect of the statute (*c*) is to constitute him an arbitrator for that purpose, and his decision cannot be reviewed (*d*). All that the Court decided in the case of Teggin *v.* Langford (*e*), which seems at first sight a contrary decision, was, that if the order was wrong, that is, not authorized by the Act, the Act did not make it final (*f*). Teggin *v.* Langford was not the case of a decision made in a summary manner, by consent of the parties, but was the case of a hostile order. Reviewing interpleader order.

For Interpleader Forms, see Appendix.

(*b*) Gayton *v.* Espin, 1 F. & F. 722—Bramwell.
(*c*) 1 & 2 Will. 4, c. 58, and 1 & 2 Vict. c. 45, s. 2.
(*d*) Shortridge *v.* Young, 12 M. & W. 5.
(*e*) 10 M. & W 556.
(*f*) Shortridge *v.* Young, *vide supra*—Rolfe, B.

CHAPTER XV.

WRITS OF EXECUTION GENERALLY (*a*).

Definition of writs of execution.

"WRITS of execution" are judicial processes issuing out of the Court where the record or other proceedings are upon which they are grounded, to enforce the judgment of that Court (*b*); the term includes writs of *fieri facias* (*fi. fa.*), *capias* (*ca. sa.*), *elegit, sequestration*, and *attachment*, and all subsequent writs that may issue for giving effect thereto (*c*).

What the term includes.

Judgment for recovery of money.

The Judicature Act, 1875, Order 42, rule 1, enacts that "A judgment for the recovery by or payment to any person of money may be enforced by any of the modes by which a judgment or decree for the payment of money of any Court whose jurisdiction is transferred by the said Act might have been enforced at the time of the passing thereof."

Judgment for payment into Court.

By rule 2, "A judgment for the payment of money into Court may be enforced by writ of sequestration, or, in cases in which attachment is authorised by law, by attachment."

Judgment for recovery of land.

By rule 3, "A judgment for the recovery or for the delivery of the possession of land may be enforced by writ of possession."

Judgment for recovery of other property.

By rule 4, a judgment for the recovery of any property other than land or money may be enforced,

By writ for the delivery of the property.

(*a*) *Vide* Reg. Gen. Hil. Term, 1853, in Appendix.
(*b*) Wh. L. L., 5th ed. See "Writs of Execution."
(*c*) Judicature Act, 1875, O. 42, r. 6.

By writ of attachment (*d*).

By writ of sequestration (*e*).

By rule 5, "A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment, or by committal." Judgment requiring person to do or leave undone.

By rule 6, "In these Rules the term 'writ of execution' shall include writs of *fieri facias*, *capias*, *elegit*, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto. And the term 'issuing execution against any party' shall mean the issuing of any such process against his person or property as under the preceding Rules of this Order shall be applicable to the case." Meaning of terms writ of execution, and issuing execution.

By rule 7, "Where a judgment is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the Court or a judge for leave to issue execution against such party. And the Court or judge may, if satisfied that the right to relief has arisen according to the terms of the judgment, order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in an action may be tried." Judgment for conditional relief.

By rule 9, "No writ of execution shall be issued without the production to the officer by whom the same should be issued of the judgment upon which the writ of execution is to issue, or an office copy thereof, showing the date of entry. And the officer shall be satisfied that the proper time has elapsed to entitle the judgment creditor to execution." Documents to be produced.

By rule 10, "No writ of execution shall be issued with- *Præcipe* for writ.

(*d*) For writs of delivery and attachment, see under the respective heads.

(*e*) The writ of sequestration is not addressed to the sheriff, and so has no place in this work.

out the party issuing it, or his solicitor, filing a *præcipe* for that purpose. The *præcipe* shall contain the title of the action, the reference to the record, the date of the judgment, and of the order, if any, directing the execution to be issued, the names of the parties against whom, or of the firms against whose goods, the execution is to be issued; and shall be signed by [or on behalf of] the solicitor of the party issuing it, or by the party issuing it, if he do so in person (*f*).

(R. S. C. June, 1876, r. 17.)

Indorsement of name and address. Solicitor. Agent. Party in person.

By rule 11, "Every writ of execution shall be indorsed with the name and place of abode or office of business of the solicitor actually suing out the same, and, when the solicitor actually suing out the writ shall sue out the same as agent for another solicitor, the name and place of abode of such other solicitor shall also be indorsed upon the writ; and, in case no solicitor shall be employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be, mentioning the city, town, or parish, and also the name of the hamlet, street, and number of the house of such plaintiff's or defendant's residence, if any such there be" (*g*).

Date of writ.

By rule 12, "Every writ of execution shall bear date of the day on which it is issued" (*h*).

Poundage, fees, and expenses.

By rule 13, "In every case of execution the party entitled to execution may levy the poundage, fees, and expenses of execution, over and above the sum recovered" (*i*).

Indorsement of direction to sheriff.

By rule 14, "Every writ of execution for the recovery of money shall be indorsed with a direction to the sheriff or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment, stating the

(*f*) The words in brackets were inserted by the rule noted in the margin. For forms of *præcipe*, see writs in Appendix.

(*g*) This is in accordance with R. G. H. T., 1853, r. 73.

(*h*) It is so provided as to all writs by Ord. II., r. 8. For the orms referred to, see Appendix.

(*i*) This is taken from the C. L. P. Act, 1852, s. 123.

amount, and also to levy interest thereon, if sought to be recovered, at the rate of £4 *per cent. per annum* from the time when the judgment was entered up, provided that in cases where there is an agreement between the parties that, more than £4 *per cent.* interest shall be secured by the judgment, then the indorsement may be accordingly to levy the amount of interest so agreed" (*k*).

Fi. fa. or *elegit*: how soon they may issue.

By rule 15, "Every person to whom any sum of money or any costs shall be payable under a judgment, shall immediately after the time when the judgment was duly entered be entitled to sue out one or more writ or writs of *fieri facias* or one or more writ or writs of *elegit* to enforce payment thereof, subject nevertheless as follows:

Payment postponed.

(*a.*) If the judgment is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period.

Stay of execution.

(*b.*) The Court or judge at the time of giving judgment, or the Court or a judge afterwards, may give leave to issue execution before, or may stay execution until any time after, the expiration of the periods hereinbefore prescribed."

Formerly, where judgment followed upon the verdict of a jury, execution could not issue till fourteen days after verdict, unless the judge at the trial, or the Court or a judge afterwards, ordered it to issue earlier (*l*).

Under the new provision, in all cases alike, the judge at the trial may order judgment to be entered (*m*). If, as is the case on circuit and at the *Nisi Prius* sittings in London and Middlesex, the officer in Court is not the officer by whom judgments are entered, judgment will be entered at the proper office on the production of the

(*k*) This is in accordance with R. G., H. T. 1853, r. 76; see also Chan. Cons. O. 29, r. 10; Morgan's Acts and Orders, ed. 4, 276. Interest on *costs* now runs only from the date of the certificate of taxation. See Judicature Act, 1875, Appendix F., Form 1. Schroeder *v.* Cleugh, 46 L. J. C. P. 365.

(*l*) Wil. Jud. Acts, 2nd ed. 285. C. L. P. Act, 1852, s. 120; R. G., H. T. 1853, r. 57. It might be stayed for any longer period.

(*m*) Judicature Act, 1875, O. 36, r. 22a.

associate's certificate of the judge's directions (*n*). By the above rule, execution may issue as soon as judgment is entered. No fixed interval is provided for between any of these successive steps. It is, therefore, necessary for the future, that, in all cases, any one wishing to avoid immediate execution should apply for a stay of execution under the above rule (*o*).

Currency of writ.

By rule 16, "A writ of execution if unexecuted shall remain in force for one year only from its issue, unless renewed in the manner hereinafter provided; but such writ may, at any time before its expiration, by leave of the Court or a judge, be renewed by the party issuing

Renewal.

it for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being marked with a seal of the Court bearing the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his attorney, and bearing the like seal of the Court; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof."

This rule is in substance the same as s. 124 of the C. L. P. Act, 1852. It will be observed that a writ of execution may be renewed by leave without the restrictions imposed in the case of a writ of summons under the new practice (*p*).

Proof of renewal.

By rule 17, "The production of a writ of execution, or of the notice renewing the same, purporting to be marked with such seal as in the last preceding rule mentioned, showing the same to have been renewed, shall be sufficient evidence of its having been so renewed" (*q*).

Execution within six years.

By rule 18, "As between the original parties to a judgment, execution may issue at any time within six years from the recovery of the judgment" (*r*).

(*n*) Judicature Act, 1875, O. 36, rr. 23—25, and O. 41.
(*o*) Wil. Jud. Acts, 2nd ed. 285. As to stay of execution pending appeal, see O. 58, r. 16.
(*p*) Order 8, r. 1, Wil. Jud. Acts, 2nd ed. 285.
(*q*) This is the same as s. 125 of the C. L. P. Act, 1852.
(*r*) This is in substance the same as s. 128 of the C. L. P. Act 1852.

By rule 19, "Where six years have elapsed since the judgment, or any change has taken place by death or otherwise in the parties entitled or liable to execution, the party alleging himself to be entitled to execution may apply to the Court or a judge for leave to issue execution accordingly. And such Court or judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in an action may be tried. And in either case such Court or judge may impose such terms as to costs or otherwise as shall seem just." Execution after six years, or change of parties.

The practice at Common Law in reviving pecuniary judgments for the purpose of execution, after the lapse of six years or the death of parties, was formerly governed by ss. 129—134 of the C. L. P. Act, 1852. Under those provisions the party seeking execution could apply to the Court or a judge for leave to enter a suggestion to the effect that such party was shown to be entitled to execution, and to allow execution to issue. If the case was made clear, the suggestion and the consequent execution were allowed. If the case were not made clear, the suggestion and execution consequent upon it were disallowed, and the party was left to his writ of revivor. This was a new action, in which by the ordinary processes of pleading the questions in dispute were brought to issue and decided (*s*).

The above rule preserves alternative processes, according as the right to execution is or is not sufficiently clear to be enforced summarily by a judge. But a somewhat simpler process is provided: if the case be clear, the judge may order execution to issue; if it be not, he may direct an issue to try the right" (*t*).

By rule 20, "Every order of the Court or a judge, whether in an action, cause, or matter, may be en- Execution on orders.

(*s*) Wil. Jud. Acts, 2nd ed. 286.
(*t*) *Ibid.*

forced in the same manner as a judgment to the same effect" (*w*).

Execution by or against persons not a party.

By rule 21, "In cases other than those mentioned in rule 18 any person not being a party in an action, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to the action; and any person not being a party in an action, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to the action" (*x*).

Audita querela abolished.

By rule 22, "No proceeding by *audita querela* shall hereafter be used; but any party against whom judgment has been given may apply to the Court or a judge for a stay of execution or other relief against such judgment, upon the ground of facts which have arisen too late to be pleaded; and the Court or judge may give such relief and upon such terms as may be just" (*y*).

Stay of execution.

Saving of previous rights.

By rule 23, "Nothing in any of the rules of this order shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever."

Order of writs

By rule 24, "Nothing in this order shall affect the order in which writs of execution may be issued."

Effect of *fi. fa.* and *elegit.*

By Order 43, rule 1, it is provided that, "Writs of *fieri facias* and of *elegit* shall have the same force and effect as the like writs have heretofore had, and shall be executed in the same manner in which the like writs have heretofore been executed."

(*w*) See 1 & 2 Vict. c. 110, s. 18.

(*x*) This rule is taken from Chan. Cons. Ord. 29, r. 2; Morgan's Acts and Orders, 513, ed. 4.

(*y*) *Audita querela* was a process in the nature of an action whereby a party against whom judgment had been obtained might prevent execution on the ground of some matter of defence which there was no opportunity of raising in the original action; see Tucker *v.* Davies, 2 Notes to Williams' Saunders, 439. By R. G., H. T. 1853, r. 79, this process could only be issued by leave of the Court or a judge; it has now fallen almost entirely into disuse. See Jud. Acts, 2nd ed. 286.

By rule 2, "Writs of *venditioni exponas*, *distringas* Writs in aid.
per vice-comitem, *fieri facias de bonis ecclesiasticis*, *sequestrari facias de bonis ecclesiasticis*, and all other writs in aid of a writ of *fieri facias* or of *elegit*, may be issued and executed in the same cases and in the same manner as heretofore."

Writs of execution issue from the London office, except where an action proceeds in a district registry (*a*).

Writs of execution are generally directed to the sheriff of the county, or to some officer on whom the performance of the duties of the sheriff for the particular place is imposed by law. The writ of sequestration is an exception; it is directed to certain commissioners, and orders them to enter upon the judgment debtor's real estate, and to collect, receive, and sequester the rents and profits of his real estate, and to sequester his personal estate, detain, and keep the same, until the judgment debtor shall pay into Court the sum of ——, or clear his contempt, &c. (*b*). Writs generally addressed to sheriff. Writ of sequestration.

A sheriff is bound to execute a writ delivered to him, according to the exigency thereof, without inquiry into the regularity of the proceeding whereon the writ is grounded (*c*); but, if a writ be delivered to a sheriff for execution against the person or the goods of some one permanently privileged, as, for example, an ambassador, it would appear that the sheriff is not bound to execute (*d*). Sheriff bound to execute; except when writ is against peer, &c.

The sheriff may personally execute the writ, and also the under-sheriff, without a warrant, for he is the known and responsible officer of the sheriff (*e*). But a bailiff, to whom a warrant is directed, cannot depute the execution to another; if, however, he himself is near, at the time of Who may execute writ. Bailiff cannot depute execution.

(*a*) Judicature Act, 1875, O. 35, r. 3.
(*b*) *Ibid.*, App. F., No. 10.
(*c*) See Parsons *v.* Lloyd, 3 Wils. 345; 2 Keb. 705; Cro. Eliz. 271. Case of the Marshalsea, 10 Rep. 76, and Wat. Sh., 2nd ed. 67.
(*d*) Isabel, Countess of Rutland's Case, 6 Rep. 64. See also Actions against the Sheriff.
(*e*) Wat. Sh., 2nd ed. 70.

Process when writ is delivered.

the execution, it is good (*f*). As soon as the writ is delivered at the sheriff's office, it is the practice for the under-sheriff to make out a warrant to one or more bailiffs for the execution of the writ, in the name and under the seal of the sheriff (*g*).

Although the sheriff is an agent for those who put writs in his hands to execute, he is also a public functionary, having at the same time duties to perform towards those against whom the writs are directed (*h*).

If the sheriff have two writs in his hands, one valid and the other invalid, and arrests on both at the same time, he may rely on the valid writ, and treat as detainers any number of valid writs which he may then have, or which may afterwards come into his hands (*i*). But if, having two writs, he arrests on the invalid writ alone, he cannot afterwards justify the arrest by the good writ (*k*).

Nor can he, while a person is unlawfully in his custody by virtue of an arrest on an invalid writ, arrest that person on a good writ. To permit him to do so, would be to allow him to take advantage of his own wrong (*l*).

Sheriff must execute within reasonable time.

The sheriff should execute the writ within a reasonable time after it has been delivered to him (*m*), otherwise he is liable to an action by the person suing out the writ.

It may be executed at any time, except on a Sunday (*n*), before it is returnable, and while in force (*o*).

Writ against executor.

If the defendant dies after execution is sued out, the writ may, it seems, be executed on his goods in the hands of the executor (*p*).

No writ, except that of *elegit*, need be returned, unless the sheriff is ruled to do so (*q*).

(*f*) Wat. Sh., 2nd ed. 70.
(*g*) Dalt. 117.
(*h*) Hooper *v.* Lane, 6 H. L. 443.
(*i*) *Ibid.*
(*k*) *Ibid.*
(*l*) *Ibid.*
(*m*) Clifton *v.* Hooper, 6 Q. B. 468.
(*n*) 29 Car. 2, c. 7, s. 6.
(*o*) Simpson *v.* Heath, 5 M. & W. 631.
(*p*) 3 Wils. 300.
(*q*) See Chapter XXI. on Sheriff's Return to Writ.

The modes of executing the various writs will be found under the respective writs.

Writ of execution when to prejudice title to goods acquired *bonâ fide*.

By 19 & 20 Vict. c. 97, s. 1 (*r*), no writ of execution, and no writ of attachment against the body of a debtor, will prejudice the title to such goods acquired by any person *bonâ fide* and for a valuable consideration before the actual seizure or attachment thereof by virtue of such writ: provided such person had not at the time when he acquired such title notice (*s*) that such writ, or any other writ by virtue of which the goods of such owner might be seized or attached, had been delivered to and remained unexecuted in the hands of the sheriff, under-sheriff, or coroner (*t*).

Methods of attaching lands or goods.

There were various modes of attaching the lands or goods of the defendant known to the law, and within the jurisdiction of the Courts, which jurisdiction was amalgamated by the Judicature Acts, and made exerciseable by any single Court. One of the modes was by *fieri facias*, another was by writ of *elegit*, a third was by the appointment of a receiver in a Court of Equity, when the other modes proved ineffectual by reason of the imperfection of the statutes which authorized the sheriff to deal with the property of the debtor. This mode of proceeding, by the appointment of a receiver, was called equitable execution. It was a mode of doing that which the plaintiff asks the Court in every action to do, namely, to realize the debtor's property, so as to produce the sum required.

Equitable execution.

Former procedure.

Prior to the Judicature Acts, the Courts of Equity, before granting equitable execution, required to be satisfied of two things:

First, that the plaintiff in the action had tried all he could to get satisfaction at law;

Second, that the debtor was possessed of that particular equitable interest which could not be attached at law.

(*r*) Mercantile Law Amendment Act, 1856.
(*s*) See Hobson *v.* Thelluson, L. R. 2 Q. B. 642.
(*t*) See Edwards *v.* Edwards, 2 Ch. Div. 291.

Most money demands were only cognizable in a Court of law, and, as a rule, the plaintiff was compelled to bring an action in a Court of Common Law to recover it, and then, having got his judgment, he was compelled to bring a new action, then called a suit in Equity, by bill to enforce the judgment.

Present procedure.

This imperfection the Judicature Acts were intended to remedy; now, therefore, in the words of the 24th section, sub-section 7, of the Judicature Act, 1873, the Court is to grant all such remedies as the parties may be entitled to in the matter pending, "so that, as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters be avoided" (*u*).

Equitable execution.

In an action, therefore, by a creditor against a debtor in which the plaintiff has obtained final judgment, the Court has power, under sub-section 7, s. 24, of the Judicature Act, 1873, in order to satisfy the judgment, to grant equitable execution against the defendant by appointing a receiver upon motion in that action, although the writ may not have been indorsed with a claim for a receiver; it being unnecessary in such a case to bring another action for that purpose (*x*). Thus, S. recovered judgment for a debt against C., and issued an *elegit*. The sheriff returned that the debtor had no lands which he could seize. C. had leasehold property which was subject to mortgages. S. thereupon obtained the appointment of a receiver of the rents of the leasehold property, without prejudice to the rights of the prior incumbrancers. On the same day a petition for adjudication in bankruptcy was filed against C., and a receiver was appointed in bankruptcy a few minutes before the appointment of the receiver in the action. C. afterwards filed a petition for liquidation; the same receiver was appointed in the liquidation as had been appointed in the bankruptcy, and resolutions were passed for liquidation of his affairs by arrangement. S. had not

(*u*) See judgment of M. R., Salt *v.* Cooper, 16 Ch. D. 544.
(*x*) Salt *v.* Cooper, *vide supra*.

until some days after the appointment of his receiver, any notice that C. had committed an act of bankruptcy, or that any proceedings in bankruptcy were pending against him. Consequently, the Master of the Rolls, and afterwards the Court of Appeal, held that, as at the time S. obtained equitable execution by the appointment of a receiver the property was legally, though not actually, in the possession of the receiver appointed by the Court of Bankruptcy, the equitable execution was ineffectual and was not protected by sect. 95, sub-s. 2, of the Bankruptcy Act, 1869 (*y*).

Writs of Execution issued out of the London Bankruptcy Court.

Writs to be sealed.

In all cases where writs of execution may be issued to enforce an order for payment of money and costs, or either of them, the same must be sealed with the seal of the London Bankruptcy Court, and be issued by the chief registrar, on production of an office copy of the order for payment; when the order comprises costs, on production of the *allocatur* also (*z*).

Issued by the chief registrar.

Præcipe to be filed.

At the time of issuing any writ of execution, the solicitor causing the same to be issued must file a *præcipe* thereof with the chief registrar, according to the form in the schedule (*a*).

Præcipe book.

The chief registrar must file and keep every such *præcipe*, and keep a book in which he must enter the same, with an index referring alphabetically to the names of the persons against whom writs are issued (*b*).

Form and mode of executing writs.

Writs of execution must be according to the forms in the schedule to the general rules, or as near thereto as the circumstances of the case may require, and such writs, when sealed, must be delivered to the sheriff or other officer to whom the execution of the like writs issuing out

(*y*) Salt *v.* Cooper, 16 Ch. D. 544.
(*z*) Bktcy Rules, 1870, r. 226.
(*a*) R. 227.
(*b*) R. 228.

of the superior Courts of Common Law at Westminster belongs, and must be executed by such sheriff or other officer as nearly as may be in the same manner in which he does or ought to execute such writs; for the execution of such writs, such sheriff or officer is not to take or be allowed any fees other than such as are or shall be from time to time allowed by lawful authority for the execution of the like writs issuing out of the superior Courts of Common Law at Westminster (*c*).

Writs to be tested in name of chief judge.

Writs of execution must be tested in the name of the chief judge of the day when actually issued, and be returnable immediately after the execution thereof to the Court (*d*).

Endorsement on writ.

The amount actually intended to be levied or extended, and the name, occupation, and address of the person against whom the writ is issued, and the name and residence, or place of business, of the solicitor issuing the same (if any), must be endorsed on every writ of execution (*e*).

Venditioni exponas.

On the filing of a return to a former writ, that goods have been seized but not sold, a writ of *venditioni exponas* may be issued (*f*).

Returns to writs to be filed.

On execution of the writ, or before execution, if so ordered by the Court, every writ must be forthwith returned to the Court, by filing the same (with the proper return enclosed) with the chief registrar, by whom such writ and return must be filed of record, and the fact and date and substance of the return must be forthwith entered in the *præcipe* book (*g*).

Amendment of writs.

The Court of Bankruptcy, on proper application, may exercise such and the same powers of amendment of writs of execution, and the endorsements thereon, and the *præcipes* thereof, in cases where such powers may be

(*c*) Bktcy Rules, 1870, r. 229.
(*d*) R. 230.
(*e*) R. 231.
(*f*) R. 232.
(*g*) R. 233.

sonably exercised, and on the same terms as to pay-
nt of costs or otherwise, as the superior Courts of
mmon Law at Westminster are in the habit of
ercising (*h*).

(*h*) Bktcy Rules, 1870, r. 236.

CHAPTER XVI.

WRIT OF FIERI FACIAS.

Writ of *fi. fa.*

THE writ of *fieri facias* (or *fi. fa.*, as it is usually called,) "is a writ judicial that lieth for him who hath recovered any debt or damages in the Queen's Courts" (*a*). It is a command to the sheriff that of the goods and chattels of the party he cause to be made the sum recovered by the judgment, with interest at 4 *per cent.* from the time of entering up judgment, and have the money and the interest before the High Court of Justice immediately after the execution of the writ, to be paid to the party suing out the writ, in pursuance of the judgment (*b*). It is perhaps the most important of the writs of execution, the sheriff being required to execute this writ more frequently than any other. The sheriff is the plaintiff's agent for the purpose of the execution, and must obey an order not to execute.

Sheriff is plaintiff's agent.

How executed.

When the writ is delivered to the sheriff, a warrant is made to one or more bailiffs, commanding them to execute the writ. The warrant commands the officer to execute the writ very much in the same terms as the sheriff is commanded by the writ itself (*c*).

Bonâ fide purchaser.

The writ of execution does not prejudice the title to the goods of a debtor acquired by any person *bonâ fide* and for valuable consideration before their actual seizure, provided that the purchaser had not at the time when he

(*a*) Wat. Sh., 2nd ed. For forms of writ, see Appendix.
(*b*) See forms of writ in Appendix.
(*c*) See forms of warrant on *fieri facias* in Appendix.

acquired title notice that a writ under which the goods might be seized had been delivered to the sheriff (*d*).

Prior execution, when void.

Where goods seized under a former writ, founded on a judgment fraudulent against creditors, are capable of being seized by the sheriff, he is compellable, under the statute 13 Eliz. c. 5, to seize and sell such goods under a writ received by him subsequently, and founded on a *bonâ fide* debt; if, after notice of such fraud, he neglects to sell, and returns *nulla bona* to the latter writ, he is liable to an action for a false return. Nor does the fact that the sheriff has assigned the goods upon the prior execution to a supposed *bonâ fide* purchaser (but who is, in fact, a party to the fraud,) innocently and in ignorance of the fraud, excuse the sheriff from such liability (*e*).

Seizure of part for whole.

When premises consisting of a mansion-house, offices, gardens, farm, and farm-house are in the same county, and in one and the same occupation as an entirety, a seizure by the sheriff at the mansion-house of part of the effects liable to the execution, in the name of the whole, is an actual seizure within the statute of everything on the premises liable to the execution, whatever the extent of the premises, and however dispersed the effects may be (*f*).

Time of operation of writ.

With regard to the time of operation of a *fi. fa.* the statute 29 Car. 2, c. 3, s. 16, enacts that "no writ of *fi. fa.*, or other writ of execution, shall bind the property of the goods of the party against whom such writ of execution is sued forth, but from the time such writ shall be delivered to the sheriff, undersheriff, or coroners to be executed; and, for the better manifestation of the said time, the sheriff, undersheriff, and coroners, their deputies and agents, shall, upon the receipt of any such writ (without fee for doing the same), indorse upon the back thereof the day of the month or year whenever he or they received the same."

(*d*) Gladstone *v.* Padwick, L. R. 6 Exch. 603.
(*e*) Christopherson *v.* Burton, 3 Exch. 160; 18 L. J. Exch. 60.
(*f*) Gladstone *v.* Padwick, L. R. 6 Exch. 603.

Goods taken must belong to person named in writ.

The goods taken must belong to the person named in the writ; so, when a sheriff seized goods belonging to a woman under an execution against the man whose wife she was supposed to be, on its turning out that the marriage was void, it was held that the woman might recover the full value of the goods (*g*). Similarly, a sheriff cannot seize under a *fi. fa.* against A. a horse belonging to B. with whom he lodged, although the only evidence of ownership was, that the horse had belonged to her husband, and that after his death she had kept it, but had not administered (*h*).

Property in goods not altered by mere delivery of writ.

The property in the goods is not altered by the delivery of the writ to the sheriff, but remains in the defendant until execution executed (*i*); but, if the defendant makes an assignment of his goods after the delivery of a *fi. fa.* to the sheriff, excepting by sale in market overt, the sheriff may take them in execution (*j*); it follows, therefore, that goods taken under a *fi. fa.* are bound from the date of the *teste* of the writ, except as against purchasers in market overt (*k*), or a trustee in bankruptcy (*l*); but, as the property is not changed until execution executed, he may sell the goods, subject to the rights of the execution creditor (*m*), to which, however, they would in any case, except as above, be liable.

Delivery to be to sheriff or deputy.

A. expecting an execution, executed a deed assigning all his property to trustees for the benefit of his creditors, after paying expenses, with a power to the trustees to retain money to pay the costs of an action which had been brought by B. against A. This deed was executed at nine a.m. on the 25th of February. A *fi. fa.* was

(*g*) Glasspoole *v.* Young, 9 B. & C. 696.
(*h*) Oughton *v.* Seppings, 1 B. & Ad. 241.
(*i*) Payne *v.* Drew, 4 East, 523; 1 Smith, 170.
(*j*) Lowthal *v.* Tomkins, 2 Eq. Cas. Abr. 381; see also Samuel *v.* Duke, 3 M. & W. 622; 6 Dowl. 536; 1 H. & H. 127.
(*k*) Ranken *v.* Harwood, 10 Jur. 794—V. C. W.
(*l*) *Ex parte* Williams, *re* Davies, L. R. 7 Ch. 314; 41 L. J. Bktcy. 39.
(*m*) See Samuel *v.* Duke, 3 M. & W. 622; 6 Dowl. 536; 1 H. & H. 127.

delivered to a sheriff's officer on the 24th, and by him delivered to the undersheriff at 10 a.m. on the 25th. In this case, it was held that the deed was good, notwithstanding the *proviso* to retain, and that the goods could not be taken under the *fi. fa.* (*n*) A delivery of the writ, therefore, to the sheriff's officer, is not tantamount to a delivery to the sheriff or his deputy.

Creditor holding security.

The position of the execution creditor with regard to a trustee in bankruptcy is different to his position with regard to other persons, as a mere delivery to the sheriff, without seizure, though by the Statute of Frauds it binds the goods, does not make the execution creditor a creditor "holding security;" in order to place him in this position, a *seizure* by the sheriff prior to any act of bankruptcy to which the title of the trustee relates is requisite; as, although the seizure does not transfer the absolute property out of the debtor (*o*), it nevertheless gives the sheriff such a special property as would enable him to maintain trover, and as would give the execution creditor, through the sheriff, a lien (*p*).

London deputy.

The delivery of a *fi. fa.* to the sheriff's deputy in London is equivalent to the delivery to the sheriff in the country (*q*).

The officer should seize the goods, but a seizure of part of the goods in a house in the name of the whole, under a *fi. fa.*, is a good seizure of all (*r*).

Officer to retain possession.

The officer should keep possession of the goods either by himself or some other person, as, upon an abandonment of the possession by the sheriff, the goods do not remain in the custody of the law, and are liable to be seized under another execution; so, where a sheriff's officer executed a writ of *fi. fa.* by going to the house and informing the debtor

(*n*) Bowen *v.* Bramidge, 6 C. & P. 140—Tindal.

(*o*) Giles *v.* Grover, 1 C. & F. 72; 2 M. & Scott, 197; 9 Bingham, 128.

(*p*) *Ex parte* Williams, *re* Davies, L. R. 7 Ch. 314; 41 L. J. Bktcy. 39.

(*q*) Woodland *v.* Fuller, 3 P. & D. 570; 11 Ad. & E. 859; 4 Jur. 743.

(*r*) Cole *v.* Davies, 1 Ld. Raym. 725—Holt, C.J.

that he came to levy on his goods, and, laying his hand on the table, said "I take this table," then locked up his warrant in the table drawer, took the key, and went away without leaving any person in possession, and the landlord, after the *fi. fa.* was returnable, distrained the goods for rent, it was held that the sheriff could not maintain trespass against him (*s*).

Sheriff not to break in.

Where the door is open the sheriff may enter and do execution at the suit of a subject, and so also in such case may the lord, and distrain for his rent or service, but if the door be shut the sheriff may not, on request having been made for the opening of the door and refused, break open the defendant's house to execute process at the suit of a subject (*t*).

Exceptions.

This privilege is, however, confined to the owner of the house, and does not extend to protect any person other than the owner, or to the goods of any person other than the owner, so as to prevent a lawful execution, or to escape the process of the law; in such cases, the sheriff may, on request made and refused, break and enter the house (*u*); but a reasonable suspicion is not sufficient to hold a sheriff harmless, if he break open the house of a third person to take a defendant, under the impression that the defendant is in the house, for the sheriff is justified or not by the event (*x*).

Door of barn or out-house may be broken open.

This privilege, further, extends only to a man's dwelling-house; therefore, a barn or outhouse not connected with the dwelling-house, *i.e.* not within the curtilage, may be broken open in order to levy an execution (*y*).

Further, when the sheriff's officer who has entered a house to distrain, or execute process, is forcibly ejected, he may break open the door in order to re-enter (*z*).

Request

The sheriff must in all cases first make request for

(*s*) Blades *v.* Arundale, 1 Maule & Sel. 711.
(*t*) Semayne's case, 5 Rep. 91.
(*u*) *Ibid.*
(*x*) Johnson *v.* Leigh, 1 Marsh. 565.
(*y*) Penton *v.* Browne, 1 Sid. 186.
(*z*) Eagleton *v.* Gutteridge, 11 M. & W. 465.

admission before breaking in (*a*). But, having entered, he need not demand to have the inner doors opened to him before he breaks them in order to seize goods within (*b*). for admission.

In all cases when the king is a party, the sheriff (if the doors be not open) may break into the party's house, either to arrest him, or to do other execution of the king's process, if he cannot otherwise enter. But before he breaks it he ought to signify the cause of his coming, and to make request to open the doors (*c*). Where Crown is party.

If a window of defendant's house be shut, but not fastened, it may not be opened for the purpose of distraining (*d*). Window may not be opened.

It appears to be an open question, whether, if the door had been unfastened and opened by an independent third person, the entry by the broker would have been lawful, in the case cited (*e*). But, when once in, the sheriff may break out, *e.g.* if locked in (*f*); and, when once in, the sheriff may further break open inner doors and chests, if necessary (*g*), and doors of lodgers residing in the house (*h*). Sheriff may break open inner doors.

Though the sheriff, in executing a *fi. fa.*, ought not to break open an outer door, nevertheless, if he does, and seizes, the execution is good, though he is a trespasser in entering the house, and liable to an action (*g*).

The sheriff must not stay on the premises beyond a reasonable time after seizure and sale (*i*), and cannot execute the writ on a Sunday (*k*).

A sheriff who seizes goods of a debtor under a *fi. fa.* is not bound by an estoppel which might have prevented Estoppel.

(*a*) Hutchison *v.* Birch, 4 Taunt. 619. Ratcliffe *v.* Burton, 3 B. & P. 223.
(*b*) *Ibid.*
(*c*) Semayne's case, *vide supra.*
(*d*) Nash *v.* Lucas, L. R. 2 Q. B. 590.
(*e*) Nash *v.* Lucas, L. R. 2 Q. B. 590.
(*f*) Pugh *v.* Griffiths, 7 Ad. & E. 827.
(*g*) Semayne's case, 5 Rep. 91.
(*h*) Lee *v.* Gansal, Cowp. 1.
(*i*) Playfair *v.* Musgrove, 14 M. & W. 239; 3 D. & L. 72; 9 Jur. 783; 15 L. J. Exch. 26.
(*k*) 29 Car. 2, c. 7, s. 6.

the debtor himself from claiming the goods (*l*). Thus, M. being the owner of goods, procured H. to assign them by bill of sale to R., to secure an advance of money. R. took the goods *bonâ fide*, and upon the assurance of M. that the goods belonged to H. The goods were afterwards seized under a *fi. fa.* as the goods of M. On the trial of an interpleader issue between R. and the execution creditor, the jury found that there had been no actual transfer of the goods from M. to H. Here it was held that R. had acquired no title to the goods as against the execution creditor (*m*).

Form of writ.

The writ should agree in the mandatory part with the judgment, and the debt set out in the body of the writ as having been recovered must agree with the judgment (*n*), although the direction on the back of the warrant may be for a less amount. (It is an every day practice to set out a judgment recovered for (say) £60, and to levy £49 (say), *and no more* (*o*). If the plaintiff sues out execution for a part only of the sum recovered by the judgment, he may direct the sheriff accordingly by a private memorandum; but, if the judgment and the writ do not agree, even though the sheriff is directed to levy a sum less than that mentioned in the judgment, the reason of the variance ought to appear on the face of the writ (*p*).

Amending writ.

The Court will not amend the writ where the rights of third persons have intervened; as, where the defendant has become bankrupt since the execution of the writ (*q*).

Priority of writs.

With regard to priority in case of several executions, the sheriff ought to execute that which was first delivered to him (*r*), unless the first was fraudulent, and in that case

(*l*) Richards *v.* Johnston, 4 H. & N. 660; 1 F. & F. 447 (N. P. trial).

(*m*) *Ibid.* See also Curlewis *v.* Denman, 1 F. & F. 448, *note*.

(*n*) Cobbold *v.* Chilver, 4 Scott, N. R. 678; 1 D., N. S. 726; 4 M. & G. 62; 6 Jur. 346.

(*o*) See *In re* Hinks, *Ex parte* Berthier, W. N. 1878, 67.

(*p*) Webber *v.* Hutchins, 8 M. & W. 319—Parke, B.; 1 D., N. S. 95.

(*q*) *Ibid.* See also Brooks *v.* Hodson, 7 M. & G. 529; 8 Scott, N. R. 228.

(*r*) Hutchinson *v.* Johnston, 1 T. R. 729.

he should execute the other (*s*); as the sheriff is bound to execute according to the plaintiff's order, if he is directed not to execute the first writ until a future day, he may execute another writ delivered before that day (*t*).

Several writs delivered at once.

Where the whole of the writs were delivered to the sheriff at one time and in one bundle, there being one attorney employed by six several plaintiffs in various actions against one defendant, in each of which judgment was obtained and a writ of execution issued, the Court refused, upon application by the sheriff, to compel the plaintiffs or their attorney to direct in what priority the writs should be executed (*u*).

Warrant granted on subsequent writ.

Where two writs of *fi. fa.* against the same defendant are delivered to the sheriff on different days, and a warrant is granted to a sheriff's officer on the second writ, and he enters and takes the defendant's goods on that writ, and subsequently another warrant to another officer on the first writ, and he enters and takes under the first writ, *if no sale has actually been made under the second writ*, the first writ must have the priority; if the person claiming under the second writ pay the sheriff the amount of the debt under the first writ, for his security, the Court will not compel the sheriff to refund the money on motion (*x*).

A renewed writ is entitled to priority according to the time of the original delivery thereof (*y*).

Surplus of first writ, how applied.

If, after execution and satisfaction of the first writ, there be a surplus, this must be applied to the satisfying of the second writ, and so on (*z*).

(*s*) Bailey *v.* Windham, 1 Wils. 44. As to the preference to be accorded to Crown process received after the writ of the subject, see *writ of extent*.

(*t*) Kempland *v.* Macauley, 1 Peake's N. P. C. 95—Ld. Kenyon; 4 T. R. 436. Hunt *v.* Hooper, 1 D. & L. 626; 12 M. & W. 664; 8 Jur. 203; 13 L. J. Exch. 203.

(*u*) Ashworth *v.* Uxbridge (Earl); 2 Dowl., N. S. 377—B. C.—Wightman.

(*x*) Hutchinson *v.* Johnston, 1 T. R. 729. Ribot *v.* Peckham, 1 T. R. 731, n. Smallcomb *v.* Buckingham, 1 Salk. 319; 5 Mod. 376; 1 Ld. Raym. 251.

(*y*) Judicature Act, 1875, O. 42, r. 16.

(*z*) Aldred *v.* Constable, 6 Q. B. 370.

Death of *execution creditor.*

If the execution creditor dies after execution sued out, the writ may, notwithstanding, be executed, and his executor have the money (*a*).

Death of *execution debtor.*

If the execution debtor dies after a *fi. fa.* is sued out, the writ may, it seems, be executed, notwithstanding, on his goods in the hands of an executor; where the debtor dies in the interval between the issuing and the execution of the writ, the creditor's title to the goods taken will be paramount to that of the executor (*b*).

Death of debtor.

Where a defendant died between eleven and twelve o'clock in the morning, and a *fi. fa.* was sued out against his goods between two and three in the afternoon of the same day, the Court set aside the execution as irregular (*c*).

Setting aside execution.

If a defendant seeks to set aside an execution levied upon his goods, on the ground that he has never been served with process, and was ignorant of the action, he must apply promptly (*d*).

Defendant may pay debt and costs to sheriff.

The defendant, instead of allowing the writ to be executed, may pay the debt and costs, &c., as directed to be levied, to the sheriff, or his officer, and this will be deemed a good discharge to the defendant of the execution (*e*).

Reducing damages.

Where a rule *nisi* for reducing the damages is granted, execution should be stayed only in respect of the amount mentioned in the rule (*f*).

Partners.

Execution against firm.

When a judgment is against partners in the name of the firm, execution may issue in manner following:—(1) against any property of the partners as such; (2) against any person who has admitted on the pleadings that he is, or has been adjudged to be, a partner; (3)

(*a*) See Thoroughgood's Case, Noy, 73.
(*b*) Ranken *v.* Harwood, 10 Jur. 794.
(*c*) Chick *v.* Smith, 8 Dowl. 337; 4 Jur. 86—B. C.
(*d*) Jones *v.* Davis, 1 B. C. Rep. 290—Erle.
(*e*) Taylor *v.* Bekon, 2 Lev. 203.
(*f*) Bate *v.* Pane, 13 Jur. 609; 18 L. J. Q. B. 273.

against any person who has been served as a partner with a writ of summons and has failed to appear (*g*).

This order is restricted to judgment against partners in the name of the firm; consequently, if the action be, as it used always to be, against partners in their individual names, the Common Law execution against each and all remains. Execution against individuals.

If the party who has obtained judgment claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the Court or a judge for leave to do so; and the Court or judge may give such leave if the liability be not disputed, or, if such liability be disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined (*h*).

Formerly, if, on an execution against one of two partners, for the separate debt of that partner, the whole of the partnership goods were taken and sold, the sheriff used to hand over to the other a share of the produce proportioned to his share in the partnership effects (*i*); but this practice has now been discontinued, and the present practice, which is in conformity with the older cases, has been adopted (*k*). Former practice. Present practice.

The sheriff's duty is to seize the whole of the partnership effects, or so much of them as may be requisite, and to sell the undivided share of the debtor partner therein, without reference to the state of the accounts, as between him and his co-partners (*l*). Sheriff's duty.

Where a business is carried on under a firm which on the face of it indicates several partners, whereas, in fact, the business is that of a single individual, Order 16, rule 10, of the Judicature Act, 1875, provides, that "any two or Discovery of names of partners.

(*g*) Judicature Act, 1875, O. 42, r. 8.
(*h*) *Ibid.*
(*i*) Eddie *v.* Davidson, 2 Dougl. 650.
(*k*) Parker *v.* Pistor, 3 B. & P. 288. Chapman *v.* Koops, *ibid.* 289. Morley *v.* Strombom, *ibid.* 254.
(*l*) Holmes *v.* Mentze, 4 Ad. & E. 127; 1 Lind., 4th ed., 689.

more persons claiming or being liable as co-partners, may sue or be sued in the name of their respective firms, if any; and any party to an action may in such case apply by summons to a judge for a statement of the names of the persons who are co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the judge may direct."

Procedure.

The sheriff, having seized the property of the firm, proceeds to sell the interest of the judgment debtor, and to assign the same to the purchaser. He can, however, sell and convey no more than the debtor's right (*m*).

Rights of partners.

If he sells the goods themselves and not the share, he is accountable to the solvent partners for so much of the proceeds of the sale as is proportional to their share in the partnership (*n*); but one partner cannot maintain trover against the sheriff for a mere sale of his share of the partnership property under a *fi. fa.* issued against the other partner for a separate debt (*o*).

Joint and separate creditors.

A separate creditor of a partner has no right against the joint property, however, further than the separate interest of the partner, *i.e.* his share upon a division of the surplus, subject to the accounts of the partnership; joint property, therefore, of an insolvent partnership taken in execution for a separate debt cannot be held against the joint creditors (*p*).

Debts of firm.

A partner holds the property of the firm subject to the right of his co-partner to have all the creditors of the firm paid out of the assets of the firm, and consequently out of the property seized by the sheriff (*q*); in this respect, therefore, the purchaser from the sheriff is in no better position than the partner whose undivided share has been sold (*r*).

(*m*) 1 Lind., 4th ed., 690; the sale may be made by private contract, *Ex parte* Villars, 1 Ch. 432.
(*n*) 1 Lind., 4th ed., 690. Mayhew *v.* Herrick, 7 C. B. 229; 13 Jur. 1073; 18 L. J. C. P. 179.
(*o*) *Ibid.*
(*p*) Taylor *v.* Fields, 4 Ves. 396.
(*q*) Skipp *v.* Harwood, 2 Swans. 586. Dutton *v.* Morrison, 17 Ves. 193; 1 Rose, 213.
(*r*) *Ibid.*

Before the Judicature Acts, it was necessary for the purchaser from the sheriff and the co-partner to settle their accounts by means of a suit in Equity (*s*).

Extent of transfer by sheriff.

The assignment by the sheriff to the purchaser transfers only so much as the sheriff has power to and does assign; if, therefore, under the *fi. fa.* the sheriff has not power to sell everything which, as between the partners, must be considered partnership property, he cannot transfer to the purchaser the entire interest of the judgment debtor. Where, therefore, a purchaser acquired from the sheriff the interest of the execution debtor, and then assigned it to the other partners, this did not preclude the execution debtor's right to an account from them, for the sale by the sheriff had not divested him of his entire share (*t*).

Solvent partners purchasing share of insolvent.

Solvent partners may purchase the share of an insolvent partner, but the purchase of his share under an execution against him must, in order to be valid, be above suspicion (*u*). Where, therefore, the solvent partners in a coal mine bought the share of an insolvent partner at a sale by auction by the sheriff under a *fi. fa.*, but before the sale by the sheriff removed the gear and prevented access to the coal mine through the shaft, and removed ironstone which had been newly raised, so as to prevent its being known that the seam of coal was almost reached, and, subsequent to the sale, on one day's working, the seam of coal was discovered, it was held that the purchase must be set aside, and on repayment of the purchase-money they were declared to be trustees of the share for the partner, although he had, without notice of the conduct of the purchasers, received the balance of the purchase-money from the sheriff (*x*). Interest upon the purchase-money was also decreed, at £5 *per cent.*

Rights of execution creditor.

The execution creditor has no title to goods seized under a *fi. fa.* issued by him, unless he purchases them from

(*s*) Parker *v.* Pistor, 3 B. & P. 288.
(*t*) Habershon *v.* Blurton, 1 De G. & Sm. 121.
(*u*) Perrens *v.* Johnson, 3 Sm. & G. 419; 3 Jur., N. S. 975.
(*x*) *Ibid.*

the sheriff. Where, therefore, under a *fi. fa.* issued against one partner for a private debt, the sheriff seized the goods of the partnership, and a joint *fiat* afterwards issued against the firm, subsequent to which the property was sold without prejudice to the rights of the execution creditor, and the proceeds were received by the assignees of the bankrupts, it was held that, as the interest applicable to the execution would only be in the surplus coming to the execution debtor after the payment of the partnership debts, and must depend on the settlement of accounts, which a Court of law is not competent to take, the execution creditor could not maintain an action for money had and received against the assignees (*y*).

Method of proceeding.

Upon a seizure by the sheriff, the partners of the execution debtor should obtain an order (1) dissolving the partnership, (2) directing the sheriff to withdraw, (3) directing the accounts of the partnership to be taken, and the value of the execution debtor's interest in the property seized by the sheriff to be ascertained, (4) appointing a receiver (*z*).

After the accounts have been taken, and the above value ascertained, the receiver should be directed to pay the amount of such value to the purchaser from the sheriff, if any, and the rest of the share of the execution debtor in the assets of the partnership to him. If the share has not been sold, the execution creditor must be paid out of, or to the extent of, the above value. The receiver can then be discharged (*a*).

A proceeding by the sheriff in the nature of an interpleader summons, bringing all parties interested before the Court, would probably be the most convenient course (*b*).

(*y*) Garbett *v.* Veale, 5 Q. B. 408; D. & M. 458; 8 Jur. 33[illegible].
(*z*) 1 Lind., 4th ed., 693.
(*a*) *Ibid.*
(*b*) *Ibid.*

Farming Stock.

Seizure of farming stock regulated by 56 Geo. 3, c. 50.

The seizing of farming stock is regulated by 56 Geo. 3, c. 50, the first section of which provides that the execution of legal process should be so regulated as to be consistent with good husbandry and the effect and intent of covenants and agreements entered into between the owners and occupiers of land let to farm, and goes on to enact, that "no sheriff or other officer in England or Wales, shall, by virtue of any process of any Court of law, carry off, or sell or dispose of for the purpose of being carried off, from any lands let to farm, any straw threshed or unthreshed, or any straw of crops growing, or any chaff, colder, or any turnips, or any manure, compost, ashes, or seaweed, in any case whatsoever, nor any hay, grass or grasses, whether natural or artificial, nor any tares or vetches, nor any roots or vegetables, being produce of such lands, in any case where, according to any covenant or written agreement, entered into and made for the benefit of the owner or landlord of any farm, such hay, grass or grasses, tares and vetches, roots or vegetables, ought not to be taken off or withholden from such lands, or which, by the tenor or effect of such covenants or agreements, ought to be used or expended thereon, and of which covenants or agreements, such sheriff or other officer shall have received a written notice before he shall have proceeded to sale."

No sheriff or other officer shall sell or carry off from any lands any straw, chaff, or turnips, in any case, nor any hay or other produce, contrary to the covenant.

Section 2 provides "that the tenant or occupier of any lands let to farm, against whose goods any process of law shall issue whereby such goods may be taken and sold, shall, on having knowledge of such process, give a written notice to the sheriff or other officer executing the same, of such covenants or agreements whereof he or she shall have knowledge, and which may relate to and regulate, or are intended to regulate, the use and expenditure of the crops or produce grown or growing thereon, and also of the name and residence of the owner or landlord of such lands; and such sheriff or other officer shall forthwith on executing such process, and before any sale shall have been proceeded

Tenant to give notice of the existence of covenants; and sheriff to give notice to the owner

or landlord.

in writing by the general post to the owner or landlord of such lands in all cases where such owner or landlord shall be resident in any part of this United Kingdom, and shall have been made known to and ascertained by such sheriff or other officer, and also to the known steward or agent of such landlord or owner, in respect of such lands, stating to such owner, landlord, and agent, the fact of possession having been taken of any crops or produce hereinbefore mentioned; and such sheriff or other officer shall, in all cases of the absence or silence of such landlord or owner, or his or her agent, postpone and delay the sale of such crops or produce until the latest day he lawfully can or may appoint for such sale."

Subsequent sections provide, however, that such produce may be sold subject to an agreement to expend it on the land, according to the custom of the country where there is no covenant or agreement, and according to such contract where there is. In case of such qualified sale, the purchasers may use all such necessary barns, buildings, yards, and fields, for the purpose of consuming such produce as the sheriff shall assign for the purpose, and which the tenant would have been entitled to and ought to have used for the like purpose.

Growing crops seized and sold under execution to be liable for accruing rent.

By the statute 14 & 15 Vict. c. 25, s. 2, it is provided "that, in case all or any part of the growing crops of the tenant of any farm or lands shall be seized and sold by any sheriff or other officer by virtue of any writ of *fieri facias* or other writ of execution, such crops, so long as the same shall remain on the farms or lands, shall, in default of sufficient distress of the goods and chattels of the tenant, be liable to the rent which may accrue and become due to the landlord after any such seizure and sale, and to the remedies by distress for recovery of such rent, and that notwithstanding any bargain and sale or assignment which may have been made or executed of such growing crops by any such sheriff or other officer."

Corn.

Corn, &c., raised by man's industry, may be taken, which is done by plucking an ear of corn; but things which

yield no annual profit, or which are produced without man's labour, cannot (*c*).

Growing crops.

Where growing crops of a tenant had been seized under a *fi. fa.*, and a writ of *hab. fac. poss.* was subsequently delivered to the sheriff in an ejectment, at the suit of the landlord, founded on a demise made long before the issuing of the *fi. fa.*, it was held that the sheriff was not bound to sell the growing crops under the *fi. fa.*, as they could not be legally considered as belonging to the tenant, the latter being a trespasser from the day of the demise laid in the declaration of ejectment (*d*).

How seized.

A crop of growing potatoes may be seized, which is done by pulling a potato root; but clover, rye grass, or artificial grass, growing under corn cannot: nor can a growing crop of meadow grass; nor growing fruit (*e*).

Fruit.

A contract for the sale of growing crops before they are cut is a contract for the sale of an interest in land. Carrots and roots, and pears and apples, do not come under the heading of land under the 4th section of the Statute of Frauds (*f*).

Ships.

Seizure may be constructive.

As regards execution against ships, it is sufficient, apparently, that the seizure should be constructive; where, therefore, under the Merchant Shipping Act, 1854, the transfer of a ship is to be in writing, and recorded as thereby directed, it is not necessary for the sheriff to go on board the vessel, but he may, after obtaining the original registers which establish the title of the defendant in the execution, register his right under the execution at the registry office of the port, and execute a bill of sale to the purchaser under the execution (*g*).

(*c*) 2 Gilb. Ex. 19.
(*d*) Hodgson *v.* Gascoigne, 5 B. & Ad. 88.
(*e*) Wat. Sh., 2nd ed., 253. Evans *v.* Roberts, 5 B. & C. 832—Bayley, J.
(*f*) Carrington *v.* Roots, 2 M. & W. 248.
(*g*) Harley *v.* Harley, 11 Ir. Ch. Rep. 451—M. R.

Formal seizure of shares sufficient.

The defendant in an execution being the registered proprietor of shares in a ship, a writ of *fi. fa.* was delivered to the sheriff; the solicitor for the creditor, by the direction of the sheriff, produced the certificate of registry from the ship, and delivered it to the sheriff, who retained it. The sheriff was registered at the custom house, under the Merchant Shipping Act, as the owner of the shares, which were afterwards sold by him and transferred to the purchaser by a bill of sale, which was also registered; here it was held that the seizure was effectual, although the sheriff did not go on board the vessel, and that the property in the shares was regularly transferred by the bill of sale (*g*).

In the course of his judgment the Master of the Rolls said, "the question is whether it is necessary for a sheriff actually to seize that which is not capable of transfer by delivery, but must be transferred in a particular manner provided by statute."

Foreign ship.

A ship built for sale to a foreigner, and for delivery to him at a foreign port, gave rise to the following case; D., the shipbuilder, being indebted to the plaintiffs in a large sum, as security made an equitable assignment to them, dated May 21st, 1875, of all his right and interest in a steamship built for but not delivered to the Turkish Government, and retained by D. as having a *lien* on the vessel for its price. D. also agreed to execute any further assurance of the ship to the plaintiffs which they might require. This assignment was not registered under the Bills of Sale Act, 1854 (*h*), nor was the ship registered under the nineteenth section of the Merchant Shipping Act, 1854 (*i*), as a British ship. By an agreement, dated June 24th, 1876, D. agreed to sell to the plaintiffs certain machinery, fixtures, and loose tools upon his business premises, at a valuation, but this agreement was never signed by the parties to it. On July 18th, 1876, the

(*g*) Harley *v.* Harley, 11 Ir. Ch. Rep. 451.
(*h*) 17 & 18 Vict. c. 36.
(*i*) 17 & 18 Vict. c. 104.

sheriff, under an execution issued upon a judgment obtained against D. by a creditor, took possession of the machinery, fixtures, and tools, and also of the steamship. On August 22nd, the plaintiffs, while the sheriff's officer was still in possession, under an authority from D., took formal possession of part of the articles comprised in the agreement of June 24th, 1876. The defendant, having obtained a judgment against D., issued a writ of *fi. fa.*, and on September 13th, a levy on the machinery, fixtures, tools, &c., was made under the writ.

On an interpleader issue to try the plaintiff's right to the steamship, and to the machinery, &c., as against the defendant, it was held, affirming the judgment of Pollock, B., that the plaintiffs had a good title to the ship, and to the machinery, &c., as against the defendant, because,

(1.) The transfer of the ship by D. to the plaintiffs, being within the exceptions in section 7 of the Bills of Sale Act, 1854 (*k*), was effectual without registration under that Act, and the ship was not a British ship so as to require registration under section 19 of the Merchant Shipping Act, 1854 (*l*).

(2.) The possession taken by the plaintiffs on August 22nd, of the machinery, &c., constituted a sufficient actual acceptance and receipt to take the agreement of May 21st out of the seventeenth section of the Statute of Frauds, and the sale by D. to the plaintiffs of the machinery, &c., was valid, notwithstanding that they were in the custody of the sheriff when the plaintiffs took possession (*m*).

It was further held by Bramwell and Brett, L. J.J., that a transfer of a ship which has not been registered as a British ship under section 19 of the Merchant Shipping Act, 1854, is good, although not made by a bill of sale under section 55 of that Act. Transfer of ship.

If A. lends money on the security of a ship, and takes

(k) 17 & 18 Vict. c. 36.
(l) 17 & 18 Vict. c. 104.
(m) Union Bank of London v. Lenanton, 38 L. T. N. S. 698; 3 C. P. D. 243; 47 L. J. C. P. 409.

possession before execution executed at the suit of B., the vessel cannot be seized under B.'s execution (*i*).

The distinction which exists between property which passes by delivery and property, such as a chattel real, which does not, is thus adverted to by Chief Baron Pollock in Playfair *v.* Musgrove (*k*): "I think it is quite clear that the term remains in the original lessee until an actual assignment by the sheriff. It may be that things which pass by delivery are, for some purposes, vested in the sheriff by the act of seizure, but, in the case of chattels real, it is not so."

Playfair *v.* Musgrove.

Lease for Years.

Interest in lease for years how seized.

The interest in a lease for years is usually seized under a *fi. fa.*, by the sheriff taking possession of the lease.

The sheriff under this writ may enter and seize a lease for years, he may then assign the term to the vendee, after which he must not stay longer on the premises; but it appears that it is not *necessary* for him either to seize a lease, or to enter on the lands; it is sufficient for the sheriff, he having acquired a power of sale by the delivery of the *fi. fa.*, to execute the assignment, without any seizure whatever (*l*), the assignment being sufficient evidence of the seizure.

Till an actual assignment by the sheriff, the term remains in the original lessee. In the course of his judgment, in the case of Playfair *v.* Musgrove (*m*), Pollock, C.B., says, "I cannot at all accede to the suggestion in argument, that, on the seizure of a term of years, the term becomes vested in the sheriff until he executes an assignment of it to the purchaser" (*n*).

Playfair *v.* Musgrove.

(*i*) Ladbroke *v.* Crichett, 2 T. R. 649.

(*k*) 14 M. & W. 245; 15 L. J. Exch. 26; 3 D. & L. 72; 9 Jur. 78

(*l*) Coleman *v.* Rawlinson, 1 F. & F. 330, explained in Harley Harley, 11 Ir. Ch. Rep. 451, by the Master of the Rolls.

(*m*) 14 M. & W. 245; 15 L. J. Exch. 26; 3 D. & L. 72; 9 Jur. 7

(*n*) Playfair *v.* Musgrove, 14 M. & W. 239; 15 L. J. Exch. 3 D. & L. 72; 9 Jur. 783; see also Hughes *v.* Jones, 9 M. & 372; 1 D. N. S. 352; 12 L. J. Exch. 265; 6 Jur. 302, where sale without assignment by a sheriff was held bad.

Where, therefore, a lease is taken in execution by the sheriff, the interest in it remains in the execution debtor, until actual assignment to the purchaser (*o*).

If the sheriff should remain on the premises for the purpose of putting the purchaser in possession, he would become liable to an action for trespass at the suit of the execution debtor, if in possession, although the premises had been sold and transferred (*p*). Trespass by sheriff.

Where the sheriff under a *fi. fa.* seized a lease, and sold the term before the writ was returnable, but did not execute the assignment to the vendee till a subsequent period, it was held that the assignment was valid (*q*).

In pleading the taking of a term under a *fi. fa.*, it is sufficient to state that the party was possessed of a certain interest in the residue of a certain term of years (*r*). Pleading.

Where a tenant entered under an agreement for a lease, and paid the stipulated rent, it was held that a tenancy from year to year was created, which the sheriff might sell under a *fi. fa.* (*s*). Agreement for lease.

Where a sheriff takes a lease and fixtures in execution he may sell the fixtures separately, if he cannot find a purchaser for the whole (*t*). When sheriff seizes lease and fixtures.

When an outgoing tenant has agreed to assign the remainder of his term, the sheriff, before an actual assignment made, may sell the term under a *fi. fa.* against the tenant, and put upon it the value agreed to be given by the incoming tenant (*u*).

When the sheriff seizes and sells a term under a *fi. fa.* he does not usually put the purchaser into actual possession of the property, especially if there be an undertenant (*v*), but the purchaser is left to obtain actual pos- When sheriff seizes and sells a term.

(*o*) Playfair *v.* Musgrove, 14 M. & W. 239; 15 L. J. Exch. 26; 3 D. & L. 72; 9 Jur. 783.
(*p*) *Ibid.*
(*q*) Stevens *v.* Donston, 1 B. & Ad. 230.
(*r*) Taylor *v.* Cole, 3 T. R. 292; 1 H. Black. 555.
(*s*) Westmoreland *v.* Smith, 1 M. & R. 137.
(*t*) Barnard *v.* Leigh, 1 Stark. 43.
(*u*) Sparrow *v.* Earl of Bristol, 1 Marsh. 10.
(*v*) Taylor *v.* Cole, 3 T. R. 292; 1 H. Black. 555.

session by ejectment (*x*), or to recover the rent from any undertenant by distress or action in the usual manner (*y*).

Legal interest.

Where the sheriff had taken a lease of premises in execution under a *fi. fa.*, and sold the term to the execution creditor without any assignment in writing, it was held, that the estate remained in the debtor, who might recover it from the execution creditor in ejectment (*z*).

Equitable interest.

An equitable interest in a term of years could not be taken under a *fi. fa.* before the Judicature Act, 1875 (*a*), nor is it presumed that by the passing of that Act it can be seized (*b*).

A sheriff cannot turn a tenant out of possession, when he has taken a term under an execution against the landlord (*c*).

It would appear, that, by 29 Car. 2, c. 3, an outstanding term vested in a trustee upon trust to attend the inheritance, is liable to be seized under a *fi. fa.* against the *cestui que trust*, the owner of the inheritance (*d*).

The statute 29 Car. 2, c. 3, s. 10, enacts as follows:—

Lands, &c., shall be liable to the judgments, &c., of *cestui que trust.*

"That it shall and may be lawful for every sheriff or other officer to whom any writ or precept is or shall be directed, at the suit of any person or persons, of, for, and upon any judgment, statute, or recognisance hereafter to be made or had, to do, make, and deliver execution unto the party in that behalf suing, of all such lands, tenements, rectories, tithes, rents, and hereditaments, as any other person or persons be in any manner of wise seised

(*x*) Cole Eject. 569; Woodfall, 10th ed., 246.

(*y*) Lloyd *v.* Davies, 2 Exch. 103; 18 L. J. Exch. 80. The sheriff's duty on a *fi. fa.* against a tenant, is to levy, first for the rent, and then for the execution; Colyer *v.* Speer, 2 B. & B. 67; Moore 473. See "Landlord's Security for Rent," Chapter XX.

(*z*) Hughes *v.* Jones, 1 D. N. S. 352; 9 M. & W. 372; 12 L. Exch. 265; 6 Jur. 302.

(*a*) Scott *v.* Scholey, 8 East, 477; Lyster *v.* Dollond, 1 Ves. j. 431; 3 Bro. Ch. C. 477 (Belt's ed.). This includes an equity of redemption.

(*b*) See "Equitable execution," p. 203.

(*c*) Rumball *v.* Murray, 3 T. & R. 298. See also Miller *v.* Parr, 2 Marsh. 78; 6 Taunt. 670; Taylor *v.* Cole, 3 T. R. 292; 1 Black. 555.

(*d*) Phillips *v.* Evans, 1 C. & M. 450; 3 Tyr. 339.

or possessed, or hereafter shall be seised or possessed, in trust for him against whom execution is so sued, like as the sheriff or other officer might or ought to have done if the said party against whom execution hereafter shall be so sued had been seised of such lands, tenements, rectories, tithes, rents, or other hereditaments of such estate as they be seised of in trust for him at the time of the said execution sued; (2) which lands, tenements, rectories, tithes, rents, and other hereditaments, by force and virtue of such execution, shall accordingly be held and enjoyed freed and discharged from all incumbrances of such person or persons as shall be so seised or possessed in trust for the person against whom such execution shall be sued; (3) and if any *cestui que trust* hereafter shall die, leaving a trust in fee simple to descend to his heir, then and in every such case such trust shall be deemed and taken, and is hereby declared to be, assets by descent, and the heir shall be liable to and chargeable with the obligation of his ancestors for and by reason of such assets, as fully and amply as he might or ought to have been, if the estate in law had descended to him in possession in like manner as the trust descended; any law, custom, or usage to the contrary in any wise notwithstanding."

And held free from the incumbrances of the persons seised in trust.

Trust to be assets in the hands of heirs.

Where an assignment by deed of a lease of premises taken in execution was made in the name and executed under the seal of office of the sheriff by the undersheriff, it was held not necessary to show the appointment of the undersheriff (*e*).

Assignment by undersheriff.

How much to be seized.

Only so much as will satisfy the demand on the writ is to be seized, together with necessary expenses, and when enough money has been realised by the sale to cover that amount, the sale must be stopped (*f*).

How much to be seized.

(*e*) James v. Brawn, 5 B. & Ad. 243.
(*f*) Aldred v. Constable, 6 Q. B. 381.

Companies.

With respect to companies, the 25 & 26 Vict. c. 89 (*x*), s. 163, enacts, that "where any company is being wound up by the Court, or subject to the supervision of the Court, any attachment, sequestration, distress, or execution *put in force* against the estate or effects of the said company after the commencement of the said winding up shall be void to all intents." This section, however, must be read in conjunction with sect. 87 of the same Act, which provides that, when an order has been made for winding up a company, no suit, action, or other proceeding shall be proceeded with or commenced against the company, except with the leave of the Court, and subject to such terms as the Court may impose (*y*). In the case of *Ex parte* North Staff. Ry. Co., Jessell, M.R., said: "The two sections may well be read together, taking the 163rd section to be subject to an exception, when the Court gives leave under the 87th section." The execution is not *put in force* within the meaning of the 163rd section until possession is actually taken under the writ (*z*).

Leave of court necessary before proceeding against a company after order for winding-up.

Execution, when in force.

Where a creditor of a company, having obtained judgment, issues execution *bonâ fide*, and the sheriff is actually in possession before the presentation of the petition, the creditor will not, except under special circumstances, be restrained from realising his judgment (*a*).

Sheriff in possession before petition presented.

Nevertheless, under the 87th section of the Bankruptcy Act, 1869, this is not a matter of course, as, under that section, which, by the 10th section of the Judicature Act 1875, applies to the respective rights of secured and

Bankruptcy Act, 1869, s. 87.

(*x*) Companies Act, 1862.

(*y*) *In re* Traders' North Staff. Carr. Co., *Ex parte* North S... Ry. Co., L. R. 19 Eq. 60. See also *In re* Universal Disinfector ... L. R. 20 Eq. 162. *In re* Lundy Granite Co., L. R. 6 Ch. ... *In re* London Cotton Co., L. R. 2 Eq. 53.

(*z*) *In re* London and Devon Biscuit Co., L. R. 12 Eq. 190.

(*a*) *In re* Great Ship Co., Parry's Case, 4 De G. J. & S. 63 ... L. J. Ch. 245; 3 N. R. 181; 12 W. R. 139; 10 Jur. N. S. ... Buck, 3rd ed., 186.

ecured creditors of a company in liquidation, even if the heriff had actually sold the property of the company, xecution creditors for more than £50 would have no ight to pay themselves out of the proceeds, if within ourteen days of the sale the sheriff were to receive notice f a bankruptcy petition having been presented against he company, but the whole of the proceeds would have to be handed over to the trustee for the general benefit of the creditors (*b*).

Rights of creditors.

The respective rights of secured and unsecured creditors of a company in liquidation are the same as under the law of bankruptcy (*c*).

The solicitors of a company, being its creditors for more than £50, issued a writ of execution against the company, and on December 20th, 1875, lodged it with the sheriff, who thereupon took possession. On December 23rd, a winding-up petition was presented, the company's solicitors being solicitors to the petitioner, and on January 15th, 1876, a winding-up order was made, under which the sheriff withdrew, and the company's property was ordered to be sold by the liquidator, but it was declared that the execution creditors should have the same priority as if it had been sold by the sheriff (*d*).

Resistance to sheriff.

The fact that the execution of the writ has only been prevented by resistance to the sheriff's officer will not be allowed to operate to the detriment of the execution creditor (*e*).

Restraint of sale by injunction.

If a forced sale by an execution creditor would be ruinous to the company and to other creditors, an injunction may be granted to restrain the sale (*f*). In such a case, however, a first charge on the property will be given

(*b*) *In re* Printing and Numerical Registering Co., 8 Ch. D. 535—Jessel, M.R. For section 87 of the Bankruptcy Act, 1869, see pp. 240, 241.
(*c*) *Ibid.*
(*d*) *Ibid.*
(*e*) *In re* London Cotton Co., L. R. 2 Eq. 53. *In re* Dublin Exhibition Palace Co., L. R. 2 Eq. 158.
(*f*) *In re* Hill Pottery Co., L. R. 1 Eq. 649. *In re* Dublin Exhibition Palace Co., *vide supra*.

to the execution creditor for his debt and costs (*g*); or the rights of the creditor against the property may be reserved, as in the case of the Printing and Numerical Registering Co. (*h*). In that case, after the reservation of the rights of the execution creditors, the proceeds of the sale of the property by the liquidator proved insufficient for the payment of the company's debts, and thereupon the execution creditors applied by summons to have their debt paid in priority to other creditors: the summons was dismissed with costs.

Sheriff in possession after petition presented.

The Companies Act, 1862 (*i*), makes no distinction between the sheriff being in possession or not being in possession at the commencement of the winding-up. The rule which has been adopted, therefore, is discretionary with the Court, and may in proper cases be disregarded (*k*).

Shares in companies.

Shares in public companies are made available for the separate liabilities of their holders, without any interference with the company or its property by the sheriff. The judgment creditor applies to one of the judges of the High Court for an order charging the shares of the judgment debtor with payment of the debt for which judgment has been recovered (*l*).

Cost-book mining company.

Where judgment was recovered against a shareholder in a Cornish mining company formed on the cost-book principle, for a private debt owing by him, and a *fi. fa.* upon such judgment delivered for execution to the sheriff of Cornwall, the company was treated as a mere partnership, and the property seized, whilst the share and interest therein of the judgment debtor were sold (*m*). The company was thus regarded as not being a public company.

Railway.

In a case where rails and other chattels, by the terms of a contract, when placed on the land, became

(*g*) *In re* Hill Pottery Co., L. R. 1 Eq. 649. *In re* Dublin Exhibition Palace Co., L. R. 2 Eq. 158.
(*h*) *Vide supra.*
(*i*) 25 & 26 Vict. c. 89.
(*k*) Buck., 3rd ed., 186.
(*l*) 1 Lind. 4th ed., 694.
(*m*) *Ibid.*

absolute property of the company, the contractor to have no property therein except the right of using them on the land for the purpose of the works, until completion of the line, as a condition precedent, when the plant was to be given to the contractor as part consideration, or if used by the company to be paid for, they were held not liable to be taken in execution for the company's debts (*n*).

Judgment creditor of corporation.

If there is a very important and substantial question for decision at the hearing, the Court will restrain a judgment creditor of a corporation and sheriff from levying writs of *fi. fa.* and *elegit*, and from levying execution against the property real and personal of the corporation (*o*).

Stay of execution.

An application to stay execution by the sheriff under a judgment in an action against a company, must be made in the Division of the High Court to which the action is attached, and not in the Chancery Division (*p*).

(n) Beeston v. Marriott, 4 Giff. 496; 11 W. R. 896; see also 1 Lind. 4th ed., 523.
(o) Attorney-General v. Wilkinson, 28 L. J. N. S. Ch. 392.
(p) *In re* Artistic Colour Printing Co., W. N. 1880, 81. Companies Act, 1862, s. 85. Judicature Act, 1873, s. 24, sub-s. 5. Judicature Act, 1875, s. 11, sub-s. 1.

CHAPTER XVII.

WHAT MAY AND MAY NOT BE TAKEN UNDER A FI. FA.

What may be taken under *fi. fa.*

As to what *may* be taken under a *fi. fa.*, it will be only necessary for us to mention the general class of things liable, with special instances about which there might appear to be some doubt.

In the first place the sheriff may seize any goods and chattels of the defendant, excepting the wearing apparel of himself or his family, and the tools and implements of his trade to the value of £5, which are to that extent protected also.

Money.

Money, or bank notes (whether of the Bank of England or of any other bank), cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money are also seizable (*a*).

Securities for money.

By 1 & 2 Vict. c. 110, s. 12 (*b*), it is enacted, "that, by virtue of any writ of *fi. fa.* to be sued out of any superior or inferior Court after the time appointed for the commencement of this Act, or any precept in pursuance thereof, the sheriff or other officer having the execution thereof may and shall seize and take any money or bank notes (whether of the governor and company of the Bank of England or of any other bank or banks), and any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, belonging to the person against

Money, bank notes, cheques, &c.

(*a*) 1 & 2 Vict. c. 110, s. 12. Deeds, &c., not being "securities for money," cannot be taken.

(*b*) As to the application of this section, see Wood *v.* Wood, 12 L. J. Q. B. 141; 3 G. & D. 532; 7 Jur. 325; 4 Q. B. 397.

whose effects such writ of *fi. fa.* shall be sued out; and may and shall pay or deliver to the party suing out such execution any money or bank notes which shall be so seized, or a sufficient part thereof; and may and shall hold any such cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, as a security or securities for the amount by such writ of *fi. fa.* directed to be levied and raised; and may sue in the name of such sheriff or other officer for the recovery of the sum or sums secured thereby, if and when the time of payment thereof shall have arrived; and that the payment to such sheriff or other officer by the party liable on any such cheque, bill of exchange, promissory note, bond, specialty, or other security, with or without suit, or the recovering and levying execution against the party so liable, shall discharge him to the extent of such payment, or of such recovery and levy in execution, as the case may be, from his liability on any such cheque, bill of exchange, promissory note, bond, specialty, or other security; and such sheriff or other officer may and shall pay over to the party suing out such writ the money so to be recovered, or such part thereof as shall be sufficient to discharge the amount by such writ directed to be levied; and if, after satisfaction of the amount so to be levied, together with sheriff's poundage and expenses, any surplus shall remain in the hands of such sheriff or other officer, the same shall be paid to the party against whom such writ shall be so issued."

Sheriff may sue on bills of exchange.

It is provided, however, that "no such sheriff or other officer shall be bound to sue any party liable upon any such cheque, bill of exchange, promissory note, bond, specialty, or other security, unless the party suing out such execution shall enter into a bond, with two sufficient sureties, for indemnifying the sheriff from all costs and expenses to be incurred in the prosecution of such action, or to which he may become liable in consequence thereof, the expense of such bond to be deducted out of any money to be recovered in such action."

Indemnity to sheriff.

Money here means actual cash in the possession of the defendants, and not a mere debt (*s*).

Fraudulent assignment.

Goods of a debtor assigned to another person before the delivery of the writ to the sheriff, but fraudulently, for the purpose of hindering, delaying, or defrauding creditors, are seizable (*t*).

Property passed under a bill of sale not properly registered, may be seized (*u*).

Fixtures which may be removed by tenant.

Fixtures, which may be removed by the tenant during his term, may be seized and sold under a *fi. fa.* against the tenant. Under the latter head are the following: structures resting on a brick or stone foundation (*x*), weighing machines deposited in holes dug in the earth, and lined with brickwork, so that the weighing plate was level with the surface of the ground, but which were not fixed in the ground (*y*).

Tenants' Fixtures held or said to be removeable (*z*).

Arras hangings (*a*).
Barn on blocks (*b*).
Beds fastened to ceiling (*c*).
Bins (*d*).
Blinds (*e*).
Book cases (*f*).
Buildings on blocks, rollers, pillars, &c. (*g*).

(*s*) Wood *v.* Wood, 4 Q. B. 397; 3 G. & D. 532; 7 Jur. 325; 12 L. J. Q. B. 141. Harrison *v.* Paynter, 6 Q. B. 387; 6 M. & W. 387; 8 Dowl. 349; 4 Jur. 488.
(*t*) West, 115.
(*u*) Edwards *v.* Edwards, 2 Ch. R. 291. See also Bills of Sale; chapter XVIII.
(*x*) Wansbrough *v.* Maton, 4 Ad. & E. 884.
(*y*) *In re* Richards, L. R. 4 Ch. 630.
(*z*) This list is mainly taken from Sewell, 231.
(*a*) Rolls, 216.
(*b*) Callons *v.* Tuffnell, Bull. N. P. 3. Elwes *v.* Mawe, 3 East, 38; 2 S. L. C. 182; *vide supra*, Windmills.
(*c*) *Ex parte* Quincey, 1 Atk. 477.
(*d*) Am. & Fer. 278, *n.*
(*e*) Colegrave *v.* Dias Santos, 1 B. & C. 77.
(*f*) Am. & Fer. 278, *n.*
(*g*) In certain cases, *vide supra*, Windmill. See also Lord Ellenborough's judgment in Elwes *v.* Mawe, 3 East, 38; 2 S. L. C. 182. Fitzherbert *v.* Shaw, 1 H. Black. 259.

Cabinets (*h*).
Chimney backs (*i*).
Chimney glasses (*j*).
Chimney pieces (ornamental) (*k*)
Cider mills (*l*).
Cisterns (*m*).
Clock cases (*n*).
Coffee mills (*o*).
Colliery machines (*p*).
Cooling coppers (*q*).
Counters (*r*).
Coppers (*s*).
Cranes (*t*).
Cupboards (*u*).
Desks and drawers (*v*).
Dutch barns (*w*).
Engines (*x*).
Fire engines (*y*).
Furnaces (*z*).
Furniture, fixtures put up as (*a*).

(*h*) Am. & Fer. 278, *n*.
(*i*) Harvey *v.* Harvey, 2 Str. 1141.
(*j*) Beck *v.* Rebow, 1 P. Wms. 94.
(*k*) Leach *v.* Thomas, 7 C. & P. 328, *per* Patteson, J. See Elwes *v.* Mawe, 3 East, 38; Am. & Fer. 81. Grymes *v.* Boweren, 6 Bing. 437; 3 Y. & J. 333—Tindal, C.J.
(*l*) Lawton *v.* Lawton, 3 Atk. 12.
(*m*) Am. & Fer. 278, *n*.
(*n*) 4 Burn's Eccl. Law, 7th ed., 301.
(*o*) Rex *v.* Londonthorpe, 6 T. R. 379.
(*p*) Lawton *v.* Lawton, 3 Atk. 12.
(*q*) Colegrave *v.* Dias Santos, 1 B. & C. 77.
(*r*) Am. & Fer. 276.
(*s*) Poole's Case, 1 Salk. 368. Grymes *v.* Boweren 6 Bing. 437; 3 Y. & J. 333—Tindal, C.J.
(*t*) Am. & Fer. 276.
(*u*) Rex *v.* St. Dunstan, 4 B. & C. 686.
(*v*) Am. & Fer. 276.
(*w*) Dean *v.* Allarley, 3 Esp. 11. Elwes *v.* Mawe, 3 East, 38; 3 S. L. C. 182.
(*x*) Dudley *v.* Warde, Amb. 113. Lawton *v.* Lawton, 3 Atk. 12. Whitehead *v.* Bennett, 27 L. J. Ch. 474.
(*y*) *Ibid.*
(*z*) Squier *v.* Mayer, 2 Freem. 249.
(*a*) See Birch *v.* Dawson, 4 N. & M. 22; 2 Ad. & E. 37.

Gas-pipes (*b*).
Glass fronts (*c*).
Grates, generally speaking (*d*).
Hangings (*e*).
Iron chests (*f*).
Iron malt mills (*g*).
Iron ovens (*h*).
Iron safes (*i*).
Jacks (*k*).
Lamps (*l*).
Looking-glasses (*m*).
Machinery let into caps or sets of timber (*n*).
Machinery. Parts of a machine put up by the during his term capable of being removed without da the building or other parts of the machine (*o*).
Mash-tubs (*p*).
Mills and posts (*q*).
Mills laid on brick foundations (*q*).
Partitions (*r*).
Pattens, erections on (*s*).
Pier glasses (*t*).
Pictures (*u*).

(*b*) Am. & Fer; *sed vide* Rex. *v.* Brighton Gas Co., 5 B. &
(*c*) Am. & Fer. 276.
(*d*) Lee *v.* Risdon, 7 Taunt. 191—Gibbs, C.J.
(*e*) Harvey *v.* Harvey, 2 Str. 1141. Beck *v.* Rebow, 1 P.
Squier *v.* Mayer, 2 Freem. 249.
(*f*) Harvey *v.* Harvey, *vide supra.*
(*g*) Rex *v.* Londonthorpe, 6 T. R. 379.
(*h*) 4 Burn's Eccl. Law, 7th ed., 301.
(*i*) Am. & Fer. 276, *n.*
(*k*) 4 Burn's Eccl. Law, 7th ed., 301.
(*l*) Am. & Fer. 278, *n.*
(*m*) Beck *v.* Rebow, 1 P. W. 94. *Vide supra*, Glasses.
(*n*) Davis *v.* Jones, 2 B. & Ald. 165.
(*o*) Whitehead *v.* Bennett, 27 L. J. Ch. 474.
(*p*) Colegrave *v.* Dias Santos, 1 B. & C. 77.
(*q*) *Vide supra*, Windmills. Ward's Case, 4 Leon. 241.
Otley, 1 B. & Ad. 161. Rex *v.* Londonthorpe, 6 T. R. 379.
(*r*) Am. & Fer. 276.
(*s*) Naylor *v.* Collinge, 1 Taunt. 19.
(*t*) Beck *v.* Rebow, 1 P. W. 94.
(*u*) *Ibid.*

Plants and pipes of brewers, distillers, &c. (*v*).
Presses (*w*).
Pumps slightly attached (*x*).
Ranges (*y*).
Reservoirs (*z*).
Shelves (*a*).
Sinks (*b*).
Shrubs planted for sale (*c*).
Stoves (*d*).
Tapestry (*e*).
Tubs (*f*).
Turret clocks (*g*).
Vessels on brickwork (*h*).
Varnish houses (*i*).
Vats, and utensils used for trade (*j*).
Wainscot fixed by screws (*k*).
Window sashes not hung nor beaded into the frames, but merely fastened by laths nailed across the frames (*l*).

Bankruptcy.

Seizure of property before

Seizure by the sheriff in execution bound the goods at Common Law, and the seizure of goods in execution could

(*v*) Lawton *v.* Lawton, 3 Atk. 12.
(*w*) Am. & Fer. 278, *n.*
(*x*) Grymes *v.* Boweren, 6 Bing. 437; 3 Y. & J. 333.
(*y*) Am. & Fer. 278, *n.* See Wynne *v.* Ingleby, 5 B. & Ald. 620.
(*z*) Grymes *v.* Boweren, 6 Bing. 437; 3 Y. & J. 333.
(*a*) Am. & Fer. 278, *n.*
(*b*) *Ibid.*
(*c*) *Vide supra*, Fruit Trees and Shrubs.
(*d*) Rex *v.* St. Dunstan, 4 B. & C. 686. Grymes *v.* Boweren, 6 Bing. 437; 3 Y. & J. 333—Tindal, C.J.
(*e*) Harvey *v.* Harvey, 2 Str. 1141.
(*f*) Colegrave *v.* Dias Santos, 1 B. & C. 77.
(*g*) Am. & Fer. 278, *n.*
(*h*) Horn *v.* Baker, 9 East, 215.
(*i*) Panton *v.* Roberts, 2 East, 88.
(*j*) Whitehead *v.* Bennett, 27 L. J. Ch. 474.
(*k*) Lawton *v.* Lawton, 3 Atk. 12. See Elwes *v.* Mawe, 3 East, 38; 2 S. L. C 182. Grymes *v.* Boweren, 6 Bing. 437; 3 Y. & J. 333—Tindal, C.J.
(*l*) Rex *v.* Hedges, 1 Leach, C. C. 201; 2 East, P. C. 590, *n.*

bankruptcy suffices.

not formerly be affected by any subsequent act of bankruptcy by the party to whom they belonged (*f*).

The Bankruptcy Act, 12 & 13 Vict. c. 106, s. 134, requiring that the seizure should have been followed also by sale, in order to bind the goods as against the bankrupt's assignees, has been repealed by the 32 & 33 Vict. c. 83, and has not been re-enacted by the Bankruptcy Act of 1869 (32 & 33 Vict. c. 71) (*g*).

Now, therefore, the execution creditor under a *fi. fa.* becomes a secured creditor from the seizure.

In the case of *Ex parte* Rocke, Lord Chancellor Hatherley states the law in these terms:—"If there has been a *seizure by the execution creditor before an act of bankruptcy*, then he is left in possession of his rights against the effects of the bankrupt. The distinction between the provisions of the Act of 1849, and those of the late Act, is, that whereas, under the Act of 1849, both seizure and sale were necessary to perfect the title of the execution creditor, there is nothing in the late Act to render a sale necessary for that purpose, unless this is to be inferred from the 95th section. But this cannot be inferred, for, even under the Act of 1849, it was held that the words, 'prior act of bankruptcy,' meant prior to the seizure, not prior to the sale; and the apparent object of the 95th section of the Act of 1869 was to protect creditors holding securities, in certain cases, from the loss of their securities, by reason of prior acts of bankruptcy."

Sheriff's duties.

The duties of the sheriff with regard to property of the defendant which devolves on the trustee in bankruptcy are set forth in the 87th section of the Bankruptcy Act of 1869 (*h*). "Where the goods of any trader have been taken in execution in respect of a judgment for a sum exceeding £50, and sold, the sheriff, or in the case of a sale under the direction of the County Court, the high bailiff or other officer of the County Court, shall retain

Notice of bankruptcy.

(*f*) Cole *v.* Davies, 1 Ld. Raym. 724—Holt. C.J.

(*g*) Slater *v.* Pinder, L. R. 6 Ex. 228; 40 L. J. Exch. 144. *Ex parte* Rocke, L. R. 6 Ch. 795; 40 L. J. Bktcy. 70; 25 L. T. N. S. 227.

(*h*) 32 & 33 Vict. c. 71.

the proceeds of such sale in his hands for a period of fourteen days, and, upon notice being served on him within that period of a bankruptcy petition having been presented against such trader, shall hold the proceeds of such sale, after deducting expenses, on trust to pay the same to the trustee; but, if no notice of such petition having been presented be served on him within such period of fourteen days, or, if such notice having been served, the trader against whom the petition has been presented is not adjudged a bankrupt on such petition, or on any other petition of which the sheriff, high bailiff, or other officer has notice, he may deal with the proceeds of such sale in the same manner as he would have done had no notice of the presentation of a bankruptcy petition been served on him."

Elegit.

Section 87 has no application to a seizure of goods under an *elegit*, and from the time of the seizure the creditor becomes a secured creditor within the meaning of s. 16, sub-s. 5, of the Bankruptcy Act, 1869 (*i*).

Execution over £50.

When the sheriff has seized a trader's goods in execution of a judgment for more than £50, and the trader files a liquidation petition within the period fixed by section 87 of the Bankruptcy Act, 1869, the title of the trustee overrides that of the execution creditor, and an order made in a proceeding between the execution creditor and a bill of sale holder cannot affect the rights of the general creditors (*k*).

Execution over £50. Composition.

Where a sheriff who has seized goods of a trader under a *fi. fa.*, for an amount exceeding £50, receives notice within fourteen days of a bankruptcy petition having been presented against the trader, and, subsequently, a resolution for composition is duly passed and registered, the sheriff ought to pay the proceeds of the execution to the execution creditor (*l*).

(*i*) *Ex parte* Abbott, *re* Gourlay, 15 Ch. D. C. A. 447.
(*k*) *Ex parte* Rayner, *In re* Johnson, L. R. 7 Ch. 325. *Ex parte* Halling, *In re* Haydon, 26 W. R. 182; 7 Ch. D. 157; 47 L. J. Bkcy. 25; 37 L. T. N. S. 809.
(*l*) Leader v. Knight, 26 W. R. 897.

Injunction to sheriff.

But where an injunction had been granted, prior to the composition proceedings being resolved on, restraining the sheriff from further proceedings until a further order, and it was stated at the bar on his behalf, but was not apparent on the pleadings, that before the execution creditor could have got the injunction dissolved after the registration of the resolution for composition, an order was made by the Court of Bankruptcy summoning a fresh meeting, under which order the resolution for composition was subsequently vacated, and a liquidation by arrangement resolved upon, the Court gave the sheriff leave to amend to state these facts, and to raise the point as to whether the plaintiff could have obtained the dissolution of the injunction during the pending proceedings in the Bankruptcy Court (*o*).

What constitutes execution over £50.

Possession was taken by the sheriff of the goods of a trader debtor under an execution for a sum below £50. The debtor having become bankrupt, his trustee obtained an injunction to restrain the sheriff from dealing with the goods, which was continued from time to time during a period of a month, at the end of which time the injunction ceased, and the sheriff went out of possession. The addition of the possession-money up to the end of the month increased the sum to over £50. It was held that this was an execution in respect of a judgment for a sum exceeding £50, within the meaning of section 87 (*p*).

Abandonment of part of claim.

A creditor who has obtained judgment in an action brought against a trader for a sum exceeding £50, is entitled to abandon part of his claim, and to enter up judgment and levy execution for a sum less than £50, so as to avoid the operation of section 87 of the Bankruptcy Act, 1869 (*q*).

(*o*) Leader *v.* Knight, 26 W. R. 897.

(*p*) *Ex parte* Lythgow, *In re* Fenton, 26 W. R. 834; 38 L. T. N. S. 886.

(*q*) *Ex parte* Reya, *In re* Salinger, 26 W. R. 193; 6 Ch. D. 332; 46 L. J. Bktcy. 122; 37 L. T. N. S. 17. *Ex parte* Berthier, *In re* Hinks, 26 W. R. 576; 7 Ch. D. 882; 47 L. J. Bktcy. 74.

The expenses of a sheriff's officer consequent upon the seizure of goods and announcing them for sale are expenses which a sheriff may deduct under section 87 of the Bankruptcy Act, 1869, although the sale does not take place; in such a case, therefore, where the sale was stayed by injunction at the instance of the trustee of the debtor who had gone into liquidation after the seizure, the trustee was ordered to pay to the sheriff's officer his expenses of seizure and announcing the goods for sale (*r*). Sheriff's expenses under s. 87.

If the creditor had not had notice of any prior act of bankruptcy (*s*), and the fourteen days have elapsed without notice of a petition having been served, the sheriff may hand over the proceeds of the sale to the creditor, who will be entitled to retain them (*t*).

The notice should afford sufficient information to the sheriff that the person against whom the petition is presented is the execution debtor, and also that he is a trader (*u*). Bankruptcy petition in this section includes a petition presented by the debtor under sections 125, 126 (*x*). Notice. Bankruptcy petition.

An execution levied by seizure and sale of a trader's goods for a debt exceeding £50, although an act of bankruptcy, is not for that reason necessarily a void proceeding.

What may not be taken under a Fi. Fa.

In the first place, the sheriff may not take the wearing apparel of the judgment debtor and his family (though "if the defendant have two gowns the sheriff may sell the other") (*y*), nor the tools and implements of his trade, nor bedding, to the value of £5 in all (*z*). Wearing apparel. Implements of trade.

(*r*) *Ex parte* Browning, *In re* Craycraft, 26 W. R. 559; 8 Ch. D. 596; 38 L. T. N. S. 364.
(*s*) *Ex parte* Dawes, L. R. 19 Eq. 438.
(*t*) *Ex parte* James, L. R. 9 Ch. 609.
(*u*) *Ex parte* Spooner, L. R. 10 Ch. 168.
(*x*) *Ex parte* Key, *re* Skinner, L. R. 10 Eq. 432.
(*y*) 1 Comb. 291.
(*z*) 8 & 9 Vict. c. 127, s. 8.

He may not take *bona aut catalla ecclesiastica* (*x*), nor the goods or chattels of an ambassador, or foreign minister, or his servants (*y*).

The following, too, are exempt from seizure under a *fi. fa.*:—*Freehold property* (the words in the writ being "goods and chattels").

Freehold.

Landlord's fixtures.

Landlord's fixtures (as opposed to tenant's fixtures, which *may* be taken). If they *can* be removed, they are the tenant's fixtures; if not, they are the landlord's; it seems that they can be removed *if they can be removed entire* and with little or no damage to the fabric (*z*).

What are landlord's fixtures.

Under the head of landlord's fixtures come:—

Landlords' Fixtures held not to be Removeable (*a*).

Agricultural erections (*b*).

Alehouse bar (*c*).

Barns fixed in the ground (*d*).

Beast house (*e*).

Benches (*f*).

Boilers built into the masonry of a greenhouse (*g*).

Border of box placed by tenant not being gardener by trade (*h*).

Carpenter's shop (*i*).

Cart house (*j*).

Chimney-pieces in general (*k*).

(*x*) Dalt. 209.
(*y*) 7 Anne, c. 12, s. 2.
(*z*) Grymes *v.* Boweren, 6 Bing. 437; 3 Y. & J. 333.
(*a*) This list is mainly taken from Sewell, 288.
(*b*) Elwes *v.* Maw, 3 East, 28; 2 S. L. C. 182.
(*c*) 2 Black. 111.
(*d*) Elwes *v.* Maw, 3 East, 28; 2 S. L. C. 182.
(*e*) *Ibid.*
(*f*) Am. & Fer. 68, 155, 156.
(*g*) Jenkins *v.* Gettring, 2 Johns. & H. 520.
(*h*) Empson *v.* Soden, 1 N. & M. 720; 4 B. & Ad. 656.
(*i*) Elwes *v.* Maw, 3 East, 28; 2 S. L. C. 182.
(*j*) *Ibid.*
(*k*) Poole's Case, 1 Salk. 368; Am. & Fer. 81. Allen *v.* Allen, Moseley, 112. But *semble*, this rule must be confined to chimney-pieces not being ornamental, ornamental chimney-pieces having been held by Patteson, J., to be removeable; Leach *v.* Thomas, 7 C. & P. 328.

Cornices affixed to the freehold, which cannot be removed without substantial injury (*l*).

Conservatories (*m*).

Doors (*n*).

Dressers (*o*).

Foldyard walls (*p*).

Fruit trees and shrubs (*q*).

Fuel house (*r*).

Glasses in panels, otherwise if screwed in (*s*).

Glass windows (*t*).

Grates (*u*).

Hearth (*v*).

Keys and locks (*w*).

Ladder fixed in the ground and to a beam above, being ne only means of access to the room above, a crank ailed at the top and bottom to keep it in its place, and a ench nailed to the wall (*x*).

Limekilns (*y*).

Machinery. Where part of a machine is a fixture, and other, an essential part of it, is moveable, the latter is nsidered a fixture (*z*).

) Avery v. Cheslyn, 5 N. & M. 372; 3 Ad. & E. 75.
a) Buckland v. Butterfield, 4 Moore, 440; 2 B. & B. 54.
) Kinlyside v. Martin, 2 Black. 1111; Am. & Fer. 5, *n.*,

) *Ibid.*
) Elwes v. Maw, 3 East, 28; 2 S. L. C. 182.
Windham v. Way, 4 Taunt. 316. This however must, it , be taken with some limitation, and be confined to fruit trees hrubs not planted for the express purposes of sale. See judg- of Lord Kenyon in Penton v. Robarts, 2 East, 91; see also igment of Heath, J., in Windham v. Way; *sed vide* the judg- f Gibbs, C.J., in Lee v. Risdon, 7 Taunt. 191.
Elwes v. Maw, 3 East, 28; 2 S. L. C. 182.
llen v. Allen, Moseley, 112.
Co. Rep. 64.
er Gibbs, C.J., Lee v. Risdon, 7 Taunt. 191. Richardson v. 38 L. J. Ch. 308.
ole's Case, 1 Salk. 368, cited in Elwes v. Maw, 3 East, 28; . 182.
John (Lady) v. Pigott, 2 Bulst. 103. Liford's Case, 11 Co. Am. & Fer. 183, 184.
le v. Waters, 16 C. B. 637.
sher v. East London Waterworks Co. 2 B. & C. 608.
ver v. Fraser, 25 L. J. Ch. 361.

Mill machinery (*a*).

Mill stones (*b*).

Ovens (*c*).

Partitions (*d*).

Pillars of brick and mortar built on a dairy floor to hold pans, although such pillars are not let into the ground (*e*).

Pineries substantially affixed, by the removal of which the freehold was diminished in value (*f*).

Pump house (*g*).

Ranges and set pots (*h*).

Racks in stables (*i*).

Saltpans (*j*).

Slabs of marble (*k*).

Statues, vases, and stone garden seats, essentially part of the architectural design, however fastened (*l*).

Strawberry beds (*m*).

Tapestry, or pictures in panels, frames filled with satin and affixed to the walls (*n*).

Waggon house (*o*).

Windmills (*p*).

(*a*) Farrant *v.* Thompson, 5 B. & Ad. 826. See also Duck *v.* Bradyl, M'Clel. 217; 13 Price, 455.

(*b*) Am. & Fer. 6, *n.*

(*c*) Wynne *v.* Ingleby, 5 B. & Ald. 625; 1 D. & R. 247.

(*d*) Kinlyside *v.* Martin, 2 Black. 1111.

(*e*) Leach *v.* Thomas, 7 C. & P. 328, *per* Patteson, J.

(*f*) Buckland *v.* Butterfield, 2 B. & B. 54; 4 Moore, 440.

(*g*) Elwes *v.* Maw, 3 East, 28; 2 S. L. C. 182.

(*h*) Wynne *v.* Ingleby, 1 D. & R. 247; 5 B. & Ald. 625.

(*i*) 2 Ventris, 214.

(*j*) Lawton *v.* Salmon, 1 H. Black. 260, *n.* Mansfield (Earl) *v.* Blackburn, 8 Scott, 720.

(*k*) Allen *v.* Allen, Moseley, 112.

(*l*) *Ibid.*

(*m*) Wetherell *v.* Howell, 1 Camp. 227. *Sed vide supra*, Fruit Trees and Shrubs.

(*n*) D'Eyncourt *v.* Gregory, L. R. 3 Eq. 382.

(*o*) Elwes *v.* Maw, 3 East, 28; 2 S. L. C. 182.

(*p*) *Ibid.* The decisions on this point seem, at first sight, conflicting. The distinction (somewhat refined, indeed) which has governed the different cases appears to be this: where the mill or other superincumbent building, being of wood, removable at pleasure, was actually fixed to brickwork let into the ground, it was

By the statute 14 & 15 Vict. c. 25, s. 3, it is provided: "That, if any tenant of a farm or lands shall, after the passing of this Act, with the consent in writing of the landlord for the time being, at his own cost and expense, erect any farm building, either detached or otherwise, or set up any other building, engine, or machinery, either for agricultural purposes or for the purposes of trade and agriculture (which shall not have been erected or put up in pursuance of some obligation in that behalf), then all such buildings, engines, and machinery shall be the property of the tenant, and shall be removeable by him, notwithstanding the same may consist of separate buildings, or that the same or any part thereof may be built in or permanently fixed to the soil, so as the tenant making any such removal do not in anywise injure the land or buildings belonging to the landlord, or otherwise do put the same in like plight and condition, or as good plight and condition, as the same were in before the erection of anything so removed: Provided, nevertheless, that no tenant shall, under the provision last aforesaid, be entitled to remove any such matter or thing as aforesaid without first giving to the landlord or his agent one month's previous notice in writing of his intention so to do; and thereupon it shall be lawful for the landlord, or his agent on his authority, to elect to purchase the matters and things so proposed to be removed, or any of them, and the right to remove the same shall thereby cease, and the same shall belong to the landlord; and the value thereof shall be ascertained and determined by two

Tenant may remove buildings and fixtures erected by him on farms, unless landlord elect to take to them.

held that this could not be taken in execution under a *fi. fa.* (a). On the other hand, where the mill or other building was of wood, and had a foundation of brick, but the woodwork was not inserted in the brick foundation, but rested upon it by its own weight alone, and no part of the machinery of the mill touched the ground on any part of the foundation, it was held that the windmill not being affixed to the freehold, nor anything connected with it, was not part of the freehold (b).

(a) Steward v. Lombe, 4 Moore, 281; 1 B. & B. 506.
(b) Rex v. Otley, 1 B & Ad. 161; see also judgment in Rex v. Londonthorpe, 6 T. R. 379—Lord Kenyon, C.J.

referees, one to be chosen by each party, or by an umpire to be named by such referees, and shall be paid or allowed in account by the landlord who shall have so elected to purchase the same."

Tenant may renounce right to fixtures.

The tenant may renounce his right to remove fixtures, and it is presumed that in that case the sheriff could not take the fixtures renounced (*p*). The tenant may also deprive himself of the right by undertaking to repair, and yield up in a good state of repair, improvements and fixtures (*q*).

Mortgaging tenant's fixtures.

If a tenant mortgage the tenant's fixtures, and afterwards surrenders the lease, the mortgagee has still the right, during the period over which the term extended, to enter and sever them (*r*).

Duration of right to fixtures.

The right of a tenant to remove tenant's fixtures continues only during his original term, and during such further period of possession by him as he holds the premises under a right still to consider himself as tenant (*s*). But *quære* whether a tenant who with his own materials partly erects a cattle shed, which is not completed at the expiration of his tenancy, can remove it, the shed being completed so far as relates to its actual annexation to the land (*t*).

The tenant has no right to remove fixtures after the landlord has entered, upon the determination of the lease (*u*).

Goods of Debtor in Pledge or Mortgage.

Property deposited as security for debt not liable.

Under an execution against the goods of A. the sheriff cannot seize goods which A. has deposited with another person as security for a debt (*v*).

(*p*) See Dumerque *v.* Rumsey, 2 H. & C. 777.
(*q*) Naylor *v.* Collinge, 1 Taunt. 19.
(*r*) London Loan and Discount Co. *v.* Drake, 6 C. B. N. S. 798.
(*s*) Weston *v.* Woodcock, 7 M. & W. 14.
(*t*) Smith *v.* Render, 27 L. J. Exch. 85. See also on this point Elwes *v.* Maw, 3 East. 28; 2 S. L. C. 182.
(*u*) Pugh *v.* Aston, L. R. 8 Eq. 626.
(*v*) Rogers *v.* Kennay, 9 Q. B. 592; 11 Jur. 14; 15 L. J. Q. B. 381.

Property held by way of *lien* cannot be taken in execution, either at Common Law or under the Statute 1 & 2 Vict. c. 110, s. 12 (*x*).

Money in hands of Third Persons for use of Debtor.

The Statute 1 & 2 Vict. c. 110, s. 12 (*y*), gives no power to seize money in execution, whilst in the hands of a third person as trustee for the debtor; money, therefore, deposited in Court in one action, pursuant to 43 Geo. 3, c. 46, s. 2, and 7 & 8 Geo. 4, c. 71, s. 2, could not be paid out to an execution creditor in a second action, in satisfaction of his claim (*z*).

Debtor's trust-money not liable.

But, though money in the hands of a third person as trustee for the debtor, cannot be paid out to an execution creditor, a voluntary purchase and settlement of stock by a person in insolvent circumstances, out of moneys belonging to him, would be fraudulent and void as against creditors (*a*).

A cheque of the Accountant-General in favour of A., but *not delivered out*, is not his property so as to be liable to be seized by the sheriff (*b*). Where, however, a judgment had been entered up against a party to whom a sum standing to the credit of the cause had been ordered to be paid, and the Accountant-General had drawn a cheque for the sum, *and delivered it* to the debtor's attorney, who subsequently returned it to the Accountant-General, the Court, on the petition of the judgment creditor, gave the sheriff liberty to take the cheque under a *fi. fa.* (*c*).

Money in

After verdict, and before judgment had been entered up,

(*x*) Legg *v.* Evans, 6 M. & W. 36; 8 Dowl. 177; 4 Jur. 197.

(*y*) For this section, see *ante*, under heading "What may be taken under a *fi. fa.*," Chapter XVII.

(*z*) France *v.* Campbell, 6 Jur. 105—B. C.

(*a*) Barrack *v.* M'Culloch, 3 Kay & J. 110; 3 Jur. N. S. 180; 26 L. J. Ch. 105.

(*b*) Courtoy *v.* Vincent, 15 Beav. 486; 21 L. J. Ch. 291. As to the rights of the Crown against money in hands of the Accountant-General, see Reg. *v.* Austin, in Chapter XXIII. on the writ of extent (*post*).

(*c*) Watts *v.* Jefferyes, 3 Mac. & G. 422; 15 Jur. 435.

hands of agent.

the defendant sold his leasehold by auction: it was held that the plaintiff could not, under 1 & 2 Vict. c. 110, s. 12, levy execution on the purchase-money in the hands of the auctioneer (*d*).

Money in Sheriff's hands.

Money left on account not liable to seizure, nor is poundage chargeable thereon.

Where a *fi. fa.* had been delivered to the sheriff to levy £97 10*s.*, the defendant, being ignorant of the precise amount, sent a person with a banker's bill for £55 5*s.* and £40 in country notes, to the officer to whom the warrant had been delivered. This sum was tendered to the officer, but upon his stating the amount, the person went away, leaving the bill and notes upon the table for the purpose of obtaining the difference. Whilst he was gone, the officer seized them under the execution, and upon the return of the person with the balance, demanded poundage. He subsequently seized some sheep for this, when it was paid under protest. Here it was held that the money was not liable to seizure, and that the Court would interfere summarily against the sheriff, to make him refund the money extorted as poundage (*e*).

Money in sheriff's hands not liable.

Money seized under a *fi. fa.* and in the hands of one sheriff cannot be taken under a subsequent *fi. fa.* by another sheriff (*f*); where, therefore, a party privileged from arrest, having been taken on a *ca. sa.* by the sheriff of G., paid the money to the sheriff, and obtained a judge's order to have it refunded, but when the town agent was about to refund the money, it was claimed by the sheriff of M., under a *fi. fa.* directed to him, it was held that the money could not be taken under the *fi. fa.* (*g*).

Money, the surplus of the proceeds of property sold under a *fi. fa.*, remaining in the hands of the sheriff after having satisfied the execution creditor, is a debt due from the sheriff to the debtor, and cannot be taken in execution

(*d*) Brown *v.* Parrott, 4 Beav. 585.
(*e*) Brun *v.* Hutchinson, 2 D. & L. 43; 8 Jur. 895; 13 L. J. Q. B. 244, B. C.—Coleridge.
(*f*) Masters *v.* Stanley, 8 Dowl. 169; 4 Jur. 28—Exch.
(*g*) *Ibid.*

under a *fi. fa.* at the suit of a third party, against the defendant in the former suits (*h*).

Money levied under a *fi. fa.* in the hands of a sheriff, for an execution creditor, cannot be seized under a *fi. fa.* against such execution creditor (*i*); for 1 & 2 Vict. c. 110, s. 12, authorising money to be taken in execution, applies only to monies set apart and earmarked, and which are the property specifically of the party against whose effects the *fi. fa.* issues (*k*).

Money seized under a *fi. fa.* is, by the statute 1 & 2 Vict. c. 110, s. 12, in exactly the same position as money the proceeds of goods seized (*l*); where, therefore, the sheriff seized bank notes and coin, under a *fi. fa.* at the suit of A., against whom he held an unexecuted *fi. fa.* at the suit of B., he was not justified in paying the amount over to B. as money belonging to A. (*m*).

An execution by a *fi. fa.* founded on a judgment upon a warrant of attorney, may be apportioned so as to entitle the plaintiff to the proceeds of any money actually in the hands of the sheriff; in such a case the plaintiff becomes entitled to money seized by the sheriff in *specie*, as much as if it was money realised for goods seized and sold under the writ (*n*).

Goods of other Persons in Debtor's Possession.

On contract of purchase.

The plaintiff let to D. a house and the furniture; they entered into a written contract whereby the plaintiff agreed to sell the house and furniture to D., the purchase-money to be paid on the completion of a good title by the plaintiff. Before the completion of a good title the con-

(*h*) Harrison v. Paynter, 6 M. & W. 387; 8 Dowl. 349; 4 Jur. 48.

(*i*) Wood v. Wood, 12 L. J. Q. B. 141; 3 G. & D. 532; 7 Jur. 325; 4 Q. B. 397.

(*k*) *Ibid.*

(*l*) Collingridge v. Paxton, 11 C. B. 683; 2 L. M. & P. 654; 16 Jur. 18; 21 L. J. C. P. 39.

(*m*) *Ibid.*

(*n*) Squire v. Hustwick, 4 P. & D. 633; 1 Q. B. 308; 5 Jur. 840.

tract was rescinded by consent. It was here held, that, under this contract, the furniture never vested in D. as his property, and therefore could not be taken under a *fi. fa.* against him (*a*).

Apparent possession.

Where goods were *bonâ fide* sold by public auction, and the vendor after such sale was allowed to continue in possession, it was held that they could not be taken in execution afterwards by one of the vendor's creditors who was present at the sale, as the change of possession was notorious, and there was a good and legal consideration to support it (*b*).

In another case, where the husband of the plaintiff's mother assigned his effects to trustees for the benefit of his creditors, and absconded, leaving his wife in possession of his house and goods, notice of such assignment was advertised in the newspapers, and the goods were afterwards sold by the trustees by public auction, at which the plaintiff purchased them in order to accommodate his mother, and paid for them at a fair valuation, removing some, but leaving the greater part in her possession; it was here held that such purchase by the plaintiff would protect the goods against a judgment afterwards obtained and execution levied by a creditor of the husband who had notice of the assignment at the time; this, too, although the plaintiff permitted his mother to continue in possession. He was, therefore, entitled to recover them from the sheriff (*c*).

Where, a sheriff being in possession under a *fi. fa.*, the defendant executed a deed of assignment for a valuable consideration, on which the execution was withdrawn, and the assignee continued to manage the property, but allowed the defendant to continue in possession, and the same property was afterwards seized under an execution at the suit of another creditor, it was held that it was protected by the assignment, although the

(*a*) Lanyon *v.* Toogood, 13 M. & W. 27.
(*b*) Woodham *v.* Baldock, 3 Moore, 11; Gow, 35.
(*c*) Leonard *v.* Baker, 1 Maule & Sel. 251.

defendant had continued in the visible and apparent possession (*d*).

Cut grass. Cut grass in the possession of a debtor, but sold by him before execution, cannot be taken under a *fi. fa* (*e*). The vendee of a growing crop of grass, who is in possession of the field for the purpose of making it into hay, may thus maintain trespass against the sheriff, if, when cut, the close is entered, and part of the grass carried away by a person who has purchased the grass of a bailiff of the sheriff, who had seized and sold it under a *fi. fa.* against the original vendor; here the person actually entering claims under the sale of the sheriff's bailiff, and carries off the crop by his authority (*f*).

Goods on hire. If a party has goods on hire for a term, and the sheriff seizes them under an execution against such party, the owner of the goods may maintain an action against the sheriff if he sells the *entire* property in such goods; but to support the action he must show that, as soon as the goods were seized, he informed the sheriff that the goods were lent for a term only, in order that the sheriff might know that he had only a right to sell the qualified property which the hirer had in the goods (*g*).

Goods seized but not sold. An action is not, however, maintainable against the sheriff, by the owner of goods let for an unexpired term, for taking them under an execution against the party who hired them, if it appears that the sheriff has not sold; in such a case, it is the duty of the party letting to give notice to the sheriff of the limited nature of the hirer's interest (*h*).

Furniture let with house. The sheriff may seize the furniture in an execution against the tenant, in a house let ready furnished, even with notice that the furniture is not the property of the hirer (*i*).

(*d*) Joseph *v.* Ingram, 1 Moore, 139.
(*e*) Tompkinson *v* Russell, 9 Price, 287; 6 East. 602.
(*f*) *Ibid.*
(*g*) Dean *v.* Whitaker, 1 C. & P. 347—Abbott.
(*h*) Duffil *v.* Spottiswoode, 3 C. & P. 435—Best.
(*i*) Ward *v.* Macauley, 4 T. R. 489. Panton *v.* Robart, 2 East, 88; 4 Esp. 33.

The point for consideration in the case cited above, (Ward *v.* Macauley), was whether the landlord could maintain an action for *trespass* against the sheriff for having taken in execution certain goods belonging to the landlord (which had been let to the tenant with the house), under a writ of *fi. fa.* against the tenant. It was held that no such action could be maintained (*u*).

Where goods leased, as furniture, with a house have been wrongfully taken in execution by the sheriff, the landlord cannot maintain *trover* against the sheriff pending the lease, because to maintain such an action he must have the right of possession as well as the right of property (*x*). The sheriff must, therefore, in seizing, be careful to seize only the limited interest of the debtor.

Cut timber.

In an execution against a tenant for years of land whereon timber is cut down, the owner of the inheritance may maintain an action of *trover* for such timber, notwithstanding the lease. The reason of this is that the only right of the tenant is the shade of the tree and such advantage as he may derive from it whilst it is growing, and by the very act of felling it his right is absolutely determined; the property does not, even then, vest in his immediate landlord, for if he has only an estate for life, it will go to the owner of the inheritance (*y*)

Goods in Hands of Person in a Representative Character.

Goods of testator in hands of executor.

Goods of a testator in the hands of an executor cannot be seized under a *fi. fa.* against the executor in his own right (*z*).

In the case of Newman *v.* Farr (*a*), which lays down this principle, all the former authorities are collected and

(*u*) See Lord Kenyon's judgment.

(*x*) Gordon *v.* Harper, 7 T. R. 9; (referred to in Davis *v.* Connor, 1 Price, 53). See also Pain *v.* Middlesex (Sheriff), R. & M. 99—Abbott.

(*y*) Berry *v.* Heard, Palm. 327; Cro. Car. 242. Explained in the case of Gordon *v.* Harper (*vide supra*) by Lawrence, J.

(*z*) Farr *v.* Newman, 4 T. R. 621.

(*a*) *Vide supra.*

discussed. The action was against the sheriff for a false return, and the question was whether certain goods of the testator, which had been seized by the sheriff under an execution against the husband of the executrix, in a house in which the husband and wife resided, and in which the testator had resided, but which had not been sold under the execution, were bound by it. The case of Whale *v.* Booth (*b*) was cited, where the goods of the testator had actually been sold under a *fi. fa.* against the executor for his own debt, and the executor joined in a bill of sale. It was held by the Court of King's Bench that the property passed by the execution, and could not afterwards be seized under a writ sued out by a creditor of the testator; this conclusion was arrived at upon the principle that the sale under the execution could not be distinguished from an alienation by the executor. But, although the two cases may thus in some degree be reconciled, Eyre, C.J., in the case of Quick *v.* Staines (*c*), says: "The case of Whale *v.* Booth (*d*) is directly in the teeth of Farr *v.* Newman" (*e*).

In the case of M'Leod *v.* Drummond (*f*), Lord Eldon, referring to the case of Farr *v.* Newman (*g*), says: "Another very material case occurred, upon which the judges differed. Mr. Justice Grove in his judgment states the general propositions I have noticed as generally as they are stated anywhere; considering that case as *reversing*, or going a great way towards reversing, Whale *v.* Booth (*h*). It gives me great satisfaction that the majority of the Court decided that the effects of the testator could *not* be taken in execution for the debt of the executor (contrary to the opinion of Mr. Justice Buller). According to that opinion(*i*), a creditor of the executor, having got judgment in the term before the testator's death, might execute

(*b*) 4 T. R. 625, *note.*
(*c*) 1 B. & P. 295.
(*d*) 4 T. R. 625, *note*
(*e*) 4 T. R. 621.
(*f*) 17 Ves. 152 (1810).
(*g*) 4 T. R. 621.
(*h*) 4 T. R. 625, *note.*
(*i*) That of Mr. Justice Buller.

that judgment upon the goods of the testator, as well as those of the executor, long before any creditor of the testator could by possibility get judgment."

It may, therefore, be taken as a settled principle of law that the goods of the testator cannot be taken under an execution against the executor in his own right (*k*).

If an executrix, however, uses the goods of her testator as her own, and afterwards marries, and then treats them as the goods of her husband, she will not be allowed to object to their being taken in execution for her husband's debt (*l*); for, where an executrix or her husband have converted the goods, it does not lie in the mouth of either of them to say that they are not the property of the husband, in a case between the executrix and one of the creditors.

Similarly, after a lapse of six or seven years, Equity will not restrain by injunction a creditor of an executor from taking in execution property of the testator, which is assets in Equity (*m*).

Where, however, goods of an intestate had been taken possession of, and used by an administrator, in the house of the intestate, for three months after the death of the intestate, it was held that they could not be taken in execution for the administrator's own debt, the time in this case not being sufficient to make the goods the administrator's property (*n*). Upon the case of Quick *v.* Staines (*o*) being alluded to, the Lord Chief Justice (*p*) observed that, in his opinion, the marriage made all the difference between the two cases.

Where the plaintiff bought a public-house, for which he could not obtain a license, because he resided in another tavern, and therefore put B., an insolvent person, into the house, as his servant, to keep it for him, supplying him

(*k*) See also 1 Will. Exec. 646.
(*l*) Quick *v.* Staines, 1 B. & P. 293; 2 Esp. 57.
(*m*) Ray *v.* Ray, Coop. 264.
(*n*) Gaskell *v.* Marshall, 1 M. & R. 132; 5 C. & P. 31.
(*o*) *Vide supra.*
(*p*) Lord Tenterden.

with money to pay for the license, which was granted to B., it was held that the sheriff was not entitled, under an execution against B., to seize the plaintiff's liquors and chattels in the house committed to B.'s custody (*q*).

Goods of Husband and Wife.

When married woman's property cannot be taken.

Property of a woman conveyed before marriage, with the consent of her intended husband, to trustees, for her sole and separate use, to enable her to carry on her business separately, cannot be seized for the husband's debts; but, if the business is carried on jointly (a question of fact for the jury), the stock-in-trade is liable for the husband's debts, but not the furniture (*r*).

In strict settlement.

A person who was indebted, by settlement before marriage, in consideration of the marriage and of his wife's portion, which was supposed to be more than the amount of his debts at that time, conveyed all his real estate, and likewise his household goods (his real estate alone not being thought an adequate settlement), in trust for himself for life, remainder to his wife for life, remainder to his first and other sons in strict settlement. The lady being a ward in Chancery, the settlement was approved of by the master, and the goods enumerated in a schedule. A., after the marriage, continued in possession of the goods; after which a creditor at the time of the settlement, having obtained judgment, took them in execution. It was held, however, that the settlement was good against creditors, and that the trustees were entitled to the possession of the goods (*s*).

When liable.

The property in wearing apparel, bought for herself by a wife living with her husband, out of money settled to her separate use before marriage, and paid to her by the trustees of the settlement, vests by law in the husband,

(*q*) Dawson *v.* Wood, 3 Taunt. 256.
(*r*) Jarman *v.* Woollaston, 3 T. R. 618.
(*s*) Cadogan *v.* Kennet, Cowp. 432. The authority of this case has been doubted in the American Courts. See Footman *v.* Pendergrass, 3 Rich. Eq. 33 (1850). Long *v.* Wright, 3 Jones, 290 (1856).

and is liable to be taken in execution for his debts (*y*). The principle laid down in the case which establishes this ruling of law has been denied in the American Courts (*z*), but, so far, it has not been overruled in the English Courts.

Rights of married woman.

The rights of a married woman with regard to her earnings are thus laid down by the Married Women's Property Act, 1870 (*a*):—"The wages and earnings of any married woman acquired or gained by her, after the passing of this Act, in any employment, occupation, or trade in which she is engaged, or which she carries on separately from her husband, and also any money or property so acquired by her through the exercise of any literary, artistic, or scientific skill, and all investments of such wages, earnings, money, or property, shall be deemed and taken to be property held and settled to her separate use, independent of any husband to whom she may be married, and her receipts alone shall be a good discharge for such wages, earnings, money, and property;" so that she is not under those circumstances liable for her husband's debts, and the savings of a married woman's separate estate, like the income itself, become her separate estate in Equity (*b*).

Her earnings not liable for husband's debts.

Business commenced by wife before marriage.

It has been held, also, that, when at the date of a marriage the wife was carrying on a business on her own account, and continued to do so after the marriage, without the intervention of the husband, and his conduct showed that he treated the business as a matter which concerned the wife alone, the business, stock-in-trade, and debts, whether belonging to the wife at the time of the marriage, or acquired by means of the business afterwards, must, as between herself and the representatives of the husband, be treated as her separate estate, and that the above Act, s. 1, applies to a business commenced by the

(*y*) Carne *v.* Brice, 7 M. & W. 183.
(*z*) Young *v.* Jones, 9 Humph. 551 (American Reports, 1848).
(*a*) 33 & 34 Vict. c. 93, s. 1.
(*b*) Duncan *v.* Cashin, L. R. 10 C. P. 554.

wife before the marriage and continued afterwards by her as a *feme sole*, and makes it entirely her separate estate.

It was also held, in the same case, that, under the circumstances, the live-stock purchased by the wife passed to the husband on the marriage (*c*).

Where, in an action on a bond given by the wife while sole, both husband and wife were outlawed, her separate goods were held to be property liable to be taken in execution, although the outlawry was set aside as to him (*d*).

The goods of a woman passing as A.'s wife, and having assumed his name, cannot be taken under a writ against A. (*e*).

Assets for which husband is liable for debts of wife.

The assets for which a husband is liable with regard to the debts of his wife are the following, and those only :—

(1). The value of the personal estate in the possession of the wife, which shall have vested in the husband.

(2). The value of the choses in action of the wife which the husband shall have reduced into possession, or which with reasonable diligence he might have reduced into possession.

(3). The value of the chattels real of the wife which shall have vested in the husband and wife.

(4). The value of the rents and profits of the real estate of the wife which the husband shall have received, or with reasonable diligence might have received.

(5). The value of the husband's estate or interest in any property, real or personal, which the wife in contemplation of her marriage with him shall have transferred to him or to any other person.

(6). The value of any other property, real or personal, which the wife in contemplation of marriage with the husband shall, with his consent, have transferred to any person with the view of defeating or delaying his existing creditors (*f*).

(c) Ashworth *v.* Outram, 5 Ch. D. 923.
(d) Briscoe *v.* Kennedy, 2 Wils. 127.
(e) Edwards *v.* Bridges, 2 Stark. 396. Glasspoole *v.* Young, 9 B. & C. 696.
(f) 37 & 38 Vict. c. 50, s. 5.

Equitable Interests.

Estate in remainder.

An estate in remainder cannot be delivered in execution by the sheriff under this writ (*u*), nor can a mere equitable interest in a term of years (*x*); but, if the legal interest be in the defendant, the term may be taken (*y*).

Equity of redemption.

An equity of redemption may not be taken under a *fi. fa.* against a mortgagor (*z*).

This principle applies whether it be of a freehold estate (*a*), or of a term of years (*b*). An equity of redemption, however, is deemed assets (*c*).

Royal Residence.

Royal residence privileged.

According to the case of Attorney-General *v.* Dakin (*d*), a royal residence is privileged from intrusion by the sheriff when there is either actual residence or an intention to resume residence; but in the case of Hampton Court it was decided that, inasmuch as there was no intention or possibility of immediate occupation, this was inconsistent with its being a royal residence, and that therefore a sheriff might enter to execute.

Hampton Court.

Sale.

Sale of goods in custody of sheriff.

The owner of goods which are in the custody of the sheriff, under a *fi. fa.* may make a valid sale and delivery of them to a purchaser (*e*).

Sale by sheriff conveys

The sheriff may make a valid sale by private contract to the execution creditor, of goods seized under an execu

(*u*) *In re* Smith, 43 L. J. Ch. 441.
(*x*) Scott *v.* Scholey, 8 East. 467.
(*y*) Sparrow *v.* Earl of Bristol, 1 Marsh. 10.
(*z*) Burdon *v.* Kennedy, 3 Atk. 739.
(*a*) Plunket *v.* Penson, 2 Atk. 290.
(*b*) Lyster *v.* Dolland, 1 Ves. jun. 431; 3 Bro. Ch. C. 477, S. C. (Belt's ed.). Scott *v.* Scholey, 8 East. 467, 486. Harris *v.* Booke 4 Bing. 96; 12 Moore, 283.
(*c*) 2 Free. 115. Plunket *v.* Penson, *ride supra.*
(*d*) L. R. 4 H. L. 338.
(*e*) Union Bank of London *v.* Lenanton, 38 L. T. N. S. 698; C. P. D. 243; 47 L. J. C. P. 409.

tion, and a sale or assignment by the sheriff of goods or chattels so seized conveys an indefeasible title to a *bonâ fide* vendee; so much so, that, if the writ be afterwards vacated, the defendant will not be restored to his goods (*f*). Indefeasible title.

A sale by a sheriff is for ready money and immediate delivery; and he is not justified, after he has sold as much as will apparently satisfy the writ, in selling more, on the speculation that the actual delivery of the goods sold may be prevented by loss or accident (*g*). Sale is for ready money and immediate delivery.

The defendant may prevent the sale of his goods, and, it would appear, even the seizure, by paying the debt, costs, &c., upon the appearance of the officer, and in this case the sheriff should not proceed further with the execution of the writ (*h*).

If payment is made to the sheriff before sale, it is a bar to future execution; and it has been said that if a sheriff seize goods after a tender of debt and costs he is a trespasser (*i*). Payment to sheriff before sale.

The goods must be sold within a reasonable time, and before the return of the *venditioni exponas*, or the sheriff will be liable to an action (*k*). Sale must be within reasonable time.

He may, however, take reasonable time to inquire into any notice of an act of bankruptcy (*l*). Bankruptcy.

The sheriff is not bound to sell by public auction, but it seems that he must bear any expense incurred by selling in any other way (*m*). Sale, how conducted.

Where a sheriff had received a *fi. fa.*, and issued a warrant to his bailiff, and the latter seized the goods of the debtor, valued them, made out an inventory or a sold note, and What is a valid sale.

(*f*) Doe *v.* Thorn, 1 Maule & Sel. 425.
(*g*) Aldred *v.* Constable, 6 Q. B. 370. Taylor *v.* Bekon, 2 Lev. 203. Cook *v.* Palmer, 6 B. & C. 739.
(*h*) Taylor *v.* Bekon, 2 Lev. 203. Lepans *v.* Moregreen, 1 Keb. 655. Bissicks *v.* Bath Colliery Co. 2 Exch. D. 459; 36 L. T. N. S. 800.
(*i*) Lepans *v.* Moregreen, 1 Keb. 655.
(*k*) Bates *v.* Wingfield, 2 N. & M. 831. Jacobs *v.* Humphrey, 2 C. & M. 413; 4 Tyr. 272.
(*l*) Ashford *v.* Murray, 23 L. T. N. S. 470.
(*m*) Phillips *v.* Viscount Canterbury, 11 M. & W. 619.

delivered one article in the name of the whole to the purchaser, it was held that the sale was valid, although there was no public auction, or bill of sale from the sheriff (*q*).

He must not sell for much below their real value (*r*), and must take care that after the seizure the goods are removed to safe custody (*s*).

If adequate price not obtainable.

If an adequate price cannot be obtained for the goods, the sheriff should return that goods remain in his hands for want of buyers (*t*); but they may be sold to the plaintiff (*u*).

If the sheriff sells goods seized under the same writ on different days, all the sales will be considered one transaction (*x*).

A sheriff cannot make a valid contract for sale of the goods of a judgment debtor against whom he holds a writ of *fi. fa.*, until he has actually seized the goods (*y*).

Composition by debtor.

Where an execution creditor delivered a *fi. fa.* to a sheriff after the debtor had filed a liquidation petition, and the creditors afterwards duly resolved to accept a composition, it was held that the execution creditor was entitled to have his debt satisfied in full, by sale of the goods seized by the sheriff under the writ (*z*).

Sale within s. 87, Bankruptcy Act, 1869.

Since there is no provision in the Bankruptcy Act, 1869, to the effect that it must be by public auction, it has been decided that a private sale is a sale within the meaning of s. 87.

When sheriff's poundage and fees raise debt to over £50.

In a special case stated under the Common Law Procedure Act, 1860, s. 15, the facts were as follows: On the 1st of April, 1875, the defendants signed judgment in an action against one H., a trader, for £43 12*s.* 2*d.* debt, and £4 costs, and issued a writ of *fi. fa.*, which was indorsed

(*q*) Hernaman *v.* Bowker, 11 Exch. 760; 25 L. J. Exch. 69.
(*r*) Keightley *v.* Birch, 3 Camp. 520.
(*s*) Sly *v.* Finch, Cro. Jac. 514.
(*t*) Keightley *v.* Birch, 3 Camp. 520.
(*u*) Leader *v.* Danvers, 1 Bos. & Pul. 360.
(*x*) *Ex parte* Villars, *In re* Rogers, L. R. 9 Ch. 432.
(*y*) *Ex parte* Hall, *Re* Townsend, 14 Ch. D. 132; 28 W. R. 556; 42 L. T. N. S. 162.
(*z*) *Ex parte* Jones, *In re* Jones, 33 L. T. N. S. 116—L. JJ.

"Levy £47 12*s.* 2*d.*, and £1 8*s.* for costs of execution, &c., and also interest on £47 12*s.* 2*d.* at £4 *per cent. per annum* from the 1st day of April, 1875, until payment, besides sheriff's poundage, officer's fees, costs of levying, and all other legal and incidental expenses." Under this writ, the sheriff, on the 3rd of April, seized H.'s goods for the following sums:—

	£	*s.*	*d.*
Debt	47	12	2
Writ of execution . . .	1	8	0
Interest	0	0	2
Poundage	2	9	0
Officer's fee	1	1	0
Possession	0	5	0
	£52	15	4

On the 4th of April H. filed a petition for liquidation under the Bankruptcy Act, 1869, thereby committing an act of bankruptcy, of which due notice was on the 14th of April given to the defendants. On the 22nd the plaintiffs were appointed trustees under the liquidation, and on the 26th gave notice to the defendants requiring them and the sheriff not to sell the goods. On the 28th of April the sheriff took out an interpleader summons, and on the 3rd of May, Huddleston, B., after hearing the parties, made an order, that, upon the plaintiff's paying £17 into Court, and possession money to the sheriff, the sheriff should withdraw from possession, and the parties state a special case. When this order was made the goods had not been sold, and were in the sheriff's possession. On the 6th of May the sheriff withdrew from possession.

Upon the question as to whether the plaintiffs as trustees were entitled to the goods or the proceeds of the sale, or of any part thereof as against the defendants, the plaintiffs claiming them under the 87th section of the Bankruptcy Act, 1869, and the defendants contending that the debt and costs being together under £50, the goods were

Bankruptcy Act 1869, s. 87

not "taken in execution in respect of a judgment for a sum exceeding £50," for that the poundage must not be added, so as to bring the case within that section, and, further, that that section did not apply at all when the goods had not been sold, it was held (following *Ex parte* the Liverpool Loan Company) (*a*), that the poundage and officer's fee brought the cases within the section, and that the trustees were entitled to the goods. The Court, however, gave no opinion as to whether possession money alone would bring the case within the section if that alone raised the amount above £50 (*b*).

The fact of a sale under a *fi. fa.* is notice to the buyers that the sheriff has no knowledge of the title to the goods, and the buyers consequently buy at their own peril (*c*).

When a bill of sale of goods taken under a *fi. fa.* is made by an officer of the sheriff, the Court will presume that he was duly authorised to make it (*d*).

(*a*) L. R. 7 Ch. Ap. 732.
(*b*) Howes *v.* Young, 1 Exch. D. 146.
(*c*) Chapman *v.* Speller, 14 Q. B. 621.
(*d*) Robinson *v.* Collingwood, 17 C. B. N. S. 777.

CHAPTER XVIII.

BILLS OF SALE.

As in the execution of writs of *fieri facias* the sheriff is not unfrequently confronted by a bill of sale, it will, perhaps, be useful to devote a chapter in this treatise to the Bills of Sale Acts, and to some of the more important and most recent decisions which illustrate their provisions, although it is not pretended that the subject can be treated exhaustively in a single chapter.

Definition of bill of sale.

The 4th section of the Bills of Sale Act, 1878, defines a bill of sale as follows:—

"The expression 'bill of sale' shall include—

(1.) Bills of sale,
(2.) Assignments,
(3.) Transfers,
(4.) Declarations of trust without transfer,
(5.) Inventories of goods with receipt thereto attached,
(6.) Or receipts for purchase-moneys of goods,
(7.) And other assurances of personal chattels,
(8.) And also powers of attorney,
(9.) Authorities or licenses to take possession of personal chattels as security for any debt,
(10.) And also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in Equity to any personal chattels, or to any charge or security thereon, shall be conferred,

But shall not include the following documents; that is to say,

(1.) Assignments for the benefit of the creditors of the person making or giving the same,
(2.) Marriage settlements,
(3.) Transfers or assignments of any ship or vessel or any share thereof,
(4.) Transfers of goods in the ordinary course of business of any trade or calling,
(5.) Bills of sale of goods in foreign parts or at sea,
(6.) Bills of lading,
(7.) India warrants,
(8.) Warehouse-keepers' certificates,
(9.) Warrants or orders for the delivery of goods,
(10.) Or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented."

Hire system.

Agreements to sell furniture on the hire system (as it is called) are not bills of sale, and consequently do not require registration, for the property in the furniture does not pass to the purchaser until the last instalment is paid (*a*).

Receipt with inventory by sheriff's officer.

A receipt containing an inventory, and given by a sheriff's officer for the price of goods sold under an execution, is not a bill of sale, even although the purchaser from the sheriff allows the execution debtor to remain in possession of the goods (*b*). The reason of this was stated by Brett, L.J., to be that upon the sale by the sheriff and payment of the price, the property in the goods passed, and the transfer was complete *before the receipt and inventory*

(*a*) *Ex parte* Powell, *Re* Matthews, 1 Ch. D. 501; 45 L. J. Bktcy. 100; 24 W. R. 378; 34 L. T. N. S. 234. *Ex parte* Crawcour, *Re* Robertson, 26 W. R. 733; 9 Ch. D. 419, C. A.; 47 L. J. Bktcy. 94; 39 L. T. N. S. 2.

(*b*) Woodgate *v.* Godfrey, 5 Exch. D. 24, C. A.; 28 W. R. 49 L. J. Exch. 1; 42 L. T. N. S. 34.

ere signed, and that, consequently, the inventory was not a assurance within the Act.

Inventory with receipt.

An inventory of goods with receipt for purchase-money ttached, the vendor remaining in apparent possession, is, n the contrary, a bill of sale, and requires registration (*c*).

Agreement to re-let.

Where there is, in addition to the above, a contemporaneous agreement for re-letting the goods to the vendor, with power to the purchaser to sell and recoup himself and pay the *surplus* to the vendor, this also will require registration (*d*).

Charge on lease and furniture.

A charge on a lease and on furniture is a bill of sale, and will require to be registered and attested under the act; thus, C. and B., being, under an agreement, tenants for a short period of a theatre, with power to renew the tenancy and take a lease, charged the agreement, and the lease to be executed in pursuance thereof, with the payment to N. of £275, by weekly instalments of £10, and interest at the rate of £30 *per cent. per annum*. They further covenanted with N., amongst other things, to charge the furniture brought, or to be brought into the theatre with the payment of the monies thereby secured. This deed was not attested by a solicitor. It was held that the deed was in fact a bill of sale within the Act of 1878, and, not having been attested by a solicitor in accordance with section 10, was void, even as against the grantor (*e*).

Mortgage of tenants' fixtures.

A mortgage of tenant's fixtures separately from the buildings to which they are attached is within the act; *e.g.*, E., a lessee for a term of years of a saw-mill, assigned the lease by way of mortgage, together with the machinery and fixtures, to M., to hold, as to the buildings and such of the machinery and premises as were in the nature of landlord's fixtures, for the residue of the term, and as to such of the machinery and premises as were in the nature

(*c*) *Ex parte* Cooper, *Re* Baum, 10 Ch. D. 313, C. A.; 39 L. T. N. S. 521; 27 W. R. 298; 48 L. J. Bktcy. 40. *Ex parte* Odell followed, *vide infra*.

(*d*) *Ex parte* Odell, 27 W. R. 274; 10 Ch. D. 76; 48 L. J. Bktcy. 1; 39 L. T. N. S. 333.

(*e*) Baghott *v.* Norman, 41 L. T. N. S. 787.

Licence to sell.

of a tenant's or trade fixtures, absolutely. The deed contained a power of sale of the premises expressed to be thereby assigned, "or any part or parts thereof, either together or in parcels." It was held that the mortgagee had power to deal with the trade fixtures separately from the buildings, and the mortgage was therefore a bill of sale, so far as the trade fixtures were affected (*e*).

Mortgage of freehold.

It was, however, held not necessary to register, as a bill of sale, a mortgage executed after the passing of the Act, but before it came into operation, of freeholds, including fixtures (a steam-crane and tram rails), although the mortgage deed contained a power to sell them separately (*f*).

Building agreement with forfeiture clause.

A building agreement between a landowner and a builder containing a stipulation that the landowner, upon the default of the builder in fulfilling his agreement, may re-enter upon the land and expel the builder, and that on such re-entry all the materials then in and about the premises shall be forfeited to the landowner, and become liquidated damages, is not "a license to take possession of personal chattels as security for any debt," within the meaning of the Act, and is, consequently, not a bill of sale (*g*).

Transfer of bill of sale.

A bill of sale of goods, which was duly registered, was given to secure £500, with interest, part of which was at a subsequent date paid off. A deed was afterwards made between the two parties to the bill of sale and the plaintiff, whereby the security was transferred and the goods assigned to him, on his paying off the amount remaining due on the bill of sale, and making a further advance to the grantor, the whole amount secured by this deed being £501 15*s.* 9*d.*, with interest, the rate of interest and the times of payment being different from those of the former deed.

It was held by Watkin Williams and Mathew, JJ.,

(*e*) *In re* Eslick, *Ex parte* Alexander, 25 W. R. 260; 4 Ch. D. 503; 46 L. J. Bktcy. 30; 35 L. T. N. S. 912.

(*f*) *Ex parte* Moore & Robinson's Banking Company, *In re* Armytage. 28 W. R. 924; 14 Ch. D. 379; 42 L. T. N. S. 443.

(*g*) *Ex parte* Newitt, *In re* Garrud, 16 Ch. D. 522, C. A.

that this deed was a transfer, and not a new bill of sale, and need not be registered in order to be effectual as to the whole amount secured by it against an execution creditor. The Court of Appeal, Bramwell, Baggallay, and Lush, L.JJ., held that whether or not the deed was an effectual security, without registration, for the fresh advance, it was, as to the amount which remained due on the former bill of sale, a transfer, and valid to that extent, without registration, under the Act, so as to entitle the plaintiff to the goods (*h*).

Had it been attempted, under colour of a transfer and assignment of the existing mortgage, to have extended the security, and to have made it available for a larger advance than that for which the original mortgage was given, such a transaction would not have been a transfer of a duly registered bill of sale within the meaning of the 10th section, but substantially a new bill of sale, which would have required registration, under the Act.

Previous agreement.

A document which amounts to a transfer of property is not less within the Bills of Sale Act, so as to require registration, because it is drawn up in consequence of a previous verbal arrangement (*i*).

Assignments for benefit of creditors.

The fourth section excepts from the expression "bill of sale" assignments for the benefit of the creditors of the person making or giving the same; where, therefore, a firm of traders, being in insolvent circumstances, executed an assignment to trustees of their stock-in-trade, machinery, and other effects, upon trust to sell and divide the proceeds of sale amongst creditors who might execute the assignment, and, also, at the trustee's option, amongst creditors who should not execute, the trustees being empowered to make an allowance to the debtors, and to return their furniture to them, as well as, in their option, to pay to the debtors the dividends which would otherwise be payable to the creditors who would not execute,

(*h*) Horne *v.* Hughes, 6 Q. B. D. 676, C. A.
(*i*) Branton *v.* Griffits, 24 W. R. 762; 1 C. P. D. 349; 45 L. J. C. P. 588; 34 L. T. N. S. 871.

it was held that this was an assignment for the benefit of creditors, and therefore did not need registration (*j*).

Attempt to delay creditors.

It was further held that the assignment was not void under 13 Eliz. c. 5, as tending to delay creditors, there being no suggestion in the case that the surrounding circumstances were such as to show that the deed was a mere sham.

The mere fact that a certain body of creditors is preferred is not of itself sufficient to avoid a deed under the 13 Eliz. c. 5 (*k*).

Attempt to defeat execution.

The above case somewhat resembles, but is distinguishable from, the case of *Spenser* v. *Slater* (*l*), where a contrary decision was arrived at. In that case, a trader in insolvent circumstances executed a deed of arrangement by which he conveyed all his property to the plaintiffs as trustees, who were to carry on his business, collect his debts, and pay a dividend to such of his creditors as were parties to or assented to the deed; in case of any creditor's refusing to assent to the deed, the trustees were empowered to hand over such creditor's dividend to the debtor. The deed was executed with the object of defeating executions which might prevent the equal distribution of the debtor's property among his creditors.

The defendants, creditors who had not assented to the deed, obtained a judgment, and put in an execution on goods included in the deed, and in the actual possession of the trustees. It was held, on an interpleader issue, that the deed was fraudulent under 13 Eliz. c. 5, and that the plaintiffs had no property in the goods seized, as against the defendants.

In the latter case (*m*) there was a clause in the deed of assignment, whereby, in case creditors should refuse within seven days to execute the deed, their dividends

(*j*) Boldero v. London and Westminster Loan and Discount Company, 28 W. R. 154; 5 Exch. D. 47; 42 L. T. N. S. 57.
(*k*) *Ibid.*
(*l*) 27 W. R. 134; 4 Q. B. D. 13.
(*m*) Spenser v. Slater, *vide supra.*

were forthwith to be paid to the debtor by the trustees. This was a very strong clause in favour of the debtor. Further, the primary trust in Spenser *v.* Slater (*n*) was to carry on the business, whereas in Boldero *v.* London and Westminster Loan and Discount Company (*o*) the primary purpose was to sell the business, and only to carry it on till such time as a sale could be effected. In Spenser *v.* Slater (*p*), moreover, a general indemnity was given to the trustees by the creditors. An indemnity clause is no doubt necessary, for obvious reasons, as, if the trustees were not freed from personal liabilities, no one would be found to undertake the office; but the indemnity was too general in its terms. These points, in addition to the fact that the deed was executed for the purpose of defeating execution, formed the distinguishing features.

Future creditors.

Similarly, a deed of assignment (of a debtor's whole property), which was found by the jury to be intended to defraud *future* but not *present* creditors, was held to be valid (*q*).

Mortgage.

A *bonâ fide* assignment, further, by way of mortgage, of the whole of the assignor's property, present and future, to one person, as a security for past indebtedness, is not void under the 13 Eliz. c. 5 (*r*).

Objection to bill of sale.

The fact that an execution creditor was, at the time when his debt was contracted, aware that his debtor had given a bill of sale of chattels, does not prevent his availing himself of the objection that it has not been registered (*s*).

Fixtures and growing crops.

Section 7 provides that, "No fixtures or growing crops shall be deemed, under this Act, to be separately assigned or charged, by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on

(*n*) *Vide supra.*
(*o*) *Vide supra.*
(*p*) *Vide supra.*
(*q*) Smith *v.* Tatton, 6 L. R. Ir. 32.
(*r*) *Ex parte* Games, *In re* Bamford, 27 W. R. 744; 40 L. T. N. S. 789.
(*s*) Edwards *v.* Edwards, 2 Ch. D. 291; 45 L. J. Ch. 391; 24 W. R. 713; 34 L. T. N. S. 472.

which they grow, without otherwise taking possession of or dealing with such land or building, or land, if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed, or in the land on which such crops grow, is also conveyed or assigned to the same persons or person."

"The same rule of construction shall be applied to all deeds or instruments including fixtures or growing crops, executed before the commencement of this Act and then subsisting and in force, in all questions arising under any bankruptcy, liquidation, assignment for the benefit of creditors, or execution of any process of any Court, which shall take place or be issued after the commencement of this Act."

This section has no general retrospective operation (*t*).

Fixtures. The rule "*quicquid plantatur solo solo cedit*" applies to premises which are leasehold, as well as to freeholds, and therefore, under an equitable mortgage of leaseholds by deposit of title-deeds, trade fixtures, whether affixed before or after the date of the deposit, pass to the mortgagee, without being expressly included in the security (*u*).

Growing crops. The Bills of Sale Act extends the term "personal chattels," by its interpretation clause, to fixtures and growing crops, when capable of complete transfer by delivery, and when separately assigned or charged, but it does not alter the general law as to fixtures so as to make fixtures personal chattels for all purposes (*x*).

It will be observed, however, that the Act *only* extends to growing crops when capable of *immediate transfer* by delivery; growing crops, therefore, "to be severed when ripe" are not within the Bills of Sale Act, because not capable of being thus at once transferred (*y*).

(*t*) *Ex parte* Moore & Robinson's Banking Company, *In re* Armytage, 28 W. R. 924; 14 Ch. D. 379; 42 L. T. N. S. 443.

(*u*) Meux *v.* Jacobs, L. R. 7 H. L. 481; 44 L. J. Ch. 481; 23 W. R. 526; 32 L. T. N. S. 171.

(*x*) *Ibid.*

(*y*) Branton *v.* Griffits, 24 W. R. 762; 1 C. P. D. 349; 45 L. J. C. P. 588; 34 L. T. N. S. 871; affirmed, 25 W. R. 313; 2 C. P. D. 212; 46 L. J. C. P. 408: 36 L. T. N. S. 4.

Apart from the events of bankruptcy or execution, the Bills of Sale Act would have no operation whatever as against an unregistered assignment of fixtures (*z*), but the effect of an execution is to make an unregistered bill of sale altogether void, giving the holder of a subsequent registered bill of sale a good title against the prior grantee, and the trustee in the grantor's bankruptcy (*a*). Priority of bills of sale.

In accordance with this principle was the decision in Payne *v.* Cales (*b*), where A. executed a bill of sale to B. which was not registered. Subsequently he executed a bill of sale of the same property to C. which was registered. On the following day C. took possession under his bill of sale, and advertised the property for sale. *After the seizure,* but before the sale, A. filed a petition in bankruptcy, and a trustee was appointed. C. sold the goods, and, after satisfying his own claim, paid over the balance to the trustee. B. brought an action against C. for illegal seizure and sale of goods assigned to him, and claimed the amount owing to him by A. It was held that C.'s seizure was illegal, and gave B. a good cause of action against him, which A.'s bankruptcy did not take away. Payne *v.* Cales.

The 8th section provides that, "Every bill of sale to which this Act applies shall be duly attested and shall be registered under this Act within seven days after the making or giving thereof, and shall set forth the consideration for which such bill of sale was given, otherwise such bill of sale, as against all trustees or assignees of the estate of the person whose chattels, or any of them, are comprised in such bill of sale under the law relating to bankruptcy or liquidation, or under any assignment for the benefit of the creditors of such person, and also as against all sheriffs' officers and other persons seizing any chattels comprised in such bill of sale, in the execution of any process of any Court authorising the seizure of the Registration.

(*z*) Richards *v.* James, 14 W. R. 580; L. R. 2 Q. B. 285; 36 L. J. Q. B. 116; 8 B. & S. 302; 16 L. T. N. S. 674.
(*a*) *Ibid.*
(*b*) 33 L. T. N. S. 355.

chattels of the person by whom or of whose chattels such bill has been made, and also as against every person on whose behalf such process shall have been issued, shall be deemed fraudulent and void so far as regards the property in or right to the possession of any chattels comprised in such bill of sale, which, at or after the time of filing the petition for bankruptcy or liquidation, or of the execution of such assignment, or of executing such process (as the case may be), and after the expiration of such seven days are in the possession or apparent possession of the person making such bill of sale (or of any person against whom the process has issued, under or in the execution of which such bill has been made or given, as the case may be)."

Unregistered bill.

When a holder of an unregistered bill of sale tries to take possession of the goods and prevent the grantor retaining them, but is prevented by the act of the grantor, and through no fault of his own, he will be protected against an execution creditor whose execution was put in after the unsuccessful attempt to take possession by the grantee (*v*), *e.g.*, where a man entered the premises where the goods were, but could not get into the room where they were, and so kept watch outside (*x*).

Where property is in England and Ireland.

A bill of sale was made in England between two persons domiciled and resident there. Part of the property assigned was in Ireland, but the bill was registered in England only. An English creditor of the grantor obtained a judgment in England, enrolled it in Ireland, and took in execution the property in the latter country. It was, however, held that the bill of sale, though not registered in Ireland, was valid against the judgment creditor, and protected the property in Ireland (*y*).

Unregistered bills of sale.

The goods of an execution debtor remained in his possession throughout the following transactions: the sheriff seized the goods, and transferred them by inventory and

(*v*) Furber *v.* Finlayson, 24 W. R. 370; 34 L. T. N. S. 322.
(*x*) *Ibid.*
(*y*) Brookes *v.* Harrison, 6 L. R. Ir. 332.

receipt to one who settled them to the separate use of the debtor's wife, with power of sale if the *cestui que trust* should consent.

Neither of the above assignments were registered.

The *cestui que trust*, in her own name, signed a bill of sale, which was registered by the grantee.

An interpleader issue was tried in the County Court, but the question as to the validity of the registered bill of sale was not argued or decided, nor was it included in the notes of the County Court judge. It was held that the Court had power to decide a point not taken before the County Court judge, and that the bill of sale given by the *cestui que trust*, she having no legal estate in the goods, was void.

It was further held that the title of the grantee of the third and registered bill of sale, made by the *cestui que trust*, was invalid, by reason of the non-registration of the first two assignments (*z*).

Registration may be obstructed by act of law, in which case the bill of sale will be void against a trustee; thus, A., when in custody on a criminal charge, executed a bill of sale upon some jewels then in the hands of the police. It was not registered, and A. was afterwards adjudicated bankrupt, upon which the bill was declared void as against the trustee (*a*). Registration obstructed by law.

Upon the trial of an interpleader issue, the claimant under a bill of sale, in order to prove that it was duly filed in compliance with the 17 & 18 Vict. c. 36, s. 1, produced the bill of sale itself, and a certificate (stamped with the seal of the judgment office of the Queen's Bench Division) of the registration in the Queen's Bench judgment office of a "document purporting to be a copy of a bill of sale, together with an *affidavit*." This was held not to be sufficient evidence of the due filing of the bill of sale, it not having been proved that the docu- Evidence of registration.

(*z*) Chapman *v.* Knight, 28 W. R. 919; 42 L. T. N. S. 538.
(*a*) *Ex parte* Newsham, *In re* Wood, 40 L. T. N. S. 104.

ment registered was a *true* copy of the original bill of sale (*b*).

Attesting and registering.

The 10th section of the Bills of Sale Act, 1878, provides that :—

"A bill of sale shall be attested and registered under this Act in the following manner:

Solicitor to explain to grantor.

"(1.) The execution of every bill of sale shall be attested by a solicitor of the Supreme Court, and the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting solicitor:

Copy of bill and *affidavit* to be filed.

"(2.) Such bill, with every schedule or inventory thereto annexed or therein referred to, and also a true copy of such bill and of every such schedule or inventory, and of every attestation of the execution of such bill of sale, together with an *affidavit* of the time of such bill of sale being made or given, and of its due execution and attestation, and a description of the residence and occupation of the person making or giving the same (or in case the same is made or given by any person under or in the execution of any process, then a description of the residence and occupation of the person against whom such process issued), and of every attesting witness to such bill of sale, shall be presented to and the said copy and *affidavit* shall be filed with the Registrar within seven clear days after the making or giving of such bill of sale, in like manner as a warrant of attorney in any personal action given by a trader is now by law required to be filed:

Condition of bill to be set forth.

"(3.) If the bill of sale is made or given subject to any defeasance or condition, or declaration of trust not contained in the body thereof, such defeasance, condition, or declaration shall be deemed to be part of the bill, and shall be written on the same paper or parchment therewith before the registration, and

(*b*) Halkett *v.* Emmott, 26 W. R. 632; 47 L. J. Q. B. 436; 38 L. T. N. S. 508.

shall be truly set forth in the copy filed under this Act therewith and as part thereof, otherwise the registration shall be void.

"In case two or more bills of sale are given, comprising in whole or in part any of the same chattels, they shall have priority in the order of the date of their registration respectively as regards such chattels. Priority of bills.

"A transfer or assignment of a registered bill of sale need not be registered." Transfer.

Although this section requires that "the attestation *shall state* that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting solicitor," the Court of Appeal have decided that this clause does not require that the explanation *shall in fact have been given*, and if it did require that, still sect. 8 did not make the bill of sale void against anyone by reason of the omission of the explanation (*c*). Explanation.

It has been doubted whether, if the attestation clause states that the bill of sale has been explained to the grantor as required by the Act, the Court can go into the question of the nature or sufficiency of such explanation (*d*). Nature of explanation.

A bill of sale is, moreover, valid, as between the grantee and grantor, although it has not been explained to the grantor and attested by a solicitor in compliance with the Act (*e*).

With regard to attestation, it must be by a solicitor, but where a solicitor was himself the grantee of a bill of sale by J., and himself attested the execution by J., and subsequently seized the goods, the Court of Appeal were of opinion that the attestation was insufficient (*f*). Attestation by grantee.

A bill of sale is sufficiently attested by a "solicitor," What is

(*c*) *Ex parte* National Mercantile Bank, *Re* Haynes, 28 W. R. 148; 15 Ch. D. 42; W. N. 1880, 76.
(*d*) Hill *v.* Kirkwood, 28 W. R. 358.
(*e*) Davies *v.* Goodman, 28 W. R. 559; 5 C. P. D. 128; 49 L. J. C. P. 344; 42 L. T. N. S. 288.
(*f*) Seal *v.* Claridge, W. N. 1881, 46; 69 L. T. J. 283.

meant by solicitor.

within the meaning of the 10th section, although such solicitor may not be practising on his own account, and is a managing clerk of the solicitors who act generally for the grantee (*g*).

Priority of registered bill.

C., upon the 24th of January, 1879, executed a bill of sale upon goods, in favour of the plaintiff. It was not attested or registered, as required by the Act. Upon the 21st of February, C. signed an inventory of the same goods falling within the definition of a bill of sale under the Act, and, subsequently, a formal bill of sale, in favour of his father-in-law. The inventory and bill of sale to C.'s father-in-law were both registered under the Act. It was held that the inventory and later bill of sale took priority over the earlier bill of sale (*h*). This decision was upheld by the Court of Appeal, who further expressed doubts as to the decision in Lyons *v.* Tucker (*i*), where it had been held that the priority in section 10 applied only to cases within section 8.

Description of grantor.

The occupation of the grantor of a bill of sale, who had been in business as a licensed victualler until a few weeks before giving the bill of sale, and was then in treaty to take a public-house, was held to be sufficiently described as "widow," without reference to her past or contemplated business (*k*).

So, also, was the occupation of a woman who carried on a farm which belonged to her deceased husband merely as his executrix, and not with a view to taking to it permanently (*l*).

Occupation of grantor.

Where the grantor of a bill of sale described himself as "an accountant," and the evidence showed that he was a clerk in the accountant's department at Euston Station, and that he occasionally worked for other people after hours in book-keeping and matters of account, it was held,

(*g*) Hill *v.* Kirkwood, 28 W. R. 358.
(*h*) Conelly *v.* Steer, W. N. 1881, 46.
(*i*) W. N. 1881, 44.
(*k*) *In re* Esther Davey, W. N. 1881, 56.
(*l*) Luckin *v.* Hamlyn, 21 L. T. 366; 18 W. R. 43.

confirming the decision of the Court of Exchequer, that the description was insufficient (*m*).

But a foreman tailor's cutter, who took in lodgers at a house where his wife kept a boarding-school, was held to be sufficiently described in a bill of sale as a "foreman tailor's cutter" (*n*).

Description of attesting witness.

It is sufficient if the description be such a description as will not mislead. Technical objections will not be taken into account, if this requirement is complied with. Thus, an attesting witness describing himself as of Grove House, Acton, *in the city of London*, was held to be sufficiently described, although Acton is in Middlesex (*o*).

If, however, a man has any office or occupation, the description "esquire" or "gentleman" would not be sufficient (*p*).

Residence.

The description of the residence and occupation of the grantor is sufficiently given by describing his residence and occupation at the time of registration, and not at the time of making or giving the bill of sale (*q*).

Christian name.

A variation between one of the Christian names of the grantor, as given in the bill itself, and as given in the accompanying *affidavit*, which could not mislead, is immaterial (*r*).

Address of grantor and witness.

In some cases it would be necessary, in describing the residence of a grantor and witness, to give even the number of the house; where, therefore, the addresses of the grantor and of the attesting witness were correctly given, but the numbers of the houses were incorrectly stated in the accompanying *affidavit*, it was held that the Act had not

(*m*) Larchin *v.* North-Western Deposit and Credit Bank, L. R. 10 Exch. 64; 42 L. J. Exch. 134; 23 W. R. 325; 28 L. T. 359.

(*n*) *Ex parte* National Deposit Bank, *In re* Willis, 26 W. R. 624.

(*o*) Blount *v.* Harris, 39 L. T. N. S. 465; W. N. 1878, 232; C. A. 27 W. R. 202; 48 L. J. Q. B. 159; see also *Ex parte* M'Hattie, *In re* Wood, 27 W. R. 327; 48 L. J. Bktcy. 26; 39 L. T. N. S. 373.

(*p*) Brodrick *v.* Scale, L. R. 6 C. P. 98. Allen *v.* Thompson, 25 L. J. Exch. 249; 1 H. & N. 15; 4 W. R. 506; 2 Jur. N. S. 451.

(*q*) Button *v.* O'Neill, 27 W. R. 592; 48 L. J. C. P. 368; 40 L. T. N. S. 799.

(*r*) Corbett *v.* Rowe, 25 W. R. 59.

been satisfied, and that the instrument was void against creditors (*s*).

No occupation.

Where the attesting witness to a bill of sale, under the Act of 1854, was a person of no occupation, his description in the *affidavit* of execution was left blank, and this was held to have been in accordance with the Act (*t*).

Occupation of grantor.

But, where an *affidavit* to a bill of sale, after correctly describing the grantor's address, stated that he "was, until lately, a commercial town traveller, or agent," it was held that the occupation of the grantor was not sufficiently described, and that the bill of sale was, consequently, invalid (*u*).

Consideration to be set forth.

The 8th section of the 1878 Act says that every bill of sale shall set forth the consideration for which the bill of sale was given. It is, however, sufficient if the real consideration is disclosed, without setting forth all the circumstances surrounding the transaction. Thus, where the consideration for a bill of sale was stated to be "the sum of £182 3*s.* 0*d.* *now* paid by the grantee to the grantor," but, as a matter of fact, the sum was, at the request and with the consent of the grantor, paid thus: £8 3*s.* 3*d.* and £103 17*s.* 5*d.* to discharge two executions against the grantor's goods, £25 0*s.* 9*d.* to a solicitor (who attested the execution of the bill of sale) for money lent, and for costs due to him from the grantor, the balance, £45 1*s.* 7*d.*, being handed to the grantor in cash—it was held to be, in the absence of any suggestion of fraud, a sufficient setting forth of the consideration within the section (*x*).

Credit Co. *v.* Pott.

So, also, where A., being indebted to B., gave him a bill of sale to secure the sum of £7350, which on stating the accounts between them was found to be the balance due, and by such bill of sale this amount was to be paid

(*s*) Murray *v.* Mackenzie, L. R. 10 C. P. 625; 23 W. R. 595; 32 L. T. N. S. 777.

(*t*) *Ex parte* Young, *In re* Symonds, 28 W. R. 924; 42 L. T. N. S. 744.

(*u*) Castle *v.* Downton, 28 W. R. 257; 5 C. P. D. 56; 49 L. J. C. P. 6; 41 L. T. N. S. 528.

(*x*) Hamlyn *v.* Betteley, 5 C. P. D. 327; 42 L. T. 373; 49 L. J. C. P. 465; 28 W. R. 956

by A., with interest on demand in writing; the bill of sale recited that B. had agreed to lend A. £7350, and the consideration for such bill of sale was stated therein to be £7350 then paid by B. to A.; it was held that the bill of sale truly set forth the consideration for which it was given, so as to satisfy the section, although no money in fact passed from B. to A. at the time the bill of sale was given (*y*).

Ex parte Beetenson.

But, where in a bill of sale the consideration was stated to be £560 paid that day by the grantee to the grantor, while, in point of fact, only £500 was paid to the grantor, £20 being paid to an auctioneer employed to value the goods, and £40 being retained by the grantee for the costs of the bill of sale and other law charges; it was held that the consideration was not properly set forth, and that the bill of sale was void (*z*).

Collateral agreement not part of consideration.

It is not necessary in stating the consideration to set forth any collateral agreement between the grantor and grantee as to the application of the consideration (*a*).

But, where the consideration was stated to be "£700 now in hand paid by the said mortgagee to the said mortgagor," and the facts disclosed showed that £7 10*s.* 0*d.* was paid to or retained by the grantee for commission on the loan and expenses in connection therewith, and a promissory note for £10, also in respect of commission on loan and expenses, had been given to the grantee by the execution debtor, it was held that by reason of such retention of the £7 10*s.* 0*d.*, the consideration for which the bill of sale had been given had not been correctly stated in accordance with the statute (*b*).

Ex parte Charing Cross Advance and Deposit Bank.

Where, too, in the operative part of a bill of sale it was expressed to be made in consideration of £120 advanced upon its execution by the grantee to the grantor, and, in fact, only £90 was paid to the grantor, £30 being retained

(*y*) Credit Company *v.* Pott, 6 Q. B. D. 295.
(*z*) *Ex parte* Beetenson, *In re* Rogers, 42 L. T. N. S. 808.
(*a*) *Ex parte* National Mercantile Bank, *In re* Haynes, 15 Ch. D. ; 28 W. R. 848; W. N. 1880, 76.
(*b*) Hamilton *v.* Chaine, W. N. 1881, 76. C. A

by the grantee for interest and expenses, but at the foot of the deed, immediately after the attestation clause, there was a receipt, signed by the grantor, which stated that the £90, "together with the agreed sum of £30 for interest and expenses," made up the sum of £120, "the consideration money within expressed to be paid," it was held that the receipt was not part of the deed, and that the deed did not set forth the consideration as required by section 8 (*c*).

Ex parte National Mercantile Bank.

The distinction between this case and that of *Ex parte* National Mercantile Bank, *In re* Haynes (*d*), was pointed out to be that in the latter case the retainer was for the purpose of satisfying a debt existing independently of the transaction of loan, whereas, in the present case, the whole of the liability for "interest and expenses" arose out of the transaction of loan which the bill of sale was intended to complete and render effectual, and was really an evasion of the Act. Apart from this, the consideration was incorrectly stated in the bill of sale, for the receipt is not, as pointed out by Lord Justice Lush, a part of the bill of sale, for it is not necessary that there should be a receipt at all.

Ex parte Challinor.

A bill of sale would not, however, be vitiated under the section, because a part of the sum stated in it as the consideration is retained by the grantee to pay the solicitor's costs of preparing the deed, and a further agreed sum for costs previously incurred, together with the fee of an auctioneer for valuing the property with the view of making the loan (*e*).

What constitutes "consideration."

The "consideration" mentioned by the section is that which the grantor receives for giving the bill of sale, not necessarily the amount secured by it. In the case of *Ex parte* Challinor, *In re* Rogers (*f*), a bill of sale was given to secure not only a present advance, but also the amount

(*c*) *Ex parte* Charing Cross Advance and Deposit Bank, *In re* Parker, 16 Ch. D. 35, C. A.
(*d*) *Vide supra.*
(*e*) *Ex parte* Challinor, *In re* Rogers, 16 Ch. D. 260.
(*f*) *Vide supra.*

for the time being due to the grantee upon a mortgage including future advances which had been previously given to him by the grantor. The recitals in the bill of sale, in stating the amount then due on the mortgage, omitted a sum which had been advanced on a bill then current. It was held, however, that this mis-statement formed no objection under the 8th section as to the validity of the bill of sale. Lord Justice Lush pointed out a distinction between this case and that of *Ex parte* Charing Cross Advance and Deposit Bank (*g*).

Ex parte Charing Cross Advance and Deposit Bank.

In that case something was kept back by the grantee out of the nominal consideration as interest on the advance, though nothing could then be due for interest. In the present case there was nothing like fraud, as the grantor received the sum stated as the consideration either in money or its equivalent.

Ex parte Carter.

The case of *Ex parte* Carter, *In re* Threappleton (*h*) is another illustration of the question of "consideration." In that case, a bill of sale, dated the 10th of January, 1879, recited that in the month of June preceding the mortgagor applied to the mortgagee for a loan of £340, which the mortgagee consented to make on the mortgagor agreeing to execute a bill of sale, when called upon to do so, of certain chattels; it further recited that in the month of July following the mortgagor applied for a further loan of £60, which the mortgagee agreed to make, on the condition that the advance should be secured in like manner.

The facts, however, were that a sum of £73 on the 3rd of March, 1878, another sum of £60 on the 6th or 7th of April, 1878, and a third sum of £107 on the 26th or 27th of April, 1878, were severally advanced by the mortgagee to a partnership firm consisting of the mortgagor and another person. On the 8th of June, 1878, the partnership was dissolved, the mortgagor taking over the assets, and undertaking in an informal way to indemnify his late co-partner against the debts of the part-

(*g*) *Vide supra.*
(*h*) 12 Ch. D. 908; 41 L. T. N. S. 37; 27 W. R. 943.

nership, of which the above £240 remained one. On the 14th of June, 1878, the mortgagee advanced £100, and on the 16th of July he advanced the remaining £60 to the mortgagor alone. Here it was held that the consideration for which the bill of sale was given was not "set forth" therein sufficiently to satisfy the requirement of the Bills of Sale Act, 1878, and that the bill of sale was void.

Insufficient consideration.

Forbearance to issue execution against the goods of a judgment debtor is not sufficient equivalent for a bill of sale of the goods, which is therefore void (*i*).

Apparent possession.

The 8th section provides that a bill of sale failing to comply with the requirements of that section shall be, as against sheriffs' officers and other persons seizing any chattels comprised in such bill of sale in the execution of any process of any Court authorising the seizure, fraudulent and void, so far as regards the chattels comprised in such bill of sale, which, at or after the time of filing the petition for bankruptcy or liquidation, &c., and after the expiration of such seven days, are in the possession, or apparent possession, of the person making the bill of sale, &c. (*j*).

Possession of sheriff.

If, however, the goods comprised in an unregistered bill of sale are, at the date of the presentation of a bankruptcy petition against the grantor, in the actual possession of the sheriff under an execution issued either by the grantee or by some third person, then they are not in the apparent possession of the grantor, and the section does not apply (*k*).

Where, also, actual apparent possession had been taken by the grantee under the bill of sale of the chattels included in the bill of sale, the statute did not apply (*l*).

(*i*) *Ex parte* Cooper, *In re* Baum, 27 W. R. 299; 10 Ch. D. 313; 48 L. J. Bktcy. 54; 39 L. T. N. S. 523. Woodhouse v. Murray, 17 W. R. 206; L. R. 4 Q. B. 27, followed.

(*j*) For section 8, see pp. 273, 274.

(*k*) *Ex parte* Sargeant, *In re* Gelder, W. N. 1881, 37.

(*l*) *Ex parte* Saffery, *In re* Brenner, W. N. 1881, 30. This decision apparently overrules the case of *Ex parte* Mutton, *Re* Cole, 41 L. J. Bktcy. 57; L. R. 14 Eq. 178; 20 W. R. 882; 26 L. T. N. S. 916.

"Apparent possession" is defined by section 4 of the 1878 Act to mean, as regards goods, remaining in the house, mill, warehouse, building, works, yard, land, or other premises occupied by the grantor, or being used and enjoyed by him in any place whatsoever, notwithstanding that formal possession may have been taken by some one else. It would seem, however, from *Ex parte* Sergeant, *In re* Gelder (*m*), that, if actual and notorious possession were given to a grantee, the transaction would be protected, even though the bill of sale were not registered. Definition of possession.

So, where the *bonâ fide* assignee of a bill of sale, executed by the sheriff under a *fi. fa.* against the goods of A., allowed the latter to remain in the possession and enjoyment of the goods until another execution was put in, and the same effects were again seized, it was held that the first execution being notorious, the assignee of the bill of sale might maintain trespass against the sheriff, and that an absolute change of possession was not necessary to give effect to the bill of sale against creditors (*n*). Possession of sheriff's assignee.

Where, however, the grantor, after the seizure of the goods, went to and from the house where the goods were as he pleased, the goods were held to be in his apparent possession (*o*). Where, too, works, tools, and implements had been mortgaged, and a date fixed for redemption (the deed not being registered), and before that date the mortgagor filed a petition in liquidation, it was held that, as no default had been committed by the mortgagor, the mortgagees, in attempting to take possession, were trespassers; but, if they had obtained actual physical possession, though wrongful, the operation of the Bills of Sale Act would have been excluded, and they would have been entitled to retain the property against the trustee (*p*), inasmuch as the property would have been taken out of the apparent possession of the grantor, even although wrongfully. It is not neces- Access to goods by grantor.

(*m*) *Vide supra.*
(*n*) Latimer *v.* Batsen, 7 D. & R. 106; 4 B. & C. 652.
(*o*) Seal *v.* Claridge, W. N. 1881, 46; 69 L. T. J. 283.
(*p*) *Ex parte* Fletcher, *In re* Henley, W. N. 1877, 93; 25 W. R. 573; 36 L. T. N. S. 758; 46 L. J. Bktcy. 93; 5 Ch. D. 809.

sary that the grantee should have an exclusive possession, to take the goods out of the apparent possession of the grantor (*q*).

Legal and wrongful holders.

A bill of sale holder, however, who seizes, and is a wrongdoer or trespasser, as in the case of *Ex parte* Fletcher (*r*), must take actual physical possession, in order to remove the goods from the apparent possession of the grantor; whereas, if his possession be legal, the construction of law will extend his possession beyond the actual physical possession, so that taking possession of one of the things comprised in the deed may amount to a taking of all (*s*).

Grantor servant to grantee in apparent possession.

Where the grantor of a bill of sale of household furniture managed a business as servant to the grantee, at a weekly salary, and was allowed to reside in the house where the business was carried on, and to use the furniture as part of his salary, the grantee residing elsewhere, and the bill not having been registered, it was held that the goods *were* in the apparent possession of the grantor, and that the execution creditor was entitled to the goods as against the grantee (*t*), the goods having been taken in an execution against the grantor.

Goods in possession of wife. Post-nuptial settlement.

Goods in the possession of a wife, and so in the joint possession of the husband and wife, are in the apparent possession of the husband (*u*). Thus, a married woman gave up to her husband £500, held upon trust for her separate use, upon the understanding that the husband would settle his furniture for her separate use. The husband assigned the furniture to a trustee to hold for the use and benefit of his wife, and the property remained in the joint possession of husband and wife. The assignment was not registered under the Act, and the husband

(*q*) Burroughs *v.* Williams, L. J. N. 1878, 127—Hall, V.-C. Davies *v.* Jones, 10 W. R. 779.

(*r*) *Vide supra.*

(*s*) Reed, 3rd ed. 34.

(*t*) Pickard *v.* Marriage, 1 Exch. D. 364; 46 L. J. Exch. 594; 35 L. T. N. S. 343; 24 W. R. 886.

(*u*) Ashton *v.* Blackshaw, L. R. 9 Eq. 510; 39 L. J. Ch. 205; 18 W. R. 307; 20 L. T. 997.

afterwards became bankrupt. Upon a bill filed by the wife to have the assignment reformed, so as to create a binding trust for her separate use, and to restrain the assignee from keeping possession of the furniture, it was held, that, independently of the Bills of Sale Act, the plaintiff would have been entitled to have the furniture secured for her separate use, but the assignment, operating as a bill of sale, came within the Act, and, not being registered under the Act, the furniture remained in the order and disposition of the bankrupt, and could not be protected against the assignee (*x*).

To the same effect was the decision in the case of Fowler *v.* Foster (*y*), where it was held that a post-nuptial settlement, by which a man, in consideration of natural love, conveys goods and chattels to trustees for the benefit of his wife and children, was within the provisions of the Bills of Sale Act, 17 & 18 Vict. c. 36, and should have been filed as required by that Act.

Unregistered assignment of goods not in apparent possession.

An assignment of goods which do not remain in the apparent possession of the assignor will be good against the sheriff, even though the assignment be unregistered; *e.g.*, W. mortgaged a house and grounds to M., and by the same deed assigned the furniture in the house to her, by way of security. The deed was not registered as a bill of sale. W. afterwards let the house furnished to D. for six months, and, the interest on M.'s mortgage being then in arrear, it was arranged that D. should pay part of his six months' rent to M., she undertaking not to disturb his possession. The balance of the rent was paid in advance to W., who filed a petition for liquidation during D.'s tenancy. It was held that, the furniture not being at the date of the petition in the apparent possession of W., the assignment to M. was good, notwithstanding its non-registration (*z*).

(*x*) Ashton *v.* Blackshaw, L. R. 9 Eq. 510; 39 L. J. Ch. 205; 18 W. R. 307; 20 L. T. 997.
(*y*) 28 L. J. N. S. Q. B. 210; 5 Jur. N. S. 99.
(*z*) *Ex parte* Morrison, *In re* Westray, 28 W. R. 524; 42 L. T. N. S. 158.

Similarly, in another case, P., a trader, sold to the plaintiffs certain agricultural machinery (including a steam-engine and thrashing-machine, with their appurtenances) for £700, and signed a sale or receipt note. The plaintiffs then, by an agreement in writing, let the machinery on hire to P. for a term of three years, at or for the sum of £882, payable by quarterly instalments of £73 10*s.*, it being provided, among other things, that in case of default by P. in payment of the £882 or the quarterly instalments, or any part of them, or if P. during the term became bankrupt, or assigned or parted with the possession of the machinery, or any part of it, without the consent of the plaintiff, it should be lawful for them to resume and take absolute possession of the machinery. Neither the sale note nor the agreement was registered under the Bills of Sale Act, 1854 (*a*). P. paid two instalments of £73 10*s.* due under the agreement, and no more, and without the consent or knowledge of the plaintiffs, and after he had made default, parted with the possession of the steam-engine and thrashing-machine, and delivered them to the defendant, who had no notice of the above agreement, for the purpose of having them sold by auction.

The defendant advanced £100 to P. on them, and also incurred expenses in attempting to sell them.

P. then committed an act of bankruptcy by absconding, and the plaintiffs demanded possession of the steam-engine and thrashing-machine from the defendant, who claimed a *lien* on them for commission and charges as auctioneer in the attempted sale, and also in respect of the advance of the £100.

The plaintiff sued to recover the steam-engine and thrashing-machine, or their value, and damages for the detention. It was here held, on grounds similar to the decision in the case of *Ex parte* Morrison (*b*), that the plaintiffs were entitled to judgment, the steam-engine and

(*a*) 17 & 18 Vict. c. 36.
(*b*) *Vide supra.*

thrashing-machine not being in the possession or apparent possession of P. at the time of his bankruptcy within the meaning of the Bills of Sale Act, 1854, s. 1, nor in his order and disposition within the meaning of the Bankruptcy Act, 1869, s. 15, sub-s. 5 (*c*).

Renewal of unregistered bill of sale.

An unregistered bill of sale, which had been renewed from time to time within the period required by the Act, was formerly good as against the sheriff; thus, the plaintiff obtained from A. a bill of sale of certain goods, which was not registered, but renewed from time to time to avoid the necessity of registration. During the currency of one of these bills, A. gave a bill of sale of the same goods to the defendants, which was registered, and after this the plaintiff's bill of sale was again renewed. The sheriff seized the goods before the time for registration had expired, and the plaintiff registered his bill of sale within the time. Here it was held that the plaintiff was entitled to the goods, since his renewed bill of sale was good against the sheriff, and the defendant's bill was invalid, the property in the goods not being in the debtor at the time when the defendant's bill was made (*d*).

Fraudulent sale.

Where the grantor of a bill of sale, without the knowledge of the grantees, sold certain horses and harness included in the bill of sale, and for that purpose entered them in the defendant's books for sale subject to the defendant's conditions of sale, and the horses and property were kept in the defendant's stables and sold in his yard, the purchase-money being paid to the defendant, from which he deducted commission, and handed the balance to the grantor, the horses and property, further, being delivered to the purchasers by the defendant's servants, the defendant was held guilty of conversion (*e*).

So, too, where B. gave the plaintiff a bill of sale of

(c) Lincoln Waggon and Engine Company *v.* Mumford, 41 L. T. N. S. 655.

(d) Hunter *v.* Turner, 32 L. T. N. S. 550; 23 W. R. 792. (Richards *v.* James, *vide supra*, distinguished.) S. 9 of the 1878 Act, however, makes such renewal void. See Appendix.

(e) National Mercantile Bank, Limited, *v.* Rymill, 44 L. T. N. S. 307.

certain stock-in-trade, by which it was provided that B. should, until default in payment, make use of the goods, without hindrance from the plaintiff, and B. afterwards sold the stock-in-trade to the defendants, upon which the plaintiff brought an action against them for wrongful conversion, the jury found that the goods were sold fraudulently, and not in the ordinary way of B.'s business, but that the defendants did not know this, and acted *bonâ fide;* it was held that, as the sale was not *bonâ fide* and in the ordinary course of trade, the plaintiff was entitled to succeed (*e*).

Ordinary course of business.

Mortgage.

In a similar case, the mortgagor, in consideration of a loan of money, by bill of sale, conveyed his furniture, stock-in-trade, and other effects in and upon the farmhouse occupied by him to the plaintiff, and all things of the like nature which might at any time during the continuance of the security be brought on the premises. The bill of sale contained *provisoes* that if the mortgagor should, upon demand delivered to him or his assigns, pay the amount secured, the security would be void, and that in case he should make default in paying the amount, or in case he should assign the goods, or permit them to be removed from the premises before such payment, it should be lawful for the plaintiff to enter upon the premises, and take possession of and sell the goods assigned. There was a further *proviso* that until the mortgagor or his assigns should make default, or do any act whereby the power of entry might be put in force, it should be lawful for him and his assigns to hold and possess the goods assigned. The mortgagor, while part of the consideration money remained unpaid, sold, and delivered off his premises, to the defendant, part of the goods assigned. The plaintiff thereupon demanded these goods from the defendant, and upon his refusal to give them up, brought an action for their conversion. At the trial, the jury found that the sale was not in the ordinary course of business, and it was

Sale of goods assigned not in ordinary course of business.

(*e*) Taylor *v.* McKeand, 28 W. R. 628; 49 L. J. C. P. 563; 42 L. T. N. S. 833; 5 C. P. D. 358.

held, accordingly, that the defendant was liable, for, upon the true construction of the bill of sale, the sale and removal of the goods gave no title to the defendant as against the plaintiff (*f*).

Sale in course of business.

Where, however, a farmer and dealer granted a bill of sale over all his growing crops, goods, chattels, and effects, which then or thereafter should be on or about his farm and premises, and he was allowed to remain in possession and carry on his farm, it was held that he had implied authority to sell the farm produce in the ordinary course of business, and that the grantees of the bill of sale had no cause of action against a *bonâ fide* purchaser without notice (*g*).

So, too, where the grantor of a bill of sale which included a horse, sent it to a repository, where it was purchased at an auction by the defendant. The bill of sale described the grantor as an "innkeeper and horse-dealer," and gave him power, until default was made in payment of the principal or interest, "to hold, make use of, and possess" the goods comprised in it. It also contained a covenant by the grantor not to dispose of any of the goods without the consent in writing of the grantee.

It was held, that the bill of sale gave the grantor authority to dispose of the goods in the ordinary course of business, and that, the horse having been disposed of in the ordinary course of his business as a horse-dealer, the defendant, who had purchased it without notice of the bill of sale, had acquired a good title to it (*h*).

After-acquired goods.

Bills of sale often contain a power to seize and sell after-acquired goods, and a question will sometimes arise as to whether the bill of sale will operate so as to pass the property in certain after-acquired goods, and give the grantee priority over execution creditors, notwithstanding that the grantee had not taken actual possession prior to

(*f*) Payne *v.* Fern, 6 Q. B. D. 620.
(*g*) National Mercantile Bank *v.* Hampson, 28 W. R. 424; 49 L. J. Q. B. 480; 5 Q. B. D. 177.
(*h*) Walker *v.* Clay, 49 L. J. C. P. 560; 42 L. T. N. S. 369.

the seizure by the sheriff. The case of Leatham *v.* Amor (*i*) is a case in point. There M. assigned to the plaintiff all the machinery, plant, &c., upon certain leasehold premises, comprising a sugar refinery, warehouse, and other offices, as well as the machinery, plant, &c., "which shall hereafter be upon the said premises," for securing a sum of money and interest. The assignment was duly registered under the Bills of Sale Act. The interest due under the above-mentioned security being in arrear, the plaintiff obtained judgment of recovery of the premises; prior, however, to the writ of possession being delivered to the sheriff, the latter had seized a considerable amount of machinery and fixtures, used in connection with the sugar refinery, but acquired subsequently to the deed, under a writ of *fi. fa.* issued by the defendants upon a judgment obtained against M., who was then in possession of the premises and of the property seized. It was held, on the authority of Holroyd *v.* Marshall (*k*), that, as the assignment to the plaintiff, though of after-acquired property, was absolute, and not a mere agreement to assign, and as the goods were sufficiently specific to make the assignment operative in Equity, the plaintiff was entitled to retain the property seized, as against the defendants.

Holroyd *v.* Marshall.

In the case of Holroyd *v.* Marshall (*l*) (which was an appeal from a decision of Lord Chancellor Campbell), A. was, in September, 1858, the owner of machinery and implements upon a mill and buildings, of which B. was the lessee. B. contracted with A. for the purchase of the machinery, &c., but being unable to pay the purchase-money, A., by an indenture of mortgage, duly registered under the statute 17 & 18 Vict. c. 36, assigned the machinery and implements (of which a list and description were contained in a schedule annexed to the mortgage) to C., upon trust for B. until A. should have demanded

(*i*) 47 L. J. N. S. Q. B. 581; 38 L. T. 785; 26 W. R. 739.
(*k*) 10 H. L. 191; 33 L. J. Ch. 193; 11 W. R. 171; 7 L. T. N. S. 172; 9 Jur. N. S. 213.
(*l*) *Vide supra.*

in writing payment of the money due to him; from and after such demand, upon trust, if B. should pay the amount due with interest, to assign the property to B.; but, if default should be made, in trust for sale, and after payment of expenses to apply the same in discharge of the money due to A., and to pay the surplus to B. The deed contained a covenant by B. to insure the property, and also a covenant that all machinery, implements, and things which, during the continuance of the security, should be fixed or placed in or about the mill, in addition to or substitution for the premises or any parts thereof, should be subject to the same trust as the property assigned by the mortgage. At various times portions of the machinery were sold, and other machinery added and substituted by B., an account of which was delivered to A. Notice was given by the former requiring payment of the mortgage money; a few days subsequent to the date of the notice the machinery and effects of B. were seized by the sheriff under writs of execution issued on judgments recovered against B. subsequently to the mortgage.

It was held, reversing the decision of Lord Chancellor Campbell, that A. was entitled to the added and substituted machinery, as well as to that portion of it which was originally in the mill, in preference to the judgment creditor; Lord Chelmsford observing, "It may be that the 17 & 18 Vict. c. 36 was intended to apply to bills of sale of actual existing property only, but there is no ground for excluding bills of sale of future property."

Immediately on the new machinery and effects being fixed or placed in the mill, they became subject to the operation of the contract, and passed in Equity to the mortgagees.

To the same effect was the decision in the case of Lazarus *v.* Andrade (*m*). There the grantor by a bill of sale assigned to the grantee the stock-in-trade then in certain specified premises, and also the stock-in-trade

Lazarus *v.* Andrade.

(*m*) 5 C. P. D. 318; 43 L. T. N. S. 30; 29 W. R. 15.

which should or might at any time during the continuance of the security be brought into the premises, either in addition to or in substitution for stock-in-trade therein at the date of the bill of sale. This assignment was held sufficient to pass the property in stock-in-trade afterwards brought into the premises, in addition to or in substitution for that previously there.

Proof of judgment under which execution levied.

In a case where trover was brought for various articles of household furniture which the defendants had taken in execution under a judgment against C., and to which the plaintiff claimed to be entitled under a bill of sale from the same person, the plaintiff proved the execution of the bill of sale for a valuable consideration, and the seizing of the goods. The defendant's case was, that the bill of sale was fraudulent and void, there having been no change of possession; but they were not prepared to prove the judgment under which the goods had been taken in execution. It was held, that without this they could not impeach the title transferred by the bill of sale (*o*).

Proof of prior agreement.

When it is sought to support a document which by itself shows an act of bankruptcy (*e.g.*, an assignment of the whole of a man's property for a past consideration), by a prior agreement, the *onus* is upon the person setting it up, of showing that the agreement did, in fact, exist, and was in all respects *bonâ fide* (*p*).

Thus, a trader, who, on receiving an advance, had agreed to give the lender as security a bill of sale of, substantially, all his property, "if required," executed the bill, and about three weeks afterwards went into liquidation. It was held that the bill of sale was void (*q*). This decision was entirely in accordance with the principles laid down in *Ex parte* Fisher, *Re* Ash (*r*).

The same case, also, was followed, where a trader,

(*o*) Steel *v.* Brown, 1 Camp. 512—Mansfield.

(*p*) *Ex parte* Kilner, *In re* Barker, 28 W. R. 269; 13 Ch. D. 106; 41 L. T. N. S. 520.

(*q*) *Ibid.*

(*r*) 20 W. R. 849; L. R. 7 Ch. 636; 41 L. J. Bktcy. 62; 26 L. T. N. S. 931.

having received a loan and agreed to give as security a bill of sale of, substantially, all his property, to be executed when the lender "lost confidence" in him, executed the bill, and about a fortnight afterwards went into liquidation. It was held that the agreement was, in effect, to postpone the execution of the bill of sale until the grantor was insolvent, and therefore could not support the assignment (*s*).

Postponement of bill of sale.

Where a bill of sale has been postponed, however, not in order to avoid loss of credit by registration, but in pursuance of a *bonâ fide* previous written agreement, and a bill of sale is subsequently given in pursuance of this written agreement, it will not be considered an act of bankruptcy, though substantially comprising all the grantor's property (*t*). Thus, a trader being indebted to his brother for advances to the amount of £800, applied for further advances, and agreed by letter, that, if his brother would make him further advances as he required them up to £150, he would give him a bill of sale on what was virtually all his property, when called upon to do so. Three sums of £50 each were accordingly advanced at intervals during the next three months, and on the last of such advances being made the bill of sale was executed. A few days afterwards, a further advance was made of £100, and in the following month a petition for adjudication was presented against the debtor by a creditor whose claim was for £435, the act of bankruptcy alleged being the execution of the bill of sale. It was held, that the consideration for the bill of sale was the whole £150, and that that amounted to a substantial further advance under the circumstances, and that there had been a *bonâ fide* intention to continue the business, and a *bonâ fide* expectation on both sides that it would be possible to do so, and so no act of bankruptcy had been committed (*u*).

Repay-

By a bill of sale, goods of the plaintiff were assigned

(*s*) *Ex parte* Burton, *In re* Tunstall, 28 W. R. 268; 13 Ch. D. 102; 41 L. T. N. S. 571.
(*t*) *Ex parte* King, *Re* King, 24 W. R. 559; 2 Ch. D. 256; 45 L. J. Bkcy. 109; 34 L. T. N. S. 466.
(*u*) *Ibid.*

ment by instalments

to the defendant as security for money advanced, subject to a *proviso* for redemption on payment by weekly instalments, and empowering the defendant to take possession of the goods at any time, and upon default in payment of any instalment to sell them. The plaintiff, immediately before one of the instalments fell due, having asked for time, the defendant replied that he would "not look for a week," but, notwithstanding, he seized the plaintiff's goods, and sold them before the week expired. In an action for wrongful seizure and sale, it was held that there was no evidence of wrongful seizure and sale by the defendant, nor of waiver of his right to take possession and sell (*x*).

Possession till default.

The grantee is entitled to take possession of the goods comprised in a bill of sale (notwithstanding a *proviso* that the grantor shall retain possession until default in payment according to the covenants), when the bill of sale empowers him to take possession on the happening of certain other contingencies, one of which takes place.

The grantee, under such circumstances, has a good title as against a trustee in liquidation (*y*). A. lent money to B., the latter verbally promising to give a bill of sale when required. No bill of sale was required during the life of A., but after her death, and four years after the money had been lent, her executor, hearing rumours against the debtor's solvency, asked for and obtained a bill of sale from the debtor, which comprised substantially the whole of the debtor's property. It was agreed that the executor should not put the bill of sale in force unless the debtor's other creditors were pressing him, and the debtor promised that if any legal process was issued against him he would give notice to the executor. Afterwards, the debtor gave the executor notice of the process issued against him, and the executor thereupon seized and sold the goods by a

(*x*) Williams *v.* Stern, 28 W. R. 901; 5 Q. B. D. 409; 42 L. T. N. S. 719.

(*y*) *Ex parte* National Guardian Assurance Company, *In re* Francis, 27 W. R. 498; 10 Ch. D. 408; 40 L. T. N. S. 237.

forced sale advertised only three days before it took place. It was held that the giving of the bill of sale was a fraudulent preference, and that the proceeds of the sale must be paid to the trustee (*z*).

A clerical error will not invalidate a bill of sale. Thus, the *affidavit* attached to a bill of sale set forth that the latter had been executed on February 17th, 1806, and that the attesting witness was a "clerk." It was held that the circumstances plainly showed that "1806" was a clerical error for "1876," and did not invalidate the bill of sale. Clerical error.

The description of the attesting witness was also held to be sufficient (*a*). Description of witness.

(*z*) *Ex parte* Bolland, *In re* Gibson, 26 W. R. 481; 8 Ch. D. 230; 38 L. T. N. S. 326.

(*a*) Lamb *v.* Bruce, Duggan *v.* the Same, Cooper *v.* the Same, 24 W. R. 645; 45 L. J. Exch. 538.

CHAPTER XIX.

SHERIFF'S FEES AND POUNDAGE.

At Common Law, the sheriff is bound to execute the Queen's writs without fee or reward, and his right to poundage is given by statute.

Poundage.

The statute 29 Eliz. c. 4, ss. 1 & 2, provided:—

1. "That it shall not be lawful . . . . . for any sheriff, undersheriff, bailiff of franchises or liberties, nor for any of their officers, ministers, servants, bailiffs or deputies, by reason or colour of their offices, to have, receive, or take of any person or persons whatsoever, directly or indirectly, for the serving and executing of any extent or execution upon the body, lands, goods or chattels of any person or persons whatsoever, more or other consideration or recompense, than in this present Act is and shall be limited and appointed, which shall be lawful to be taken, that is to say, twelve pence of and for every twenty shillings, where the sum exceedeth not one hundred pounds, and sixpence of and for every twenty shillings, being over and above the said sum of one hundred pounds, that he or they shall so levy or extend and deliver in execution, or take the body in execution for, by virtue and force of any such extent or execution whatsoever, upon pain and penalty that every sheriff, undersheriff, bailiff of franchises and liberties, their ministers, servants, officers, bailiffs or deputies, which at any time . . . . . shall directly or indirectly do the contrary, shall lose and forfeit to the party grieved his treble damages, and shall

forfeit the sum of forty pounds of good and lawful English money for every time that he, they, or any of them shall do the contrary; the one moiety thereof to be to our sovereign Lady the Queen, her heirs and successors, and the other moiety thereof to the party or parties that will sue for the same, by any plaint, action, suit, bill or information, wherein no essoin, wager of law, or protection shall be allowed.

Not to extend to corporate town.

2. "Provided always, that this Act, or anything therein contained, shall not extend to any fees to be taken or had for any execution within any city or town corporate; anything above mentioned to the contrary thereof notwithstanding."

Upon executing a *fi. fa.*, therefore, the sheriff is entitled to 12*d.* for every 20*s.* if the sum levied do not exceed £100, and to 6*d.* for every 20*s.* over and above that amount (*a*).

Penalty for extortion.

If he exacts more, he is liable, by that statute, to a penalty of £40 to the use of the Crown, and, by the same statute, he was also held liable in treble damages and treble costs to the party aggrieved (*b*).

Treble damages not now recoverable.

But a count claiming treble damages against a sheriff for extortion has, in a recent case, been held unsustainable (*c*), though the statute is still unrepealed, except as to treble costs, which the 5 & 6 Vict. c. 97, s. 2, repeals.

Right to levy poundage, &c.

The 123rd section of the Common Law Procedure Act, 1852 (*d*), gives the party entitled to execution the power to levy the poundage, fees, and expenses of the execution, over and above the sum recovered.

This provision, however, does not entitle a person to take under a *ca. sa.* the expenses of a previous *fi. fa.* which had proved abortive (*e*).

(*a*) Lyster *v.* Bromley, Cro. Car. 286.
(*b*) Deacon *v.* Morris, 2 B. & Ad. 393. Woodgate *v.* Knatchbull, 2 T. R. 148.
(*c*) Byrne *v.* Hutchinson, 9 Ir. R. C. L. 75, Q. B.
(*d*) 15 & 16 Vict. c. 76.
(*e*) Salisbury (Marquis) *v.* Ray, 8 C. B. N. S. 193; 6 Jur. N. S. 1117; 29 L. J. C. P. 225; 8 W. R. 462. Earp *v.* Satchell, 3 G. & D. 346; 4 Q. B. 121; 7 Jur. 172; 12 L. J. Q. B. 122.

Expenses.

The words "expenses of execution" mean expenses of the specific execution under which the fruits are obtained (*f*). By 19 & 20 Vict. c. 108, s. 30, where an action of contract is brought in one of the Superior Courts to recover a sum not exceeding £20, and the defendant suffers judgment by default, the plaintiff cannot recover costs unless a Court or judge shall otherwise order. This section does not deprive a plaintiff of the costs of a writ of execution (*g*).

Poundage chargeable on whole amount realised.

A sheriff is entitled to poundage on the whole amount realised by the sale, although a portion of it is paid over to the landlord for rent; but the sheriff is not entitled to extra expense caused by an adverse claim to the goods (*h*).

Extortion, how punishable at common law.

Extortion, or taking more fees than by law allowed, is punishable at Common Law by indictment, but indictments can only be maintained against the person actually guilty of the offence, and the sheriff is not liable to an indictment for the offence of his officer (*i*).

Extortion summarily punishable.

The statute 7 Will. 4 & 1 Vict. c. 55, by which the sheriff's fees are now regulated, makes the exaction of more than the proper sum punishable as a contempt of Court (*j*), and this does not deprive the aggrieved party of his remedy by action (*k*).

Fees not indorsed on the writ.

By that statute (*l*), a sheriff may under a *fi. fa.* levy the amount of his fees thereby authorised, though not indorsed on the writ, and he need not specify separately the amount of such fees in his return (*m*).

Extra trouble.

The sheriff, on making a levy under a *fi. fa.*, is only

(*f*) *Ibid.*, see previous page.
(*g*) Armitage *v.* Jessop, L. R. 2 C. P. 12; 12 Jur. N. S. 969; 15 W. R. 130; 15 L. T. N. S. 214.
(*h*) Davies *v.* Edwards, 1 D. & L. 395; 12 M. & W. 31; 13 L. J. Exch. 1. Gore *v.* Goston, 1 Stra. 643.
(*i*) Woodgate *v.* Knatchbull, 2 T. R. 148. Saunderson *v.* Baker, 3 Wils. 316.
(*j*) See Gill *v.* Jose, 6 E. & B. 618.
(*k*) Pilkington *v.* Cooke, 16 M. & W. 615. Berton *v.* Lawrence, 5 Exch. 816.
(*l*) See Appendix.
(*m*) Curtis *v.* Mayne, 2 D. N. S. 37, B. C.—Wightman.

entitled to his poundage under 29 Eliz. c. 4, and to such fees as are allowed by the table of fees framed under 7 Will. 4 & 1 Vict. c. 55, and he cannot claim more, although he may be put to extra trouble and expense in making the levy (*n*).

He must make a return of the whole sum produced by the sale, when the Court orders it to be paid over, deducting poundage; he must thereupon move the Court for any extra allowance to which he may be entitled (*o*): and it will then be ascertained, by reference to the master, on the sheriff's application, if anything is due to him on the accounts stated.

The Court is authorised by the statute 3 Geo. 1, c. 15, s. 11, to give the sheriff an additional allowance or reward in respect of any extraordinary service to the Crown.

Sheriff only entitled to poundage on sum marked on writ.

A sheriff is only entitled to poundage on the sum marked on the writ, and where on a *fi. fa.* marked for £30 8*s.* 11*d.*, the sheriff, by seizure and sale of a term of years, levied £530, and, with the assent of the attorney of the execution debtor, retained poundage fees on the whole amount, it was held that he could only retain on the lesser sum (*p*).

Sheriff's poundage in extent is chargeable under the statute 3 Geo. 1, c. 15, s. 3. Before that act the sheriff was not entitled to any fees for executing extents, and as the statute 1 & 2 Vict. c. 55 did not apply to process at the suit of the Crown, the table of fees issued under that Act, in 1837, was annulled by a Rule of Court of Michaelmas Term, 1847, in so far as it purported to relate to fees on process at the suit of the Crown.

Poundage in extent.

A sheriff has no right to *levy* costs or poundage, or any incidental expenses, under an extent on a simple contract debt; neither has he, or the attorney for the prosecutor of the extent, a right to receive any such costs, &c., under a

(n) Slater *v.* Haines or Hayes, 7 M. & W. 413. Davies *v.* Edwards, 1 D. & L. 395; 12 M. & W. 31; 13 L. J. Exch. 1.
(o) Rex *v.* Jones, 1 Price, 205.
(p) Byrne *v.* Hutchinson, 9 Ir. R. C. L. 75, Q. B.

compromise, in consideration of staying proceedings, f the defendant under duress of a seizure (*a*).

Payment of excess.

If more than the precise debt be received by the under such circumstances, they will be ordered to rest it, and to pay the costs of an application to the Court f the purpose of obtaining the order (*b*).

An assignee of a bankrupt defendant may apply (*c*).

Such a motion may be made after an application to s aside the extent altogether, which has failed (*d*).

Auction expenses.

In a case where a sheriff, besides his poundage, charg five *per cent.* for an auctioneer to sell the malt take under the extent, the Court disallowed the charge (*e*).

Excess paid in ignorance.

Where a sheriff claimed, as of right, upon a warra issued by him in the execution of his office, a larger fe than he was entitled to by law, and the attorney paid it i ignorance of the law, it was held that the latter migh maintain an action for the amount paid above the legal fe or might set off the amount in an action by the sheri against him (*f*).

Motion calling on sheriff to refund excess, &c.

If a sheriff's officer is guilty of extortion, the party complaining may call upon the sheriff to show cause wh he should not refund the excess, and upon the officer t show cause why an attachment should not issue again him, under the same rule (*g*).

Deducting auction fees, and not selling.

A motion to return auction fees deducted from the levy by the sheriff, on the ground that the goods were trans ferred by the sheriff by bill of sale to the plaintiff, and not by auction, and that the auctioneer was employed by the plaintiff, should be against the sheriff, and not against the plaintiff (*h*).

(*a*) Rex *v.* Tidmarsh, 5 Price, 189.
(*b*) *Ibid.*
(*c*) *Ibid.*
(*d*) *Ibid.*
(*e*) Rex *v.* Crackenthorp, 2 Ans. 412.
(*f*) Dew *v.* Parsons, 2 B. & Ad. 562; 1 Chit. 295.
(*g*) Blake *v.* Newborn, 2 B. C. Rep. 263; 5 D. & L. 601; 12 Jur. 882; 17 L. J. Q. B. 216, B. C.—Coleridge.
(*h*) Bushell *v.* Boord, 4 D. & L. 359; 11 Jur. 268; 16 L. J. Q. B. B. C.—Patteson.

Evidence as to amount of fees allowed by law.

It was formerly held, that it was unnecessary to give any evidence as to the amount of fees allowed by law, in an action against the sheriff for extortion (*i*); but it appears now to be insufficient to allege generally that the defendant took £ , being a larger sum, &c.; the statement of claim should also state what he ought to have taken, and what was the excess on each writ (*k*).

Effect of 7 Will 4 & 1 Vict. c. 55, on 29 Eliz. c. 4.

The 29 Eliz. c. 4 is not repealed by 7 Will. 4 & 1 Vict. c. 55, but the effect of the latter statute is to exempt from the penalties of the statute of Elizabeth the cases in which the sheriff takes no larger fees than are allowed by order of the judges (*l*).

The sheriff, in consequence of the latter statute not repealing the former, levies his poundage under the statute of Elizabeth, and his fees under the statute of William and Victoria (*m*).

Costs of taxation by consent.

Where a sheriff takes a greater amount of fees than he is entitled to receive under 7 Will. 4 & 1 Vict. c. 55, and on taxation under a judge's order, by consent, the amount of his claim is reduced, the Court cannot compel him to pay the costs of taxation under section 4, that section only applying to cases where the taxation has proceeded in consequence of a complaint to the Court under section 3 (*n*).

Declaration that sheriff took £8 for execution, and did not levy.

Where a declaration stated that a *fi. fa.* was delivered to the sheriff, indorsed to levy debt and costs, and that the sheriff wrongfully took £8 for the execution, although he did not levy any sum of money by virtue of the execution, it was held that the declaration was good, and that it was not necessary to negative all the facts which amount in law to a levy (*o*).

(*i*) Plevin *v.* Prince, 10 Ad. & E. 494.
(*k*) Berton *v.* Lawrence, 1 L. M. & P. 668; 20 L. J. Exch. 46. Ashby *v.* Harris, 5 Dowl. 742; 2 M. & W. 673. Usher *v.* Walters, 3 G. & D. 594; 4 Q. B. 553; 7 Jur. 511; 12 L. J. Q. B. 246.
(*l*) Pilkington *v.* Cooke, 16 M. & W. 615; 4 D. & L. 347; 17 L. J. Exch. 141. Wrightup *v.* Greenacre, 11 Jur. 408; 16 L. J. Q. B. 246.
(*m*) Davies *v.* Griffiths, 7 Dowl. 204.
(*n*) Curlewis *v.* Bird, 1 D. N. S. 752; 6 Jur. 669, B. C.—Coleridge.
(*o*) Holmes *v.* Sparkes, 12 C. B. 242; 15 Jur. 975; 21 L. J. C. P. 191

Costs of keeping possession under an injunction.

Where the sheriff retained out of the results of a sale under an execution the proceeds of which were not sufficient to satisfy the plaintiff's claim, the expenses occasioned by keeping possession under an injunction out of Chancery, it was held, that this was an indirect taking of more than the poundage allowed by 29 Eliz. c. 4 (*x*).

Costs will be allowed against the sheriff to a plaintiff who recovers damages for extortion (*y*).

Action for extortion.

An action for money had and received, at the suit of a plaintiff who had sued out a *fi. fa.* lies against the sheriff who executed it, if he retains more money in his hands than he is entitled to do, the party injured not being bound to proceed by motion in banc (*z*).

Where excessive fees are charged, but not allowed.

When an application was made against the deputy constable or bodar of Dover Castle, on the ground of his having taken larger fees, for executing process, than those allowed by 23 Hen. 6, c. 9, but only the usual fees had been allowed by the master, the Court refused to interfere, but left the party to his action (*a*).

Where a sheriff's officer who arrested a defendant demanded and received from him a larger sum than he was liable to pay, as a caption fee, and for the expense of the bailbond, the Court ordered it to be referred to the master to ascertain what the officer was entitled to on that account, and ordered him to restore the surplus to the defendant, and to pay the costs of the application (*b*).

Recovery of fees by officers.

Where there is a distinct promise, a sheriff's officer may maintain an action for fees (*c*).

Liability of solicitor.

With regard to the question whether a sheriff's officer can maintain an action for his fees and possession money against the solicitor of an execution creditor, where the solicitor has done no more than deliver a writ of *fieri facias*

(*x*) Buckle *v.* Bewes, 5 D. & R. 495; 3 B. & C. 688.
(*y*) Tyte *v.* Glode, 7 T. R. 267. Deacon *v.* Morris, 2 B. & Ad. 393.
(*z*) Longdill *v.* Jones, 1 Stark. 345—Ellenborough.
(*a*) Primrose *v.* Bradley, 2 C. & M. 687; 2 Dowl. 662; 4 Tyr. 995.
(*b*) Watson *v.* Edmonds, 4 Price, 309.
(*c*) Ormerod *v.* Foskett, Peake's Add. Cas. 77—Kenyon.

to the sheriff for execution, it was formerly held, that a sheriff's officer might maintain an action against the solicitor on proof of employment by the solicitor, and that it was the usual course of business for the solicitor to be charged with and to pay such fees. Proof of the usage of business was held to be admissible in evidence to establish the liability of the solicitor (*d*).

Liability of solicitor to sheriff, how established.

In several other cases which preceded the case of Brewer *v.* Jones (*e*), it was held that a request by the solicitor that a particular bailiff might be employed to execute the writ was evidence of a contract by him to pay that bailiff's fees and possession money; in one of those cases—Foster *v.* Blakelock (*f*), the distinction was expressly pointed out by Bayley, J., between such a state of circumstances and that which exists when the solicitor merely delivers the writ for execution to the sheriff. The cases of Maybery *v.* Mansfield (*g*) and Seal *v.* Hudson (*h*) were cases in which there was in fact nothing more than the delivery of the writ to the sheriff; in both these cases it was held that there was no evidence of any contract, and that the solicitor was not liable. In the case of Brewer *v.* Jones (*i*) the Court of Exchequer arrived at an opposite conclusion, upon the authority (as it considered) of Walbank *v.* Quarterman (*k*); and it is remarkable that the judges who pronounced that decision themselves regarded it as at variance with sound principle, and only justified it by that supposed precedent. The case of Walbank *v.* Quarterman (*k*), however, was decided upon the authority of Foster *v.* Blakelock (*l*), in which the distinction above noticed was pointed out, and it was

(*d*) Newton *v.* Chambers, 1 D. & L. 869; 8 Jur. 244; 13 L. J. Q. B. 141, B. C.—Williams.
(*e*) L. R. 10 Exch. 655; 3 C. L. R. 369; 1 Jur. N. S. 240; 24 L. J. Exch. 243.
(*f*) 5 B. & C. 328.
(*g*) 9 Q. B. Rep. 754; 16 L. J. Q. B. 102.
(*h*) 4 D. & L. 760; 2 B. C. Rep. 55; 11 Jur. 610.—Coleridge.
(*i*) L. R. 10 Exch. 655; 3 C. L. R. 369; 1 Jur. N. S. 240; 24 L. J Exch. 243.
(*k*) 3 C. B. 94
(*l*) 5 B. & C. 328.

determined upon a state of facts similar to that which existed in Foster *v.* Blakelock (*l*). It is, therefore, no precedent at all for Brewer *v.* Jones (*m*), which thus stands self-condemned as against sound principle, and is opposed to the judgment of a Court of co-ordinate jurisdiction, and of equal authority, in Maybery *v.* Mansfield (*n*). The question has, however, been at length authoritatively set at rest; for, the Court of Appeal, in the case of Royle *v.* Busby (*o*), preferring the precedent of Maybery *v.* Mansfield (*n*) to that of Brewer *v.* Jones (*m*), held that a sheriff's officer cannot maintain an action for his fees and possession money in the execution of a writ of *fi. fa.* against the solicitor of the execution creditor, where the solicitor has done nothing more than deliver the writ to the sheriff for execution. In his judgment, Lord Selborne observes, "The sheriff is an officer of the law, with subordinate officers of his own appointment, for whose acts and defaults he is responsible. He and his officers are by statute, entitled to certain fees; but the statute does not say that the solicitor to the execution creditor is to pay them; whatever, therefore, the remedy for them may be, when the fruits of an execution are insufficient, there is no reasonable ground on which it can be implied that the solicitor, who, in the proper and ordinary course of his duty to his client, simply delivers a writ to the sheriff for execution, thereby enters into a personal contract to pay the fees."

Solicitor's liability removed.

Execution creditor liable.

With regard to the question who is the person liable for the fees, in the event of the execution proving insufficient, now that it is definitely settled that, apart from contract, the solicitor is not responsible, the law was laid down in the case of Maybery *v.* Mansfield (*p*), by

(*l*) 5 B. & C. 328.
(*m*) L. R. 10 Exch. 655; 3 C. L. R. 369; 1 Jur. N. S. 240; 24 L. J. Exch. 243.
(*n*) 9 Q. B. Rep. 754; 16 L. J. Q. B. 102.
(*o*) 6 Q. B. D. 171, C. A.; 50 L. J. Q. B. 196, C. A.; 29 W. R. 315; *coram* Lord Selborne, L.C.; Baggallay and Brett, L.JJ.
(*p*) 9 Q. B. Rep. 754; 16 L. J. Q. B. 102.

Erle, J., in terms as follow: "The law is, that the client is liable in such a case as this." Now, therefore, that the authority of the decision in this case is restored, it may be taken as settled law that the execution creditor is liable (*q*).

An undersheriff cannot refuse to execute process till he has his fees; if he does, he may be indicted for extortion (*r*).

The constable of Dover Castle is an officer within the contemplation of the 23 Hen. 6, c. 9 (*s*).

Sheriff, when entitled to poundage.

A sheriff is entitled to his poundage if he levy the debt and pay the money to the plaintiff, even if the execution be afterwards set aside (*t*). He is also entitled to his poundage, if the parties come to an arrangement before the sale (*u*).

Formerly held that where money was paid before sale, sheriff not entitled to poundage.

Where the money has been tendered to the sheriff before levy (*x*), or where the amount has been paid, as when a sheriff's officer went with a warrant to the defendant's premises, for the purpose of levying under a *fi. fa.*, and without saying or doing anything more, produced the warrant, with a demand for the debt and costs, together with poundage and expenses of levy, and the money was paid under protest, it was formerly held, that this did not amount to a levy so as to entitle the sheriff to poundage, or the officer to fees (*y*). This decision was followed in a recent case in the Common Pleas Division (*z*), where it was laid down, that, if a sheriff, who

(q) The case of Malle *v.* Mann, 6 D. & L. 42; 2 Exch. 608, may be added to the number of the cases which were decided upon an erroneous conception of Walbank *v.* Quarterman and Foster *v.* Blaklock.

(r) Hewett's Case, 1 Salk. 330.

(s) Primrose *v.* Bradley, 2 C. & M. 687; 2 Dowl. 662; 4 Tyr. 995.

(t) Rawstone *v.* Wilkinson, 4 M. & Sel. 256. Bullen *v.* Ansley, 6 Esp. 111.

(u) Alchin *v.* Wells, 5 T. R. 470.

(x) Colls *v.* Coates, 3 P. & D. 511; 11 Ad. & E. 826.

(y) Nash *v.* Dickenson, L. R. 2 C. P. 252; see also Graham *v.* Grill, 2 M. & S. 296, and Brun *v.* Hutchinson, 2 D. & L. 43.

(z) Ree *v.* Hammond, 2 C. P. D. 300.

had seized, pursuant to a writ of *fi. fa.*, the goods of an execution debtor, were paid out before sale, he was not entitled to poundage, but he was entitled to a discharge fee for the release of the goods. In that case, the goods of the defendants were seized by the sheriff under a writ of *fi. fa.* issued at the suit of the plaintiff, and afterwards a similar writ, in an action by a second plaintiff against one of the defendants, was lodged with the sheriff. The sheriff remained in possession some days afterwards, but ultimately the amount of the judgment debts was paid on behalf of the defendants, and no part of the goods seized were sold. The sheriff claimed and received payment of a discharge fee in each action, and, in the action at the suit of the second plaintiff, poundage and a levy fee. A rule having been obtained under 7 Will. 4 & 1 Vict. c. 55, s. 3, for a return of these fees and the poundage, the Common Pleas Division compelled the sheriff to return the poundage, to which they held that he was not entitled, but they allowed him to retain the discharge fees and the levy fee. The Exchequer Division, however, refused, in a still more recent case, to follow the principle laid down in Nash *v.* Dickenson, and Roe *v.* Hammond, considering that the decision in the former case was based on insufficient grounds, and the decision in the latter was founded on an anonymous case in Lofft's Reports, which was insufficient to support it. The statement in Lofft is to the effect that a sheriff is not entitled to poundage till the goods are sold, and this was considered by the Court of Exchequer to be, not an authoritative statement, so much as the result of an inquiry into the practice of the Courts. Consequently, in a case where a sheriff's officer, in the execution of a warrant on a *fi. fa.*, went with another man to the debtor's house, showed him the warrant, and demanded payment, telling him that in default of payment the man must remain in possession, and further proceedings be taken, upon which the debtor paid the sum demanded in the warrant (which included poundage and officer's fee), the Court held that there had been *in substance* a levy, and that the sheriff

Now overruled.

Bissicks *v.* Bath Colliery Company (Limited).

was entitled to poundage and fee, though there had been no sale (*t*).

In a still later case (*u*), it was held in the Court of Appeal, that a sheriff, acting under a *fi. fa.*, has made a good "levy" within sect. 1 of 29 Eliz. c. 4, when he has seized goods, and obtained money in direct or indirect consequence of that seizure. He need not proceed to a sale of the goods in order to be entitled to poundage. In the case referred to, a sheriff seized defendant's goods on a *fi. fa.*, and remained in possession until defendant paid him the debt, costs, and sheriff's fees, when possession was given up again to defendant. What constitutes a levy.

This doctrine of a constructive levy, and the decisions enforcing it, appear to be as desirable for the debtor as for the sheriff, for, if the debtor, in order to avoid the great inconvenience of having his goods seized, prefers to pay the amount of the execution, it would be a great hardship to place any obstacle in his way; but, if the receipt of the amount by the sheriff's officer were to occasion the sheriff's loss of his fees, it would obviously result in the officer refusing to accept payment without first going through the whole system of levy, seizure, and sale, in order to entitle the sheriff to his fees, or else the sheriff would be compelled to endure the hardship himself of having to forego his fees for services which had without doubt been instrumental in eliciting payment; moreover, this decision appears to be in accordance with the principle laid down by Willes, J., in the case of Miles *v.* Harris (*x*), in which he says that, where the "plaintiff had had all the benefit of the sheriff's services, and the sheriff had done all he could do, and was ready to do the rest, in obedience to the precept, according to all ordinary principles he ought to be paid," and with the observations of Parke, B., in Rex Constructive levy. Miles *v.* Harris—Willes, J. Rex *v.*

(*t*) Bissicks *v.* The Bath Colliery Company (Limited), 2 Exch. D. 459; 36 L. T. N. S. 800.

(*u*) Mortimore *v.* Cragg, *Re* Sheriff of Surrey, 38 L. T. N. S. 116.

(*x*) 12 C. B. N. S. 551; 31 L. J. C. P. 361; 6 L. T. N. S. 649.

Robinson —Parke, B.

v. Robinson (*y*), where he says, "the authorities cited go thus far, that the sheriff is entitled to poundage on all the amount obtained under *compulsion of the process*" (*z*). Surely, if a man pays money in order to avoid seizure and sale to the sheriff's officer, it is a payment under compulsion of the process. The case of Alchin *v.* Wells (*a*) also supports the principle contained in Bissicks *v.* The Bath Colliery Co., for, in that case, the plaintiff, having obtained judgment, sued out a *fi. fa.*, and delivered it to the sheriff, who levied on the defendant's goods; after the sheriff had been in possession two days the plaintiff and defendant compromised, before any of the defendant's goods had been sold. The sheriff, before he quitted possession, satisfied himself for his poundage, after which, the plaintiff ruled the sheriff to return the writ. It was contended that the sheriff was not entitled to poundage, because he had not sold the goods. The Court held that the sheriff was entitled to poundage, and that the parties could not after a compromise deprive him of his poundage by ruling him to return the writ. Actual seizure is, therefore, now unnecessary to entitle the sheriff to his poundage.

Alchin *v.* Wells.

Where levy is ineffectual.

A sheriff's officer who has made an ineffectual levy upon the goods of a debtor by reason of a claim by an assignee, upon which the officer was obliged to abandon the possession, has been held not to be entitled to sue for his charges (*b*).

The sheriff was also formerly held not to be entitled to poundage, where, after seizure and before sale, the judgment and all subsequent proceedings are set aside for irregularity (*c*); but the case of Bissicks *v.* The Bath Colliery Co. seems to overrule this principle, and to give the sheriff his poundage, on the ground that it would be a great hardship on the sheriff, if, after having performed

(*y*) 2 C. M. & R. 334.
(*z*) See also Chapman *v.* Bowlby, 1 Dowl. N. S. 83—Parke, B.
(*a*) 5 T. R. 470.
(*b*) Cole *v.* Terry, 5 L. T. N. S. 347, Q. B.
(*c*) Miles *v.* Harris, 12 C. B. N. S. 551; 31 L. J. C. P. 361; 6 L. T. N. S. 649.

all his duty, he were to be mulcted of his fees through the negligence or default of the execution creditor, who would, moreover, be benefiting by his own wrong.

Sheriff's officer must have done something beneficial to entitle himself to recover fees.

But, on the other hand, it has been held that a sheriff's officer employed to execute a *fi. fa.* cannot recover his fees from the attorney at whose instance the writ was issued, if the execution becomes abortive through the default or negligence of the sheriff or his officer (as where the sheriff makes a levy upon the wrong goods), and so the result is not in any way beneficial to the party at whose instance the writ was issued. Thus, the attorney of B., who had recovered judgment against C., issued a *fi. fa.* and delivered it to the sheriff, who made out his warrant to D. to make a levy on the goods of C.; D., however, made a levy on goods which were claimed by E., and, having kept possession for eleven days, went out of possession, pursuant to an interpleader order. D. having sued the attorney for his fees, it was held that, as he had done nothing in respect of the levy that was beneficial, he was not entitled to recover them (*d*).

It should be stated, that, in both the cases in which the principle was laid down that a sheriff cannot recover his fees from the solicitor where the sheriff has done nothing beneficial, were cases in which the sheriff had seized the goods of the wrong person, and were, in fact, cases in which the sheriff was suing for costs incurred in committing a trespass, since the goods seized were not the property of the judgment debtors, and thus the executions proved practically abortive. It would, therefore, be an error (on the assumption of a contract by the solicitor to pay the sheriff's officer what he was lawfully entitled to receive) to extend the principle to any case of a different kind (*e*).

Royle *v.* Busby.

In the case of Royle *v.* Busby (*f*) the judgment debtor was a joint stock company, against which there was pending, when the execution was issued, a petition for winding-

(*d*) Newman *v.* Merriman, 26 L. T. N. S. 397, Exch.
(*e*) See Royle *v.* Busby, 6 Q. B. D. 171; 29 W. R. 315; 50 L. J. Q. B. 196—Lord Selborne.
(*f*) *Vide supra.*

up, on which a winding-up order was afterwards made. The effect of that winding-up order was to defeat the execution, by the operation of section 163 of the Companies Act of 1862. The sheriff held the goods until the result of the petition for liquidation was ascertained, and the execution was not void until the winding-up order was made. There was, therefore, no default on the part of the sheriff. In this case the Lord Chancellor (*g*) observed: "I am not at all satisfied that it was the duty, or that it would have been consistent with the duty, of the sheriff's officer to withdraw from possession without instructions from the execution creditor, until it was certain that such an order, whereby the title of the judgment debtor to the goods might be displaced, would be made, or that, under such circumstances, he would lose his right to receive his lawful fees from any person, solicitor or not, who might have contracted to pay them."

Companies Act, 1862, s. 163.

Where a sheriff had seized under a *fi. fa.*, and notice was given of a prior act of bankruptcy by the debtor, and a petition filed, under which he was adjudicated bankrupt, the goods remaining unsold, and the messenger taking possession of them, it was held that the sheriff was not entitled to a rule calling upon the assignees to pay him the expenses of preparing for a sale of the goods (*h*).

Expenses of preparing for sale, where no sale takes place.

But, where a company had presented a petition for compulsory winding-up, and the sheriff was at the time in possession of the property of the company under a writ of *fi. fa.*, he was restrained by injunction from selling, but he was allowed his costs and fees against the company (*i*).

Sheriff restrained from selling allowed costs.

The Common Law Procedure Act, 1852, s. 123, provides that "In every case of execution, the party entitled to execution may levy the poundage, fees, and expenses of the execution, over and above the sum recovered" (*k*). This section applies, even though, under the County Courts

C. L. P. Act, 1852, s. 123.

(*g*) Lord Selborne.
(*h*) Searle *v.* Blaise, 14 C. B. N. S. 856.
(*i*) *In re* Perkins Beach Lead Mine, W. N. 1877, 261.
(*k*) The Judicature Act, 1875, O. 42, r. 13, incorporates this provision of the Common Law Procedure Act, 1852.

Acts, the party issuing the execution is not entitled to costs (*l*).

Expenses of possession where execution creditor becomes disentitled.

But, when goods have been seized under a writ of *fi. fa.*, and the execution creditor afterwards becomes disentitled to recover the amount of the judgment debt, the sheriff cannot, at least without instructions from the execution creditor, sell any portion of the goods seized, in order to realise thereby the amount of his possession money, fees, and expenses. So, where goods had been seized under a writ of *fi. fa.*, and the execution debtor entered into a composition under the Bankruptcy Act, 1869, s. 126, to which the execution creditor assented, and the sheriff afterwards, without instructions from the execution creditor, sold a portion of the goods seized under the writ, in order to realise the amount of his possession money, fees, and expenses, there, upon the execution debtor suing the sheriff in the County Court for an unlawful sale, the judge directed the jury, that, in the absence of evidence to show that the sheriff was required to proceed to the sale by the execution creditor, a cause of action accrued to the execution debtor: this direction of the County Court judge was afterwards affirmed by the Divisional Court of Appeal (*m*).

Retaking goods to secure poundage.

If a sheriff leaves goods taken in execution with a person who parts with the possession of them, he may not retake them, merely to secure his own poundage, in a case where the execution was fraudulent (*n*).

Cost of appraisement.

A sheriff who has seized goods under a *fi. fa.*, and disposed of them by bill of sale, has no right to deduct from the amount received the charge of appraising the goods previous to the sale (*o*).

Expenses of sale by order of Court.

But the Court will allow a sheriff to deduct the expenses of a sale effected by the authority of the Court, although it appears on the trial of an issue that the seizure was wrongful (*p*).

(*l*) Armitage *v.* Jessop, L. R. 2 C. P. 12.
(*m*) Sneary *v.* Abdy, 1 Exch. D. 299.
(*n*) Goode *v.* Langley, 7 B. & C. 26.
(*o*) Phillips *v.* Canterbury (Viscount), 11 M. & W. 619; 12 L. J. Exch. 401; 1 D. & L. 283.
(*p*) Bland *v.* Delano, 6 Dowl. 293; 1 W. W. & H. 75.

Auction expenses under *extent*.

The sheriff, however, may not retain against the Crown, a sum of money deposited by an agent of the Crown to cover the expenses of a sale by auction of property seized under an extent, and sold under a *venditioni exponas* (*f*).

Poundage to sheriffs in two counties.

Where upon extents issued into the counties of A. and B. both sheriffs seize, and, before a *venditioni exponas* issues to either, the debt is paid to the sheriff of A., he is entitled to the whole poundage (*g*). So, also, if a *venditioni exponas* issues to the sheriff of A. only, who sells and levies the whole debt.

Extents.

Where, however, the debt is paid to the officers of the Crown immediately, although upon the compulsion of the one levy, the poundage is apportioned between the two sheriffs (*h*). In making such apportionment all property not legally seizable must be passed over. The Court or a judge has the discretionary power of apportioning the poundage where the sheriff goes out of office before the extent is completely executed (*i*).

Set-off against sheriff's poundage, when allowed.

A set-off against the sheriff's claim for poundage will only be allowed if incurred for the sheriff, and where, in an action by the sheriff against an execution creditor for poundage, the defendant claimed to set-off the expenses which he had paid, of a bill of sale and appraisement preparatory to an assignment in trust for the benefit of the creditors of the party whose goods were seized, it was held, that, without further evidence on the defendant's part, the payment in respect of such a sale could not be considered as made for the sheriff, and could not be set off (*k*).

Mileage.

A sheriff's officer may only charge 6*d.* per mile for mileage, and in executing a *fi. fa.*, where the distance exceeded five miles, a sheriff's officer was held liable to attachment for having taken more than that sum, although

(*f*) Rex *v.* Jones, 1 C. & J. 140.
(*g*) Rex *v.* Barber, 3 Anstr. 717 (1796). Rex *v.* Bowles, Wightw. 117.
(*h*) Rex *v.* Fry, 3 Anstr. 718 *n.*
(*i*) 3 Geo. 1, c. 15, s. 9. Judicature Act, 1873, s. 34.
(*k*) Marshall *v.* Hicks, 10 Q. B. 15; 11 Jur. 305; 16 L. J. Q. B. 135.

in that particular county it appeared to have been the custom to take 1*s.* per mile (*l*).

Charges for advertisements.

A sheriff may not deduct charges for advertisements from the proceeds of a sale; and where a sheriff, previous to a sale by public auction of the goods of a debtor, had issued three advertisements of such sale, and claimed to deduct 15*s.* from the proceeds of the sale, as the cost of these advertisements, it was held that his charges were regulated by 7 Will. 4 & 1 Vict. c. 55, and that he was not entitled to do so (*m*).

Extents.

The sheriff is not entitled to poundage on stamps seized under an extent against the distributor (*n*), nor upon money, or bills or notes found in the possession of the defendant, nor upon debts due to the defendant, and collected by the sheriff, nor upon money paid by the defendant's sureties in order to obtain the liberation of his person (*o*).

A sheriff has no right to levy costs or poundage, or any incidental expenses, under an extent on a simple contract debt, nor has he a right to receive any such costs, &c., under a compromise made in consideration of staying proceedings, where the defendant is under *duress* of a seizure (*p*).

Charge for second man in possession.

It is extortion for a bailiff on a *fi. fa.* to charge costs of a second man in possession, and of a valuation of the goods (*q*).

Where, after the goods of a debtor had been seized, the debt and costs were paid by him, the sheriff's officer was held not to be entitled to charge the fees allowed under 7 Will. 4 & 1 Vict. c. 55, s. 2, "for search for detainers," or "for *supersedeas*, discharge to any writ or process, or for the release of any goods taken in execution" (*r*): but

(*l*) Gill *v.* Jose, 6 E. & B. 718; 2 Jur. N. S. 860.
(*m*) Braithwaite *v.* Marriott, 32 L. J. Exch. 24; 11 W. R. 93; 1 H. & C. 591; 9 Jur. N. S. 26.
(*n*) Rex *v.* Villers, Wightw. 95; 8 Price, 587.
(*o*) *Ibid.*
(*p*) Oldacre *v.* Tidmarsh, 5 Price, 189.
(*q*) Halliwell *v.* Heywood, 10 W. R. 780, Exch.
(*r*) Masters *v.* Lowther, 11 C. B. 948; 16 Jur. 374; 21 L. J. C. P. 130.

the cited portion of the Act is now repealed, and only such fees can be charged as are allowed by the taxing officers at Westminster.

Expenses of keep of animals.

The masters will, in a proper case, allow for the keep of animals, by virtue of the general authority given to them by the table of fees, to allow a sum "for any duty not therein provided for" (*x*).

But the term "possession money" does not include the expense of the keep of cattle seized by the sheriff (*y*).

Overcharge not necessarily extortion.

When a judge has ordered that the claimant in an interpleader issue, as a condition of relief, shall pay possession money, the claim of an overcharge is not an extortion, but is ground for relief on taxation of costs (*z*).

Upon a sale of land under the statute 25 Geo. 3, c. 35, no poundage is due (*a*).

Extent.

Where goods are seized under an extent against the acceptor of a bill, which is afterwards taken up by the drawer, the property must be restored to the extendee without any deduction for poundage, which, if due, is payable by the Crown (*b*).

The sheriff will be allowed his costs of keeping possession after applying to the Court, where it is for the benefit of the parties, though it be not in furtherance of his duty (*c*).

Costs under interpleader rule.

A sheriff, having taken goods in execution which were claimed by a third party, obtained an interpleader rule. The parties appeared, and a rule was made that the parties should appear again in the next term, to maintain or relinquish their claims; in the meantime, the sheriff to continue in possession till further order of the Court, and proceedings against him to be stayed, and a feigned issue to be tried between the claimants at the next assizes. The issue was tried, and the third party obtained

(*x*) Gaskell *v.* Sefton, 14 M. & W. 802; 3 D. & L. 267; 15 L. J. Exch. 107; 9 Jur. 996.
(*y*) *Ibid.*
(*z*) Long *v.* Bray, 10 W. R. 841, Exch.
(*a*) Rex *v.* Goodchild, West, 237.
(*b*) Rex *v.* Freme, 2 Price, 58.
(*c*) Underden *v.* Burgess, 4 Dowl. 104.

a verdict against the execution creditor. The latter obtained a rule for a new trial, which rule, after the lapse of five terms, was discharged. The sheriff had, by direction of the execution creditor, quitted possession before the rule for a new trial was discharged. The interpleader rule had never been enlarged, or in any manner formally continued. It was held, that the Court might nevertheless act upon the interpleader rule, for the purpose of awarding to the successful party the costs of appearing to the sheriff's rule, and costs of keeping possession of property incurred by such party (*d*).

Apportionment of fees in part executed process.

When a sheriff seizes or extends any goods, chattels, or personal estate into the hands of the Crown for any debt or duty to the Crown, and dies or is superseded before a writ of *venditioni exponas* be awarded to him for the sale of such goods, &c., or before the sheriff has made actual sale, and a writ is afterwards awarded to a subsequent sheriff, who by virtue of such writ makes sale or disposition, the Barons of the Court of Exchequer formerly, and now the judges of the Queen's Bench Division of the High Court of Justice (*e*), if sitting, and, if not sitting, any one or more of them, may apportion the fees, &c., between the preceding and subsequent sheriffs, in such manner and proportions as shall seem fit to him or to them, having regard to the expense and trouble the respective sheriffs have had in the execution of such process (*f*).

Coroners acting for sheriffs to be paid as sheriffs.

By the statute 7 & 8 Vict. c. 92, s. 22, where any writ or process is directed to and executed by the coroner in the place of the sheriff, the coroner is to receive the same poundage and fees, &c., as the sheriff would have had, and is to possess the same remedy for recovering such fees, &c.

Where sheriff's poundage brings

Where an execution debt by a trader is under £50, but is brought by sheriff's fees and poundage to more than £50, it comes within the 87th section of the Bankruptcy

(*d*) Levy *v.* Champneys, 4 Ad. & E. 365; 2 Dowl. 454.
(*e*) Judicature Act, 1873, s. 34.
(*f*) 3 Geo. 1, c. 15, s. 9.

amount to more than £50.

Act, 1869. The sheriff or high bailiff (as the case may be) must, in this case, retain the proceeds of such sale, in his hands, for fourteen days, and on notice being served on him within that period of a bankruptcy petition having been presented against the trader, he must hold the proceeds of such sale, after deducting expenses, on trust to pay to the trustee (*y*).

Seizure without sale; subsequent liquidation.

Where a sheriff's officer, having seized the goods of a debtor under a *fi. fa.*, advertised them for sale, and immediately afterwards the debtor filed a petition for liquidation, the trustee obtained an injunction restraining the sale; upon an application that the trustee should pay the costs incurred about the seizure and announcement of the goods for sale, it was held, that those costs were expenses properly incurred within the meaning of the 87th section of the Bankruptcy Act, 1869, and must be paid by the trustee (*z*).

Where an irregular execution is set aside, and the sums levied and paid by the defendant are ordered to be repaid, the plaintiff is only bound to repay the money which has been properly paid by the defendant (*a*).

Costs where *fi. fa.* has been improperly issued.

Where a petition for the winding up of a company was dismissed with costs, and the costs were applied for from the petitioner, but through a misunderstanding were not paid until a *fi. fa.* had been issued and executed for the amount, the Court refused to set aside the writ, but, considering that it ought not to have been issued, ordered the solicitor of the company who issued the writ to pay the costs of the execution and motion (*b*).

Here the goods were not sold, and the 87th section says "where the goods are sold by the sheriff," but that fact was held not to deprive the sheriff's officer of his right to retain his expenses properly incurred.

(*y*) Howes *v.* Young, 1 Exch. D. 146.
(*z*) *Ex parte* Browning, *Re* Craycraft, 38 L. T. N. S. Bkrcy. 364.
(*a*) Whalley *v.* Barnett, 2 Dowl. 33.
(*b*) *In re* Commonwealth Land, Building, &c., Co., *Ex parte* Hollington, 29 L. T. N. S. 502; 22 W. R. 106, V. C. H.

Table of Fees (*c*).

ollowing is a table of fees drawn up under the y of the judges, by virtue of the discretion vested by the second section of the 7 Will. 4 & 1 Vict.

ry warrant which shall be granted by ieriff to his officer upon any writ or s,	£	s.	d.
on and Middlesex	0	2	6
outlawry process, an additional . .	0	2	6
counties, where the most distant part county shall not exceed 100 miles London	0	5	0
eeding 200 miles	0	6	0
ng 200 miles	0	7	0
there are several defendants in a writ *ias*, and warrants are issued thereon by ndersheriff against more than one de- nt, no more shall be charged, in any for each warrant after the first, than .	0	2	6
rrest in London	0	10	6
llesex, not exceeding a mile from the al Post Office	0	10	6
eeding 7 miles from the same place .	1	1	0
counties, not exceeding a mile from 's residence	0	10	6
eeding 7 miles	1	1	0
ng 7 miles.	1	11	6
eying the defendant to gaol from the of arrest . . . . . *per* mile	0	1	0
ndertaking to give a bail bond . .	0	10	6

f's officers are entitled to a fee of £1 1*s*. on exe- *ca. sa.* and 1*s*. a mile travelling expenses, but not

order with regard to these fees is signed by Lord Denman en Common Law judges, and, though undated, was issued

no a fee for an assistant, nor for conducting the prisoner to gaol.

For a Bail Bond.

	£	s.	d.
If the debt shall not exceed £50 . . .	0	10	6
„ „ 100 . . .	1	1	0
„ „ 150 . . .	1	11	6
„ „ 300 . . .	2	2	0
„ „ 400 . . .	3	3	0
„ „ 500 . . .	4	4	0
If it shall exceed £500	5	5	0
For receiving money, under the statute, upon deposit for arrest, and paying the same into Court, if in London or Middlesex . .	0	6	8
If in any other county	0	10	0

For filing the Bail Bond.

If the arrest be made in London or Middlesex.	0	2	0
If in any other county	0	4	0

Assignment of Bail or other Bond.

If in London or Middlesex	0	5	0
If in any other county, including postage .	0	7	6
For the return to any writ of *habeas corpus*, if one action.	0	12	0
For each action after the first. . . .	0	2	6
For the bailiff to conduct prisoner to gaol *per diem*	0	10	0
And travelling expenses. . . *per* mile	0	1	0
For search for detainers (*b*)	0	1	0
Bailiff's messenger for that purpose (*b*) . .	0	2	6
To the bailiffs, for executing warrants on extent, *capias utlagatum, levari facias, fi. fa., ca.*			

(*a*) Cooper *v.* Hill, 6 C. B. N. S. 703; 6 Jur. N. S. 99.
(*b*) When not payable on a levy under a *fi. fa.* (see Masters *v.* Lowther, p. 315).

	£	s.	d.
exeat, attachment, *elegit*, writ of pos- forfeited recognizance, and other like , for each, if the distance from the ı office or the bailiff's residence do eed 5 miles	1	1	0
. that distance . . . *per* mile	0	0	6
ugas in London	0	5	0
lesex, not exceeding 5 miles from l Post Office	0	5	0
ounties, not exceeding 5 miles from residence	0	5	0
; 5 miles.	0	10	0
man left in possession when absolutely ry (*c*),			
arded . . . . *per diem*	0	3	6
ıt boarded . . . *per diem*	0	5	0
sale by auction, notwithstanding that fendant should become bankrupt or nt, where the property sold does not ə more than £300, 5 *per cent.*; £400, *cent.*; £500, 3 *per cent.*; and where ds £500, 2½ *per cent.*			
ertificate of sale to save auction duty.	0	2	6
ndemnity, besides stamps. . .	1	10	0
ə of execution having issued for record	0	5	0
On Writs of Trial and Inquiry.			
ıutation	1	1	0
ıg writ for entering cause, and warrant ımoning jury, which fee shall be for- n case of countermand of trial . .	0	4	0
On Trial or Inquisition.			
r presiding	1	1	0
r summoning jury, and attendance in	0	4	0

(*c*) *Ex parte* Sims, 4 Ch. D. 521; 5 Ch. D. 375.

	£	s.	d.
And, if not held at the office of the undersheriff, for hire of room, if actually paid, not exceeding	0	10	0
For travelling expenses of undersheriff from his office to place where trial or inquisition held *per* mile	0	1	0
To the bailiff from his residence . *per* mile	0	0	6

The travelling expenses of the undersheriff from his office, and of the bailiff from his residence, to the place where the trial or inquisition is held, are to be apportioned rateably to the parties, if more than one trial or inquisition be held at the same time and place.

In all cases where it shall appear to the master that a saving of expense has accrued to the parties by reason of a writ of trial having been executed by deputation, the fee for such deputation shall be allowed.

On Writs of Extent, Elegit, Capias Utlagatum, and others of the like Nature.

	£	s.	d.
For summoning the jury, use of room, presiding at inquisition	2	2	0
Jury	0	12	0
For travelling expenses of the undersheriff from his office to the place of inquisition, *per* mile	0	1	0
For drawing and ingrossing the inquisition *per* folio	0	1	6
For a summons for the attendance of a witness	0	5	0
Receipt to bailiff	0	2	6
Notice for service on defendant . . .	0	2	6
Broker, where the sum demanded and due shall exceed £20, and shall not exceed £50, for appraisement and *affidavit* of value . .	0	10	6
Where it shall exceed £50	1	1	0
And his travelling expenses from his residence to the place where the goods are, *per* mile	0		0

	£	s.	d.
or summoning parties and delivering to tenant	1	1	0
s travelling expenses, same as broker.)			
s summons or a writ of *sci. fa.* or for rvice of writ of *capias*, where no arrest	0	5	0
eage . . . . . *per* mile	0	1	0
rding each demand or proclamation on of outlawry in London and Middlesex.	0	2	6
ff for making each demand or proclama- on writs of outlawry in London and esex	0	2	6
counties	0	5	0
velling expenses, if the distance shall l 5 miles, then for every mile beyond istance	0	0	6
supersedeas, writ of error, order *liberati*, charge to any writ or process, or for the s of any defendant in custody (unless prison of the county), or of any goods in execution	0	4	6
return of any writ or process, and same, exclusive of the fee paid on	0	1	0

Attendance in Court.

(Rule of Trinity Term, 1864.)

dance in Court upon the trial of every on jury cause or issue, from the party g the cause for trial	0	10	6
dance in Court on the trial of every or issue tried by a special jury sum- l by precept under the 108th section of mmon Law Procedure Act, 1852, from rty at whose instance the same was so	1	1	0

For attending a View.

(Reg. Gen. 44—49, Hilary Term, 1853.)

	£	s.	d.
For travelling expenses, to the undersheriff, shewers, and jurymen, expenses actually paid, if reasonable.			
Fee to the undersheriff when the distance does not exceed 5 miles from his office . .	1	1	0
Where distance exceeds five miles . . .	2	2	0
And in case he shall be necessarily absent more than one day, then for each day after the first a further fee of	1	1	0
Fee to each of the shewers, the same as the undersheriff, calculating the distance from their respective places of abode.			
Fee to each common juryman . *per diem*	0	5	0
Fee to each special juryman . . *per diem*	1	1	0
Allowance for refreshment to the undersheriff, shewers, and jurymen, whether common or special, each . . . . *per diem*	0	5	0
To the bailiff, for summoning each juryman whose residence is not more than five miles distant from the office of the undersheriff .	0	2	6
And for each whose residence does exceed five miles of such distance	0	5	0

CHAPTER XX.

LANDLORD'S SECURITY FOR RENT.

Landlord's security for rent.

OR the better security of the landlord's claim for rent, to which the policy of the law has given priority over other claims, the statute 8 Anne, c. 18, s. 1 (*a*), provides that goods or chattels lying on demised lands are liable to taken by virtue of any execution, unless the execution creditor shall first pay the amount of rent due, provided the arrears do not exceed one year's rental. If the arrears exceed one year's rent, then the execution creditor may, by paying one year's rent to the landlord, proceed to execute his judgment, and the sheriff must levy and pay the amount so paid for rent in addition to the original amount, to the execution creditor.

Distress on goods of tenant.

If arrears exceed one year's rent.

By 7 & 8 Vict. c. 96, s. 67, the claim of a landlord is further restricted, and by that statute no landlord of any tenement let at a weekly rent can have any claim or lien on goods taken in execution for more than four weeks arrears of rent, and, if the tenement be let for any other term less than a year, the landlord cannot claim a *lien* on the goods for more than the arrears accruing during four such terms.

Where tenements are let at weekly rental.

The statute 43 Geo. 3, c. 99, s. 37, provides that, when duties or taxes are in arrear, no goods can be taken by virtue of any process, &c., except at the suit of the landlord for rent, unless the party suing shall pay the arrears, not exceeding one year. In case of refusal the collector may distrain and sell the goods.

When taxes are in arrear.

(*a*) Revised Statutes, c. 14, in the common printed edition.

Sheriff to decide if rent due.

The law casts on the sheriff the responsibility of ascertaining whether or not the rent claimed is due (*b*), for otherwise there might be numerous unfounded claims, in order to defeat an execution by a creditor. If, moreover, the execution debtor holds under a lease, the sheriff should see the lease (*c*).

Notice to sheriff.

It has also been held, that, where a sheriff, with knowledge that there is rent due to the landlord, proceeds to sell the tenant's goods, without reserving the year's rent, he will be liable for it, even though no specific notice was given him by the landlord (*d*).

But, as a general rule, it would appear that a sheriff is not bound to find out what rent is due to a landlord, and pay it him, unless the landlord gives him notice (*e*).

Where an action was brought against the sheriff by the execution debtor for seizing and selling more goods than were necessary to satisfy two executions, the Court decided against the sheriff expressly on the ground that he had no right to levy for rent without a claim being first made by the landlord (*f*).

The want of an allegation in a declaration that the sheriff had notice of rent due, was held not to be the subject of a motion for a new trial, but should be moved in arrest of judgment (*g*).

An allegation in a declaration, of "the defendant well knowing the premises," in an action by the landlord against the sheriff for removing goods taken in execution, without paying him a year's rent, will, after verdict, cure the omission of an averment that the defendant had notice of rent in arrear (*h*).

Sheriff to satisfy rent.

The sheriff, however, before seizing goods in execution, will do well to first inquire whether any rent is due, and

(*b*) Augustien *v.* Challis, 1 Exch. 279.
(*c*) *Ibid.*
(*d*) Andrews *v.* Dixon, 3 B. & Ald. 645.
(*e*) Smith *v.* Russell, 3 Taunt. 400. Waring *v.* Dewberry, 1 Stra. 97.
(*f*) Gawler *v.* Chaplin, 2 Exch. 503.
(*g*) Lane *v.* Crockett, 7 Price, 566.
(*h*) *Ibid.*

he is made aware that any rent is due, he should, subject the limitations of the above statutes, satisfy the rent fore proceeding with the execution. Where a sheriff glected to take this precaution, and seized goods which ere under distress for rent due to the landlord, the urt refused to grant him relief, when he applied to be lowed to interplead, although he had applied for demnity to the execution creditor, which had been fused (*i*).

When the year's rent is paid, the sheriff is authorised remove the goods, but not before (*k*).

By removing the goods before, he becomes liable to an tion by the landlord (*l*).

If the goods are not sufficient to satisfy a year's rent, e sheriff ought to withdraw from possession (*m*).

Where the sheriff had taken goods in execution, while ere was rent due to the landlord, and the landlord aimed the goods from the sheriff, upon which the latter ought the landlord, with other claimants, into Court, the urt ordered the sheriff to pay the rent, upon the land-rd's giving security, and also to pay his costs. It was rther held that the sheriff was liable to pay the expenses the security (*n*).

When a landlord distrains for rent, and does not sell e goods, he cannot bring an action for the rent so long he holds the distress, even though it be insufficient to tisfy the rent (*o*). The principle of the law on this int is that the distress must be accounted for before the ndlord is permitted to seek further remedy against the nant, and while he holds the goods as a pledge he is

When landlord distrains, and does not sell.

(*i*) Haythorn *v.* Bush, 2 C. & M. 689; 2 Dowl. 641.
(*k*) Calvert *v.* Joliffe, 2 B. & Ad. 421—Lord Tenterden, C. J. e also Colyer *v.* Speer, 4 Moore, 473; 2 Brod. & B. 67.
(*l*) *Ibid.*
(*m*) Cocker *v.* Musgrove, 15 L. J. Q. B. 365; 9 Q. B. 223; 10 Jur. 22.
(*n*) Clarke *v.* Lord, 2 Dowl. 227.
(*o*) Lehain *v.* Philpott, L. R. 10 Exch. 242; 44 L. J. Exch. 225; 3 L. T. N. S. 98; 23 W. R. 876. Vaspor *v.* Edwards, 12 Mod. 58.

restrained from further action; but, as soon as he ceases to have this pledge, his remedy by action is restored to him. In an action for use and occupation, however, where it was pleaded that the plaintiff took and detained, as a distress for the rent, goods of value sufficient to satisfy the same, it was held, on special demurrer, that this plea was bad for not shewing that the rent was satisfied (*k*). The reason of this decision appears to have been that the mere seizure was not satisfaction, and as it did not appear how long the distress was detained, the plea did not go far enough; the defendant ought to have accounted for the distress, the facts being within his knowledge, and a plea which alleges that a landlord took and detained, is not, in the absence of further allegation, to be understood to mean that he still, at the commencement of the action, continues to detain (*l*).

Two distresses for same rent.

Similarly, where a distress for rent has been made, another distress cannot lawfully be made for the same rent while the first is unaccounted for (*m*).

Landlord only to have one year's rent.

If a landlord has a year's rent paid to him on one execution, and more rent remains due, he is not entitled to have another year's rent paid to him on a subsequent execution (*n*).

Growing corn.

Growing corn sold under a *fi. fa.* cannot be distrained for rent, unless the purchaser allow it to remain on the ground an unreasonable time after it is ripe (*o*).

Where a landlord sells under condition.

The landlord must sell for the best price; where, therefore, a lease of a farm contained a covenant by the tenant not to remove hay, unthrashed corn, &c., from the demised premises, but to use them for the improvement of the land, and the landlord, notwithstanding, having distrained hay and unthrashed corn, for rent in arrear, sold the distress under a condition that the purchaser should con-

(*k*) Lear *v.* Edmonds, 1 B. & Ald. 157.
(*l*) Cf. Lingham *v.* Warren, 2 Brod. & B. 36; Hudd *v.* Ravenor, 2 B. & B. 662.
(*m*) Dawson *v.* Cropp, 1 C. B. 961.
(*n*) Dodd *v.* Saxby, Stra. 1024.
(*o*) Peacock *v.* Purvis, 2 Brod. & B. 362.

the matters sold on the premises, whereby the best was not obtained, it was held, that the landlord not legally sell under such a condition (*p*).

Sheaves of corn distrained.

reason of this decision was that the action of the rd was in contravention of the spirit of the statute & Mary, c. 5, s. 2, which requires that corn, grain, in a barn, or on a stack, distrained, shall not be ed by the person distraining, to the damage of the , from the place where seized. The statute 56 Geo. 3, s. 11, upon which the defendant relied in addition e covenant, enacts that "no assignee under any f sale, nor any purchaser under any bill of sale, nor rchaser of the goods, chattels, stock or crops of any or persons engaged in husbandry on any lands let n, shall take, use, or dispose of any hay, straw, &c., y manure, &c., or other dressings intended for lands, and being thereon in any other manner and y other purpose than such bankrupt . . . or person so employed in husbandry, ought to have or disposed of the same, if no commission of bank- had issued, or no such assignment or assignments een executed or sale made," does not apply to a sale ndlord of a distress (*q*), and the object of the statute lly foreign to the question of sales by landlords.

56 Geo. 3, c. 50, s. 11, not to apply to sale by landlord of a distress.

14 & 15 Vict. c. 25, s. 2, it is provided "That in case any part of the growing crops of the tenant of any or lands shall be seized and sold by any sheriff or officer by virtue of any writ of *fieri facias* or other of execution, such crops, so long as the same shall n on the farms or lands, shall, in default of sufficient ss of the goods and chattels of the tenant, be liable e rent which may accrue and become due to the land- fter any such seizure and sale, and to the remedies istress for recovery of such rent, and this notwith- ling any bargain and sale or assignment which may

Growing crops liable for accruing rent.

(*p*) Hawkins *v.* Walrond, 1 C. P. D. 280.
(*q*) *Ibid.*

have been made or executed of such growing crops by any such sheriff or other officer."

Goods placed with an auctioneer on his premises, for sale by him.

Goods in the hands of an auctioneer, upon the premises of an auctioneer for the purpose of sale by the auctioneer, are privileged from being distrained for the rent arising due in respect of the auction rooms; this privilege exists for the benefit of trade, but is confined to goods on the premises of an auctioneer, and does not extend to goods sold on other premises (*p*). So, where a sale by auction of A.'s goods on his own premises was advertised, and B. delivered some other goods to C., the auctioneer, to sell at the same time on A.'s premises, and B.'s goods were distrained for rent in arrear, by the landlord, during the auction, it was held that B.'s goods were not privileged, and the distress was valid.

Goods sold on other premises than his own.

Landlord purchasing goods distrained for rent.

Where goods belonging to the defendant had been distrained for rent on a third person's premises, and had been duly appraised, and the landlord, instead of actually selling, took them at the appraised price, in satisfaction of the rent and costs, and then handed them as a gift to the plaintiff, and the defendant then took possession of them, it was held that there had not been such a sale as could deprive the defendant of his property in the goods, and he had, therefore, a right to take them (*q*).

Landlord may distrain goods of bankrupt.

The landlord, or other person to whom any rent is due from a bankrupt, may at any time, either before or after the commencement of the bankruptcy, distrain upon the goods or effects of the bankrupt for the rent due to him from the bankrupt, with this limitation, that, if such distress for rent be levied after the commencement of the bankruptcy, it shall be available only for one year's rent accrued due prior to the date of the order of adjudication; but the landlord, or other person to whom the rent may be due from the bankrupt, may prove under the bankruptcy for the overplus due, for which the distress may not have

(*p*) Lyons *v.* Elliott, 5 Q. B. D. 210.
(*q*) King *v.* England, 4 B. & S. 782; 33 L. J. Q. B. 145.

in available (*r*). A similar enactment was contained the Bankruptcy Act, 1849 (12 & 13 Vict. c. 106), 129, repealed by the 32 & 33 Vict. c. 83, s. 20.

On the 27th of March, 1861, A. B., being then a der, committed an act of bankruptcy by a fraudulent nveyance of all his goods; on the 11th of October his ndlord levied a distress for four years' arrears of rent; the same day the 24 & 25 Vict. c. 134 (*s*), came into eration, and on the 17th of October, A. B., being then non-trader, was adjudicated a bankrupt upon his own tition, under the 75th section of that Act. The 129th tion of 12 & 13 Vict. c. 106, enacted that no distress rent made and levied *after an act of bankruptcy*, ether before or after the issuing of the *fiat* or the filing the petition for adjudication of bankruptcy, should be ailable for more than one year's rent accrued prior to e date of the *fiat* or filing of the petition. In this case, was held, that, in order to bring the case within that tion, the act of bankruptcy must be one to which the le of the assignees could relate; that no such relation isted to the act of bankruptcy of the 27th of March; d that, therefore, the landlord was entitled to retain the ir years' rent against the assignees (*t*).

No distress for rent to avail for more than one year's rent.

Though the 12 & 13 Vict. c. 106, has been repealed, a nilar enactment to the 129th section of that Act has en inserted in the Bankruptcy Act, 1869 (*u*).

The distinction between the two sections seems to be, at, as in Paull *v.* Best, the 129th section of the 12 & 13 ict. c. 106, was held not to relate back to any act of ankruptcy prior to that on which the adjudication was unded, so as to disentitle the landlord to distrain for ore than one year's rent, and the 34th section of the ankruptcy Act, 1869, would relate to any act o fbank- Ptcy committed within twelve months next preceding

Difference between the two sections.

(*r*) Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), s. 34.
(*s*) Repealed by 32 & 33 Vict. c. 83, s. 20.
(*t*) Paull *v.* Best, 32 L. J. Q. B. 96.
(*u*) S. 34, *vide supra.*

the order of adjudication, provided that, at the time of committing such prior act, the bankrupt was indebted to some creditor or creditors in a sum or sums sufficient to support a petition in bankruptcy, and provided such debt or debts were still remaining due at the time of adjudication; especially as the judgment in Paull *v.* Best rested partly on the fact that it did not appear in that case that, at the time of the distress made and levied, there was any creditor who could have obtained an adjudication against the bankrupt, or that he was amenable to the bankruptcy laws at all except upon his own petition (*y*).

Notice after removal of goods.

The sheriff must, if he does not request payment from the execution creditor, retain the year's rent out of the proceeds of the tenant's goods taken in execution, at any time when he may receive notice of the landlord's claim, so long as the goods or the proceeds remain in his hands; and the Court will, upon motion, order the same to be paid to the landlord, even where notice was given after the removal of the goods from the premises (*z*); it would follow, as an *à fortiori* principle, that, where notice was given to the sheriff before the removal of the goods, but after the sale, of rent due to the landlord, the sheriff must satisfy the rent out of the proceeds in his hands (*a*).

Landlord remitting year's rent.

Where a landlord sued a sheriff for not reserving a year's rent on an execution against the tenant, and released the rent after the jury were sworn, to make the tenant a witness, it was held, that he was not thereby precluded from recovering against the sheriff the amount of rent (*b*).

The sheriff is not liable to an action, unless there has been an actual removal of the goods from the premises, and the execution of a bill of sale is not equivalent to such removal (*c*).

Practice.

In an action against a sheriff for removing goods seized, without paying the rent, after notice of its being due, no

(*y*) Will. Bankruptcy, 2nd ed., 170.
(*z*) Arnitt *v.* Garnett, 3 B. & Ald. 440.
(*a*) Yates *v.* Ratledge, 5 H. & N. 249; 29 L. J. Exch. 117.
(*b*) Thurgood *v.* Richardson, 7 Bing. 428.
(*c*) Smallman *v.* Pollard, 1 D. & L. 901.

averment of notice to the execution creditor is necessary (*d*). Nor need it be alleged that the goods removed were chargeable by law with a distress (*e*).

But, in an action against the sheriff founded on the statute, notice to the sheriff is always alleged, and should not be omitted (*f*); the notice, however, is only for the purpose of acquainting him with the landlord's claim, and may be very informal, as no particular formalities are prescribed by the statute (*g*).

The sheriff should acquaint the execution creditor or his solicitor of the rent in arrear, and request payment (*h*); in default of which, he may, if he please, withdraw from possession, and return *nulla bona*, unless there are other goods on which he may levy (*i*); for the sheriff is not called upon to advance money to pay the rent, which must be done by the execution creditor, quite irrespective of the price the goods might fetch, if sold (*k*).

In order to enforce a landlord's claim for rent in arrear, against assignees, after a seizure under a *fi. fa.*, he must distrain (*l*). Claim against assignees.

As against an execution creditor, a landlord is entitled to a full year's rent, even though he has been accustomed to remit some portion of it to the tenant (*m*).

The landlord is entitled to his rent, without any deduction for poundage (*n*), but the sheriff is not on that account to go without his poundage on the amount of rent levied and paid (*o*). Poundage.

Where a landlord takes the security of a third person

(*d*) Riseley *v.* Ryle, 11 M. & W. 16; 12 L. J. Exch. 322.
(*e*) *Ibid.*
(*f*) Woodfall, 12th ed. 458. Thurgood *v.* Richardson, 7 Bing. 628; 4 C. & P. 481. Reed *v.* Thoyts, 6 M. & W. 410; 8 Dowl. 410. Tibble *v.* Hussey, 2 Ir. R. C. L. 308; 16 W. R. 710.
(*g*) Colyer *v.* Speer, 4 Moore, 473; 2 Brod. & B. 67.
(*h*) For form see Appendix.
(*i*) Cocker *v.* Musgrove, 15 L. J. Q. B. 365; 9 Q. B. 223; 10 Jur. 922.
(*k*) *Ibid.*
(*l*) Gethin—Gale *v.* Wilks, 2 Dowl. 189.
(*m*) Williams *v.* Lewsey, 8 Bing. 28; 1 M. & Sc. 92, S. C.
(*n*) Gore *v.* Goston, Stra. 643.
(*o*) Davies *v.* Edmonds, 12 M. & W. 31; 1 D. & L. 395.

for the rent at the time of the execution, the sheriff is discharged as to the landlord's claim for rent (*g*).

A landlord who himself seizes the goods of his tenant, as an execution creditor, cannot retain a year's rent against the assignees of the tenant (*h*).

Landlord may not break in.

A landlord may not break open the outer door of a stable, though not within the curtilage, to levy an ordinary distress for rent (*i*). This is not inconsistent with the doctrine that a sheriff may thus break in for the purpose of executing a *fi. fa.* (*k*), for a distinction may reasonably be made between the powers of an officer acting in execution of legal process, and the powers of a private individual who takes the law into his own hands, and for his own purposes. There is another well-known distinction, that a landlord cannot distrain at all hours, whereas the sheriff is under no such restriction (*l*).

Landlord may recover without action.

Instead of bringing an action, the landlord may move the Court that he may be paid what is due to him, out of the money levied, or so much as the sheriff has levied (*m*).

Sheriff must prove that rent is due.

If the plaintiff bring an action against the sheriff for the money levied, the sheriff must prove that the rent was due, in order to discharge himself as to a payment for a year's rent to the landlord (*n*).

Property lying on debtor's land.

The property of a mortgagee lying on land demised to a bankrupt is not protected, and is liable to distress for the whole rent due, even though the arrears have accrued during a longer period than a year (*o*).

Where landlord sells goods

Where a landlord distrained upon goods of his tenant, and sold part of them, which were subject to a mortgage, and the tenant became bankrupt, it was held that the

(*g*) Rotheray *v.* Wood, 3 Camp. 24.
(*h*) Taylor *v.* Lanyon, 6 Bing. 536.
(*i*) Brown *v.* Glenn, 16 Q. B. 254.
(*k*) Penton *v.* Broune, 1 Sid. 186.
(*l*) Brown *v.* Glenn, *vide supra*, *per* Lord Campbell, C. J.
(*m*) Henchett *v.* Kimpson, 2 Wils. 140. West *v.* Hedges, Barnes, 211; 6 M. & G. 1004, *note*.
(*n*) Keightley *v.* Birch, 3 Camp. 521. Augustien *v.* Challis, 1 Exch. 279.
(*o*) Brocklehurst *v.* Law, 26 L. J. Q. B. 107.

mortgagee was entitled to stand in the place of the landlord, and to be paid the amount of his mortgage debt out of the proceeds of the goods taken under the distress which were not comprised in his security (*p*). subject to a mortgage.

A notice to a sheriff stating that the rent was due to S. and the mortgagees of his estate, and signed by a person not the receiver appointed by the mortgage deed, is sufficient (*q*).

A landlord cannot distrain and prove for the same rent (*r*), though he may, by the Bankruptcy Acts, 1869 and 1849, prove for the amount not covered by the distress.

He is not, by virtue of his right of distress, however, a secured creditor (*s*)

A landlord may distrain for his whole rent even after assignment or sale by the assignees, if the goods are not removed (*t*). Bankruptcy.

He can, however, only claim from the sheriff the rent which was due at the date of seizure, and not the rent which accrued afterwards (*u*).

Goods seized by a messenger under a *fiat* in bankruptcy are not, while in his custody, privileged from distress for rent due from the bankrupt to his landlord (*w*).

If the landlord of a bankrupt suffers his assignees to sell off his goods, he is not entitled to his whole rent, but must come in *pro ratâ* with other creditors (*x*).

A landlord may distrain as against the receiver without the leave of the Court; in a case, therefore, where a landlord distrained for one year's arrear of rent on goods of a debtor in the hands of a receiver appointed by the Court of Bankruptcy, and on an application by the receiver to the County Court judge for an injunction, the landlord was *Ex parte* Descharmes.

(*p*) *Ex parte* Stephenson, *Re* Stephenson, 1 De G. 568.
(*q*) Colyer *v.* Speer, 4 Moore, 473; 2 Brod. & B. 67.
(*r*) *Ex parte* Grove, 1 Atk. 104.
(*s*) *In re* Coal Consumers' Association, 4 Ch. D. 625.
(*t*) *Ex parte* Plummer, 1 Atk. 103.
(*u*) Hoskins *v.* Knight, 1 M. & S. 245. Reynolds *v.* Barford, 7 M. & G. 449; 2 D. & L. 327.
(*w*) Briggs *v.* Sowry, 8 M. & W. 729.
(*x*) *Ex parte* Descharmes, 1 Atk. 103.

restrained, and committed for contempt of Court, the chief judge in bankruptcy discharged the order of the County Court, on appeal, and observed that if an application had been made to the Court by the landlord to levy for one year's rent, the Court could not have refused the application, as the landlord had a clear right by statute, and there was nothing in the Bankruptcy Rules, 260 and 299, to place a receiver appointed by the Court of Bankruptcy on an equality with a receiver appointed by the Court of Chancery.

If landlord distrains for more than a year's rent.

If, however, the landlord distrains for more than a year's rent, an application to the Court for an injunction to restrain him from exceeding the amount would be proper; but the appointment of a receiver by the Court of Bankruptcy is made subject to the landlord's statutory right to distrain for the year's rent (*z*).

A decision in the Irish Courts appears to conflict somewhat with this principle. In the case referred to, the sheriff seized a trader's goods, under a *fi. fa.*; on the following day, the debtor was adjudicated bankrupt, and notice thereof was given to the sheriff. The landlord gave the sheriff notice of rent in arrear at the time of the seizure; the sheriff sold, and within fourteen days lodged the proceeds of the execution in the Court of Bankruptcy. It was held that the landlord was not entitled to be paid, out of the sum so lodged the rent in arrear at the time of the seizure (*a*). After adjudication, the assignees received the rents from the occupying tenants, and then disclaimed the bankrupt's interest in the premises. Here, however, it was held that they must pay over the rents received to the landlord (*b*).

Bankruptcy is not an execution within the meaning of the statute of Anne (*c*).

Landlord

Where a landlord distrained for rent due before the

(*z*) *Ex parte* Till, *Re* Mayhew, L. R. 16 Eq. 97; 42 L. J. Bkcy. 84.
(*a*) *In re* Hudson, L. R. 1 Ir. 6.
(*b*) *Ibid.*
(*c*) Lee *v.* Lopes, 15 East. 230.

tcy of his tenant, and when the goods were ap- left them on the premises, for the use of the bank- ife (the bankrupt himself being in prison), and bankruptcy distrained again for the same arrears t was held that the second distress was void; and goods passed to the assignees, as being in the l disposition of the bankrupt at the time of his tcy (*d*).

may forfeit his right to distrain.

xecutor or administrator of a deceased landlord, is to claim rent from the sheriff, in the same way as ased might have done (*e*); but, if an administrator obtain letters of administration until after the ve been seized and sold, his right to claim rent sheriff is gone (*f*).

Executor.

ss for rent not being "an execution or other legal within the meaning of those terms in section 13 Bankruptcy Act of 1869, and rule 260 of the Rules of January, 1870, a gas company, who, by ss section in their special Act, were authorised to rent and charges due to them for gas, "by the ans as landlords may recover rent in arrear," may, tice of the filing of a petition for liquidation gement, distrain upon the goods of petitioning for a sum due for gas supplied, and the distress gainst the trustee under the liquidation (*g*).

A company with statutory powers to recover money due, "by same means as a landlord."

e a sheriff seizes goods of a bankrupt and sells, he eld liable to the assignees for the whole proceeds, ugh he has paid a year's rent to the landlord (*h*), ere he seizes and removes goods which do not the judgment debtor, and afterwards pays the oceeds of the sale to the real owner, he is still the year's rent to the landlord (*i*).

ll avoid these and similar difficulties by requiring

parte Shuttleworth, *Re* Deane, 1 D. & C. 223.
rave *v.* Wyndham, 1 Stra. 212.
ring *v.* Dewberry, 1 Stra. 97.
parte Birmingham Gas Co., *Re* Fanshaw, L. R. 11 Eq. 615.
v. Lopes, 15 East. 230.
ter *v.* Cookson, 1 Q. B. 419.

the execution creditor to pay the rent in arrear to the landlord, and, in default of such payment, withdrawing from possession.

Purchase by instalments.

Where in an agreement for the sale of certain premises there was a stipulation that "in the meantime and until the assignment was made, the purchaser should pay and allow to the vendor at the rate of £100 per annum, from the time of taking possession of the premises until the completion of the purchase, in equal half-yearly payments," the purchaser having taken possession, and one half-yearly payment being due, it was held that it was due *as rent* under the statute of Anne (*u*).

8 Anne, c. 18, s. 7, only applies to existing tenancies.

The statute 8 Anne, c. 18, s. 1, only applies to existing tenancies; and the sheriff is not liable for removing goods taken in execution without first paying to the landlord a year's rent, when the tenancy has determined before the seizure, though within six months of it (*x*).

Ground landlord not within statute of Anne.

A ground landlord is not a landlord entitled to receive a year's rent within the statute (*y*); but the case of a lessee and undertenant is within the statute, as also are goods in an apartment part of a messuage (*z*).

Forehand rents.

The Act applies to forehand rents, payable in advance (*a*), even where reserved in a mortgage deed by way of additional security for the interest (*b*).

Right of landlord who has bought goods of execution creditor to deduct rent due.

If a trader, after committing an act of bankruptcy, takes a shop, and agrees to pay half a year's rent in advance, where, by the custom of the country, half a year's rent becomes due on the day on which the tenant enters, the landlord, after an act of bankruptcy, and before the year expires, may distrain the goods on the premises for half a year's rent: or, if he buys the tenant's goods at the sale under the bankruptcy, he may retain the amount of the half year's rent (*c*).

(*u*) Saunders *v.* Musgrove, 6 B. & C. 524; 2 C. & P. 294.
(*x*) Cox *v.* Leigh, L. R. 9 Q. B. 333; 22 W. R. 730; 30 L. T. N. S. 494.
(*y*) Bennett's Case, Stra. 787.
(*z*) Thurgood *v.* Richardson, 7 Bing. 428.
(*a*) Harrison *v.* Barry, 7 Price, 690.
(*b*) Yates *v.* Ratledge, 5 H. & N. 249; 29 L. J. Exch. 117.
(*c*) Buckley *v.* Taylor, 2 T. R. 600.

CHAPTER XXI.

SHERIFF'S RETURN TO WRIT.

Sheriff's return to writ.

THE sheriff should, strictly speaking, make a return to every writ (*a*), but as a matter of practice it has long been unusual to do so in the case of most writs, unless he is ruled to make it; but he should still make a return to the writ of *elegit* without being ruled. The return is his answer to the process delivered to him.

General and special returns.

The sheriff's return to a writ has been said to be of two kinds, general and special, but the probable meaning of this is, that a return was called *general* when no unusual circumstance took place during the execution of the writ, and *special* when otherwise; as, for example, if a defendant should die while in custody, the sheriff, if ruled, must return the writ. Such a return would be called *special*. There is no difference now between general and special returns.

Defendant cannot rule sheriff to make specific return.

The power of ruling the sheriff to return the writ is a valuable protection to the defendant, in guarding him from misconduct on the part of the sheriff; but the Court will not, on the motion of the defendant, compel the sheriff to give a specific return of the particulars and proceeds of goods sold under a *fi. fa.*, on the ground that his officer has wasted the goods (*b*).

(*a*) Clerk *v.* Withers, 1 Salk. 322; 2 Ld. Raym. 1072; 6 Mod. 290 (1705). The principle laid down in this case has been denied in the American Courts. See Biscoe *v.* Sandefur, 14 Ark. 568 (1854). Williams *v.* Cheesborough, 4 Conn. 356 (1822). Denton *v.* Livingston, 9 Johns. 96 (1812).

(*b*) Willett *v.* Sparrow, 2 Marsh. 293; 6 Taunt. 576.

Sheriff need not return unless ruled to do so.

A sheriff need not return a writ unless ruled to do so (z); where, therefore, a declaration stated that the plaintiff had recovered a debt against A. B., and had sued out a *fi. fa.* which was delivered to the defendants, the sheriffs, to be executed, and the first count averred that the defendants forebore to levy when they might have levied, and had not the money, &c.; and the second count averred that the defendants had levied, but had not the money, &c.,—the Court held that this was not such a default as laid the foundation of an action. The sheriff should have been ruled to return the writ, which the Court would have required to be a legal return, and, if false, then the plaintiff would have been entitled to his action (*a*).

It is, however, provided by the statute 20 Geo. 2, c. 37, "that no sheriff shall be liable to be called upon to make a return of any writ or process, unless he be *required* so to do within six months after the expiration of his said office." The word *required* means "ruled to return;" therefore the sheriff is not liable to an attachment for not returning a writ, if not ruled, although requested to return it within that time (*b*). The months mentioned in this statute have been construed to mean lunar months (*c*).

Irregularity.

An irregularity in signing judgment and issuing execution is cured by the defendant obtaining time for the sheriff to return the writ (*d*).

At what time process may be transferred to new sheriff.

Questions sometimes arise as to the stages at which process may be transferred to the new sheriff, and at which the old sheriff is bound to complete its execution. With reference to this question it is observable that the words of the act now in force, 3 & 4 Will. 4, c. 99, s. 7, are somewhat different from those of the former act, 20 Geo. 2, c. 37, s. 1. The 20 Geo. 2 directs the sheriffs, at

Process *unexecuted.*

(*z*) Moreland *v.* Leigh, 1 Stark. 388. For forms of return see Appendix.

(*a*) Moreland *v.* Leigh, 1 Stark. 388.

(*b*) Wat. Sh., 2nd ed., 82. Rex. *v.* Jones, 2 T. R. 1; Doug. 463 n.

(*c*) Rex. *v.* Adderley, Doug. 463.

(*d*) Lewis *v.* Gompertz, 1 Jur. 984.

the expiration of their office, "to turn over to the succeeding sheriffs all such writs and process as shall remain in their hands unexecuted, who shall duly execute and return the same." The words of 3 & 4 Will. 4, are "all writs and other process in his hands not wholly executed." While the former act was in force, the construction put upon the word "unexecuted" seems to have been "wholly unexecuted;" and, therefore, before 3 & 4 Will. 4, c. 99, if a sheriff had commenced the execution of a writ, as of a *fi. fa.*, by seizure, he was bound to complete it, and might have proceeded to sell the goods without waiting for a *venditioni exponas* (*e*).

Process *not wholly executed.*

If the sheriff returns that the premises of the defendant are so barricaded that he is unable to ascertain whether the defendant has goods within the bailiwick on which a levy may be made, it is a bad return, as he should state either that the defendant has goods or that he has none (*f*).

Sheriff must return that defendant has goods or not.

If, after a reasonable interval, no return to the writ is made, an order may be obtained requiring the sheriff forthwith to make his return; if the sheriff disobeys the order, an order *nisi* will be made for his committal (*g*).

Where sheriff disobeys rule.

All returns must be in the name of the high sheriff, and should be signed with his christian and surnames, but not necessarily *suâ propriâ manu*, and, in practice, the undersheriff generally sets the sheriff's name to the returns.

Return to be in name of sheriff.

An indictment for perjury alleged the trial of an issue before E. S., Esq., sheriff, of D., by virtue of a writ directed to the said sheriff. The writ of trial put in evidence was directed to the sheriff, and the return was of a trial before him, but it was proved that, in fact, the trial took place before a deputy, not the undersheriff. It was held that there was no variance (*h*).

Where return is of a trial before sheriff.

(*e*) Wat. Sh., 2nd ed., 24.
(*f*) Munk *v.* Cass, 9 Dowl. 332.
(*g*) Owen *v.* Pritchard, W. N. 1876, 147.
(*h*) Rex *v.* Dunn, 2 Moody C. C. 297.

Deputy to certify in name of sheriff.

Where an undersheriff before whom a writ of inquiry is executed certifies under the 3 & 4 Vict. c. 24, s. 2, he may do so in the name of the high sheriff, and it ought not to be signed in his own name (*o*).

Who may rule the sheriff to return.

Either party at whose instance the writ issues, or the party against whom it issues, may rule the sheriff to return the writ; but there is this difference between the parties, that the former may rule the sheriff to return the writ at any time, while the latter can only do so after the object of the writ has been effected, except on special grounds (*p*).

When defendant may rule sheriff to return.

Where the sheriff seizes goods and keeps possession at the defendant's desire, to enable him to pay the debt and costs without sale, the defendant may, after such payment, rule the sheriff to return the writ (*q*). But, where a defendant against whom a *fi. fa.* had issued became a bankrupt after the seizure, and his assignees made an arrangement with the sheriff as to the disposal of his goods, it was held that the sheriff could not be ruled to return the writ on behalf of the bankrupt (*r*).

If a sheriff returns to a writ of *fi. fa.* a seizure under that and another writ, it is bad (*s*).

It is a sufficient return of a sheriff to a writ of *fi. fa.*, that he has seized goods of the defendant by virtue of several previous writs of *fi. fa.*, "according to their priority" (*t*).

Where goods remain in hand for want of buyers.

Where there are two writs, and the goods remain in the sheriff's hands for want of buyers, he must make some return as to the value of the goods, although he will not be bound by the amount stated (*u*).

Some

The omission, however, to state some amount as to the

(*o*) Stroud *v.* Watts, 3 D. & L. 799—Tindall, C.J.

(*p*) Daniels *v.* Gompertz, 2 Gale & D. 751; see also, France *v.* Clarkson, 2 Dowl. 532; and Richardson *v.* Trundle, 8 C. B. N. S. 474; 7 Jur. N. S. 28; 29 L. J. C. P. 310.

(*q*) Edmunds *v.* Watson, 2 Marsh. 330; 7 Taunt. 5.

(*r*) Gilbert *v.* Whalley, 2 C. M. & R. 722.

(*s*) Wintle *v.* Lord Chetwynd, 7 Dowl. 554; 1 W., W. & H. 581.

(*t*) Chambers *v.* Coleman, 9 Dowl. 554.

(*u*) *Ibid.*

f the goods seized is only an irregularity, and, e, where a return so far defective was made on the March, it was held too late to object to the return ground on the 24th of April following (*x*). value of the goods should be stated.

eriff's statement as to the value of goods in his o a writ of *fi. fa.*, will be *primâ facie* evidence him when he sells under a writ of *venditioni* (*y*).

re the sheriff in his return to a *fi. fa.* states that aid rent due to the landlord in respect of the pre- which the seizure took place, the return ought to least with reasonable certainty that the rent was he time of the seizure (*z*). Where sheriff paid rent due to landlord.

no ground for quashing a return to a *fi. fa.* that the herein claims to retain for possession money more is entitled to charge to the execution creditor, under is of an interpleader rule (*a*).

riff's return that he had seized certain goods which aimed by a third party, and that he thereupon to the Court under the Interpleader Act, and that was made for the trial of an issue whether the goods property of the claimant or not, and that after- ne plaintiff directed him to deliver up possession of ls to the claimant, was held insufficient, the Court ig that if such a return were to be held sufficient, l afford great facility for fraud, as a defendant hen have nothing to do but to get a third party to claim to the goods seized, and, if the plaintiff were g to incur the expense of the trial of an issue, the nt might evade the execution, although he had it goods to satisfy the debt (*b*). Return as to goods being claimed by third party.

irst writ must be returned before the issue of a or the same debt. Thus, a sheriff having seized

(*x*) Chambers *v.* Coleman, 9 Dowl. 554.
(*y*) Burton *v.* Gill, 1 D. & L. 593—Parke; 12 M. & W. 315; 13 Sh. 83.
(*z*) Reynolds *v.* Barford, 8 Scott. N. R. 233; 7 M. & G. 449; 2 327; 8 Jur. 961; 13 L. J. C. P. 177.
(*a*) *Id.*
(*b*) Weaver *v.* Fisher, 2 Dowl. N. S. 292, Exch.

the defendant's goods under a *fi. fa.*, it was agreed between the plaintiff and the defendant that the sheriff should withdraw upon payment of part of the debt, and that the judgment should stand as a security for the remainder (which was to be paid by instalments), and that, in default of payment of any instalment as arranged, the plaintiff should be at liberty to re-enter into possession; default having been made in payment of the first instalment, the plaintiff issued a second *fi. fa.* without returning the first. It was held that the second writ was irregular (*c*).

Amending return.

If a sheriff's return be insufficient, he may, with permission of the Court, amend his return, upon payment of costs (*d*).

Court will refuse leave to amend in certain cases.

But, where a sheriff returned that the goods he had seized were in his hands for want of buyers, and, upon an action being brought against him for a false return, had obtained an order for time to plead on the usual terms, taking short notice of trial for the first sittings in the next term, the Court refused to allow the sheriff to amend the return by substituting that of *nulla bona* (*e*).

Return of *nulla bona*, when admissible in evidence.

A return of *nulla bona* made by a sheriff to a *fi. fa.* against A. is admissible in evidence upon the trial of a question as to property in goods at the time of such return between A. and a succeeding sheriff. This is so, moreover, although the bailiff entrusted with the execution of such writ did not himself search for goods of A., but sent his assistant (*f*).

Order to withdraw.

Where a sheriff returned to a writ of *fi. fa.*, that he had received from the attorney of the plaintiff named in the said writ an order to withdraw from possession, and that he thereupon withdrew, the return was held good (*g*).

(*c*) Chapman *v.* Bowlby, 1 Dowl. N. S. 83; 8 M. & W. 249.
(*d*) Cleaver *v.* Fisher, 2 Dowl. N. S. 292, Exch.
(*e*) Wylie *v.* Pearson, 1 Dowl. N. S. 807; 6 Jur. 806, B. C.—Wightman.
(*f*) Avril *v.* Sheriff of Warwick, 3 N. & M. 871.
(*g*) Levy *v.* Abbott, 7 D. & L. 185; 4 Exch. 588; 19 L. J. Exch. 62.

here a person against whom a *fi. fa.* was taken out Goods passed under void deed.
n possession of goods under a deed which was given
nsideration of an antecedent debt and a small annuity
ole thenceforth, the sheriff was held to be warranted
urning *nulla bona*, if it appeared that the memorial
ch annuity was not registered according to 17 Geo. 3,
, s. 1, for in that case the deed was absolutely
(*h*).

an action against the sheriff for a false return of *nulla* Return of *nulla bona* held a "good return."
to a writ of *fi. fa.*, the declaration, after stating the
ery of the writ to the sheriff to be executed, went on
lege that the sheriff by virtue thereof "seized and
in execution divers goods and chattels of R. (the
r) of great value, to wit, of the value of the monies
sed on the writ and directed to be levied as afore-
and then levied the same thereout." The defend-
leaded that he did not seize or take in execution
goods or chattels of R., the debtor, nor levy
out the monies in the first count in that be-
mentioned *modo et formâ*. Here it was held
the allegation as to the seizure in the declaration
be understood as an allegation of a seizure of goods
. that were liable to the plaintiff's execution, and
the same meaning must be ascribed to the plea; con-
ntly, that the goods seized under the plaintiff's writ
; exhausted by payment of rent and satisfaction of a
previously delivered to the sheriff, the return of *nulla*
was a proper return, and the defendant was entitled
verdict (*i*).

here a sheriff entered and took possession of the Where extent has priority over *fi. fa.*
ndant's goods, under a *fi. fa.*, and, before the sale, the
rs of the customs entered to levy for a penalty
vered against the defendant for an offence against the
nue, the sheriff permitting the goods to be taken for
penalty, and returning *nulla bona* to the *fi. fa.*, the

Crossley *v.* Arkwright, 2 T. R. 603.
Heenan *v.* Evans and Wheelton, 4 Scott. N. R. 2; 1 Dowl. 204; 3 M. & G. 398.

sheriff was held to be justified, on the ground that there is no distinction between a warrant to levy a penalty given to the Crown by statute, and an execution under an extent, in which the Crown would always have priority before the sale (*g*).

Declaration for false return of *nulla bona*.

Where a declaration by an execution creditor against the sheriff for falsely returning *nulla bona* to a *fi. fa.* alleged that the sheriff seized goods of great value, to wit, of the value of the monies included in plaintiff's writ, and then levied the same thereout; and it was pleaded that

Plea of prior writ.

F. had sued out a prior writ of *fi. fa.*, which was delivered to the sheriff before the plaintiff's writ, and remained unexecuted in the sheriff's hands; and the sheriff, after seizing the goods under the plaintiff's writ, and before they were sold under the same, seized them under F.'s writ, and sold them for the utmost price, &c., but for a sum insufficient to pay the sum indorsed on F.'s writ, and

Held bad.

paid the sum to F.; here the plea was, upon special demurrer, held bad, as an argumentative traverse of the allegation that the sheriff had levied the moneys indorsed on the plaintiff's writ; such levy consisting in a sale, the proceeds of which would be applicable to the plaintiff's writ (*h*). In this case it was held that the allegation contained in the declaration, that the sheriff had seized the goods and levied the money thereout, meant that the sheriff had sold under the plaintiff's writ, and that he had the proceeds in his hands for the purpose of handing over to the plaintiff; and, further, that if at the time of executing the plaintiff's writ the sheriff had in his office a prior writ, and had paid the proceeds of the execution to the creditor on the prior writ, his plea should have traversed the allegation that he had levied under the plaintiff's writ.

Explanation.

Leave to amend.

Leave to amend was, however, granted, on payment of costs.

Return of *nulla bona*, when

Where a plaintiff issued a *fi. fa.*, and the sheriff seized goods, the proceeds of which were exhausted by payment

(*g*) Grove *v.* Aldridge, 2 M. & Scott. 568; 9 Bing. 428.
(*h*) Drewe *v.* Lainson, 11 Ad. & E. 529; 3 P. & D. 245.

a year's rent to the landlord under the statute 8 Anne, 18, s. 1, the expenses, and the sum due upon another writ of *fi. fa.* previously delivered to the sheriff, it was held, that a return of *nulla bona* to the plaintiff's writ was proper, and that the sheriff, in an action against him for a false return, might show the above facts, under a plea that the original defendants had no goods whereof the sheriff could levy the damages mentioned in the declaration (*i*). Proceeds exhausted in landlord's rent, &c.

Where, before the issuing of a writ of *fi. fa.*, a *fiat* in bankruptcy issued against the debtor, but *before* the return of the writ an order for annulling the *fiat* was made by the Court of Review, and *after* the return that order was confirmed by the Lord Chancellor, it was held, that the return of *nulla bona* was well founded (*k*). Return of *nulla bona* held good where *fiat* in bankruptcy annulled.

The meaning of a return of *nulla bona* to a writ of *fa.* is, that there are no goods applicable to the plaintiff's writ. Where, therefore, a declaration for a false return of *nulla bona* stated that the sheriff took in execution the goods of the judgment debtor to the amount indorsed on the writ, and levied the same thereout, and the defendant pleaded that the sheriff did not levy, it was held, that under that plea the defendant might prove that the plaintiff's judgment was obtained by fraud, and that the defendant had paid the proceeds of the execution to another execution creditor, notwithstanding that the writ of the other creditor was dated subsequently to the plaintiff's writ (*l*). Meaning of return of *nulla bona*.

The sheriff has no right to make any other return to a writ of *venditioni exponas* than the sum for which the goods were sold, on which the Court will order him to pay it over, deducting the poundage; if he has any further claim, he must come with an application for its allowance (*m*). Return to *venditioni exponas*.

(*i*) Wintle *v.* Freeman, 11 Ad. & E. 539; 1 G. & D. 93.
(*k*) Smallcombe *v.* Olivier, 13 M. & W. 77; 2 D. & L. 217; 8 Dr. 606; 13 L. J. Exch. 305.
(*l*) Shattock *v.* Carden, 6 Exch. 725; 21 L. J. Exch. 200; 2 L. M. & P. 466.
(*m*) Rex *v.* Jones, 1 Price, 205.

A compromise between parties no reason for sheriff not returning writ.

Where a rule was obtained, calling on the sheriff to return a writ, and cause was shewn against the rule, one of the grounds being that a compromise had been effected between the parties, it was held that this would not prejudice the sheriff, and would be no reason for his not returning the writ (*n*).

Nor is landlord's claim for rent.

Neither does a claim for rent by the landlord relieve the sheriff from making a return, for if the landlord had a right to the rent, the sheriff might pay it or not, and shew it in his return (*o*).

The writ with the sheriff's return upon it is only evidence against him to the extent of his duty under it, and it is no part of the sheriff's duty to annex the officer's name to the return (*p*).

The return should possess certainty.

A sheriff's return should possess certainty, so that the Court may be definitely informed as to the matter for which the writ was issued; and, if a sheriff die before the return of the writ, the undersheriff must return the writ in the name of the deceased sheriff, if prior to a new appointment (*q*).

The same sheriff by whom any writ directed and delivered to him is executed while in office, ought to make his return to the same, and hand such writ and return over to the new sheriff who comes into office before the return day; and such new sheriff will return the writ with the old sheriff's return thereon.

Rules for return of writs.

Rules and orders may be made in term time for the return of writs, by the Court out of which any writ issues, and also by the judge of any such Court in vacation; but no attachment can issue for disobedience of such orders, until they have been made rules of Court (*r*).

Where rule expires in vacation.

When a rule to return expires in the vacation, the sheriff must file the writ at the expiration of the rule, or as soon after as the office shall be open, and the officer

(*n*) Balson *v.* Meggat. 4 Dowl. 557.
(*o*) *Ibid.*
(*p*) Hill *v.* Middlesex (Sheriff), Holt, 217; 7 Taunt. 8.
(*q*) 3 Geo. 1, c. 15, s. 8.
(*r*) 2 & 3 Will. 4, c. 39, s. 15.

ith whom it is filed must indorse the day and hour at hich it was filed (*s*).

Writs of extent are returnable in vacation, under 5 & 6 ict. c. 86, s. 8 (*t*).

All rules upon the sheriffs of London and Middlesex to turn writs, are four day rules; on other sheriffs, eight ıy rules (*u*).

It is further provided by the 132nd rule that "no dge's order shall issue for the return of any writ, but a le-bar rule shall issue for that purpose in vacation, as in rm, which shall be of the same force and effect as side- r rules made for that purpose in term."

Extension of time for return of writ.

The Court will, however, where sufficient cause is shewn, tend the time in which the sheriff must make his return. ı a case, therefore, in which writs of extent and *fieri cias*, tested on the same day, had both issued against e defendant's goods, the Court, while refusing to grant writ of *venditioni exponas* on the return to the *fieri cias*, extended the time of the return to the *fi. fa.* by ıe sheriff, upon the suggestion of a difficulty occasioned y the subsequent issue of the writ of extent at the suit f the Crown, by allowing him five days in which to make is return (*x*). This rule for further time was granted on ayment of costs (*y*). In a similar case, the Court, upon he application of the sheriff, enlarged the time for his naking a return to a *fi. fa.*, upon the suggestion of a easonable doubt whether the goods seized under the writ were not covered by an extent afterwards issued at the suit of the Crown for malt duties under the statute 28 Geo. 3, c. 37, s. 21, for the purpose of inducing the plaintiff to go into the Court of Exchequer, and there contest the question of right with the Crown (*z*).

Costs of rule.

(*s*) Reg. Gen. Q. B. C. P. & Exch., H. T. 16 Vict. r. 131.
(*t*) Reg. v. Renton, 2 Exch. 216; 5 D. & L. 750; 17 L. J. Exch. 264.
(*u*) Reg. Gen. Q. B. C. P. & Exch. H. T. 16 Vict. r. 130.
(*x*) Rex v. Devon (Sheriff), 1 Chit. 643.
(*y*) *Ibid.*
(*z*) Wells v. Pickman, 7 T. R. 174.

Effect of ruling.

The act of ruling the sheriff to return a *fi. fa.* does not estop the plaintiff from shewing that the writ was not a good writ: neither does the filing it of record affirm the existence of a void writ (*t*).

Judge at chambers may set aside rule to return.

When a sheriff has levied execution, the party for whom he is acting cannot as of right rule him to make a return to the *fi. fa.* pending an interpleader issue; and, if such a rule is obtained, a judge at chambers may set it aside, if of opinion that the return would under the circumstances be inconvenient or useless (*u*).

Where sheriff makes return to a writ without paying over the money.

It may happen that, where a plaintiff has recovered judgment in an action, and has issued a *fi. fa.*, under which a sheriff has levied the amount indorsed, and filed a return accordingly, the sheriff may fail to pay over the money. The plaintiff in this case, may apply for a rule calling on the sheriff to shew cause why he should not pay over the money to the plaintiff or his solicitors, with the costs of the application; there should be an *affidavit* in support of the application, and notice of motion must be given to the sheriff, under Order 53, r. 3, Judicature Act, 1875 (*x*).

For cases in which actions may be brought or attachments may issue against the sheriff for false or insufficient return, see *Chapters on "Remedies against the Sheriff."*

(*t*) Jones *v.* Williams, 8 M. & W. 349; 9 Dowl. 302.
(*u*) Angell *v.* Baddeley, 26 W. R. 137—C. A.
(*x*) Delmar *v.* Freemantle, W. N. 1878, 142.

CHAPTER XXII.

ELEGIT.

it derives its name from the election given to the by the statute Westminster II. (*a*), and from the the award of this execution on the roll, "*quod i executionem.*" It is a judicial writ, founded on e statute, and lies to recover any sum of money osts payable under a judgment, or under any order ourt or judge. By it (*b*) the sheriff gives to the all goods and chattels of the defendant, and, ese, all his lands and tenements, to be occupied yed till the money due on such judgment is paid. tatute 1 & 2 Vict. c. 110, s. 11, enlarged the ion of the writ, extending it to the whole of the lands, instead of a moiety only. The provisions atute are as follows:—

Derivation of name.

What it is.

What sheriff gives by it.

t it shall be lawful for the sheriff or other officer to ny writ of *elegit*, or any precept in pursuance shall be directed at the suit of any person upon gment which at the time appointed for the com- nt of this Act shall have been recovered, or thereafter recovered, in any action in any of her s superior Courts at Westminster, to make and xecution unto the party in that behalf suing, of lands, tenements, rectories, tithes, rents, and here- s, including lands and hereditaments of copyhold nary tenure, as the person against whom execu-

Creditor may extend all debtor's lands instead of a moiety.

Copyholds.

(*a*) 13 Ed. 1, c. 18.
(*b*) See forms in Appendix.

tion is so sued, or any person in trust for him, shall have been seized or possessed of at the time of entering up the said judgment, or at any time afterwards, or over which such person shall at the time of entering up such judgment, or at any time afterwards, have any disposing power which he might without the assent of any other person exercise for his own benefit, in like manner as the sheriff or other officer may now make and deliver execution of one moiety of the lands and tenements of any person against whom a writ of *elegit* is sued out; which lands, tenements, rectories, tithes, rents, and hereditaments, by force and virtue of such execution, shall accordingly be held and enjoyed by the party to whom such execution shall be so made and delivered, subject to such account in the Court out of which such execution shall have been sued out as a tenant by *elegit* is now subject to in a Court of Equity: provided always, that such party suing out execution, and to whom any copyhold or customary lands shall be so delivered in execution, shall be liable and is hereby required to make, perform, and render to the lord of the manor or other person entitled, all such and the like payments and services as the person against whom such execution shall be issued would have been bound to make, perform, and render in case such execution had not issued; and that the party so suing out such execution, and to whom any such copyhold or customary lands shall have been so delivered in execution, shall be entitled to hold the same until the amount of such payments, and the value of such services, as well as the amount of the judgment, shall have been levied."

Proviso as to copyhold land.

Creditor in possession must account as a mortgagee

A creditor in possession under an *elegit* of lands belonging to his debtor, sued out for the sale of the property under 1 & 2 Vict. c. 110, s. 11, is bound to account as a mortgagee in possession (*a*). Notwithstanding 1 & 2 Vict. c. 110, s. 11, which gives to a judgment the effect of an equitable charge upon the lands of a debtor, an equitable mortgagee retains his right in Equity to enforce his security

(*a*) Bull *v.* Faulkner, 1 De G. 685; 12 Jur. 33; 17 L. J. Ch. 23.

gainst the title of a creditor under a subsequent judg-ent, although the latter may have acquired the legal isin and possession of the land under an *elegit* without otice of the mortgage (*b*).

Purchasers and mortgagees.

By 23 & 24 Vict. c. 38, s. 2, writs of execution of dgments must be registered, otherwise they will not fect real property as against a *bonâ fide* purchaser for lue, and no writ of execution shall affect a mortgagee, hough execution or other process shall have issued ereon and have been duly registered, unless such execu-n or other process shall be executed and put in force thin three calendar months from the time when it was gistered; and the 27 & 28 Vict. c. 112 provides that no lgment, statute, or recognizance, to be entered up after passing of that Act, shall affect any land (of what-er tenure) until such land shall have been actually de-ered in execution by virtue of a writ of *elegit* or other rful authority in pursuance of such judgment, statute, recognizance.

Registration.

Writs of execution by virtue of which land is actually livered in execution must, by the 3rd section of the tute 27 & 28 Vict. c. 112, be registered in the manner scribed by 23 & 24 Vict. c. 38, but in the name of the btor, and no prior registration is necessary.

Creditor may obtain order for sale.

A creditor to whom land is delivered in execution, is titled to obtain from the Chancery Division a summary der for sale (*c*); and, where debts due on judgments charged on land, notice of the sale is required to be ved upon creditors entitled to the benefit of the charges.

A writ of *elegit* can be issued either upon a judgment a debt, or damages, or upon the forfeiture of a recog-ance taken in the king's Court.

Sheriff's powers under *elegit*.

Under a writ of *elegit* the sheriff is entitled to seize the btor's goods at once, before the holding of the inqui-ion, and from the time of the seizure the creditor be-

(*b*) Whitworth *v.* Gaugain, 1 Ph. 728; 10 Jur. 531; 15 L. J. . 433.
(*c*) 27 & 28 Vict. c. 112, s. 4.

comes a secured creditor within the meaning of section 16, sub-section 5, of the Bankruptcy Act, 1869 (*t*). At the same time, it may be pointed out that the sheriff will run considerable risks in seizing before an inquisition, as the jury might find that some of the goods seized were not the debtor's.

Section 87 of that Act has no application to a seizure of goods under an *elegit* (*u*).

Sale under s. 95, sub-s. 3, Bktcy Act, 1869.

The delivery to an execution creditor of goods seized by the sheriff under an *elegit* at the value appraised by the jury on the inquisition, is a sale within the meaning of section 95, sub-s. 3, of the Bankruptcy Act, 1869, and is protected by that section, if the creditor had not, at the time of the delivery, notice of any act of bankruptcy committed by the debtor prior to the seizure, or available against him for adjudication (*x*).

Notice of an act of bankruptcy between delivery and seizure will not deprive the creditor of this protection (*y*).

A provision contained in a recent Bankruptcy Bill (which will probably find expression shortly in a Bankruptcy Act) forbade the seizing of the debtor's goods or chattels under an *elegit*.

How executed.

Sheriff to take inquisition.

When an *elegit* is prayed, the sheriff must take an inquisition; for, he cannot appraise the goods, or value and extend the goods, himself, but this must be done through the medium of a jury (*z*).

The sheriff must therefore empanel a jury to inquire of all the goods and chattels of the debtor, and appraise the same, and also to inquire as to his lands and tenements, and their value (*a*).

(*t*) 32 & 33 Vict. c. 71. *Ex parte* Abbott, *In re* Gourlay, 15 Ch. D. C. A. 447.
(*u*) *Ibid.*
(*x*) *Ex parte* Vale, *In re* Bannister, 18 Ch. D. 137. *Ex parte* Schulte followed; L. R. 9 Ch. 409.
(*y*) *Ibid.*
(*z*) Cro. Eliz. 584.
(*a*) Palmer's Case, 4 Co. 74.

The lands need not now be set out by "metes and bounds," as formerly; it is sufficient to describe them by their names, or in some other way sufficient to identify them in a conveyance (*b*). Lands.

No notice is of necessity to be given of executing an *elegit;* but gates or doors if not found open may not be broken open (*c*) for the purpose of executing the writ.

After the inquisition the sheriff must deliver to the execution creditor, the plaintiff, all the goods and chattels of the debtor, the defendant (except oxen and beasts of the plough), at the value set upon them by the jury; if the goods be sufficient to satisfy the debt, he must not extend the debtor's lands. Sheriff to deliver goods and chattels at value found by jury.

But, if the goods do not prove sufficient, he must deliver the execution creditor all the lands, &c. (as above) of the debtor. If goods not sufficient.

The writ must then be returned, and the execution is complete.

If a writ of *elegit* be sued out, and the plaintiff extend the lands upon it, and return and file the writ; on a suggestion that the defendant has more lands, either in the same or another county, the plaintiff may have a new writ of *elegit* for the land, in whatever county it lies (*d*).

Where lands had been taken possession of under an *elegit*, the Court ordered it to be referred to a master, to take an account of the rents and profits received, and if on inquiry it should appear that the debt had been satisfied, possession was to be restored to the debtor (*e*). Procedure.

Where lands have been improperly taken possession of under an *elegit*, the objection may be taken on an ejectment brought upon the *elegit* (*f*). But, if lands which cannot be extended on an *elegit* are found on the inquisition, together with lands which can properly be Lands improperly extended.

(*b*) Sherwood *v.* Clarke, 15 M. & W. 764. Roberts *v.* Barry, 6 L. & L. 430; 13 M. & W. 356; 8 Jur. 963; 14 L. J. Exch. 20.
(*c*) Dalt. 134.
(*d*) Hunger *v.* Frey, Moore, 341.
(*e*) Price *v.* Varney, 5 D. & R. 612; 3 B. & C. 733.
(*f*) Fenny *v.* Durant, 1 B. & Ald. 40. Parr *v.* Roe, 1 Q. B. 730.

extended, and the sheriff sets out each, it would appear that the extent is not bad *in toto*, but only for the part that is not extendible (*c*).

Fraud. Where fraud, deceit, or partiality has been practised, if the writ be not filed, the Court will stay the filing of it, and grant another writ (*d*).

Undue valuation. If it appears that the lands have been extended at an undue valuation, the Court will stop the filing of the return (*e*); but the Court will not try the truth of an inquisition on motion (*f*).

Difference between *elegit* and *fi. fa.* An *elegit* differs from a *fi. fa.* in that the goods themselves cannot be delivered by the sheriff to the plaintiff, under a *fi. fa.*; whereas under an *elegit* the goods themselves are delivered at a certain ascertained price (*g*).

What it delivers. The sheriff under the writ delivers only the legal possession—a right of entry and not actual possession—and in order to attain actual possession the usual method is for the execution creditor to proceed by ejectment (*h*).

Rogers *v.* Pitcher. It must be noted, however, that, in the case of Rogers *v.* Pitcher, Gibbs, C.J., said, "I am aware that in several places it has been said that the tenant in *elegit* cannot obtain possession without an ejectment, but I have always been of a different opinion" (*i*).

Consequence of misrecital of date. If the sheriff sell a term under a *fi. fa.* or *elegit*, and misrecite it in date, or in time of duration, in the *fi. fa.*, or the jury mistake it in the latter, the sale is void, unless he also sells all the *interest* which the defendant has in the land, for then it is good, notwithstanding the misrecital.

Plaintiff may sue for rent. It seems that the plaintiff may sue for the rent; it was formerly doubted whether the tenant by *elegit* could proceed for the rent without an attornment from the

(*c*) Morris *v.* Jones, 3 D. & R. 603.
(*d*) Wat. Sh., 2nd ed., 313.
(*e*) Parr *v.* Roe, 1 Q. B. 700.
(*f*) Cooper *v.* Gardner, 3 Ad. & E. 311.
(*g*) Pullen *v.* Pusbecke, 1 Ld. Raym. 341.
(*h*) Taylor *v.* Cole, 3 T. R. 292; 1 H. Black. 555 (1 2 Saund. 69.
(*i*) 6 Taunt. 207; but see Hughes *v.* Lumley, 4 E. & B. Harris *v.* Booker, 4 Bing. 100; 12 Moore, 283.

tenant, for the 4 Anne, c. 16, s. 9, applies only where property is acquired by grant or conveyance (*k*). In Lloyd *v.* Davies (*l*), however, it was held that no attornment was necessary.

Rent arrear.

As rent arrear is no part of the reversion, but a mere chose in action, the execution creditor under an *elegit* is not entitled to it (*m*).

Creditor of railway company.

A judgment creditor of a railway company, who had obtained an *elegit*, was restrained from taking posession of the lands and chattels belonging to the company as against prior mortgagees, to whom were assigned the undertaking, calls on shareholders and tolls (*n*).

Evidence of title.

In an action by a plaintiff claiming under an *elegit* for use and occupation, an examined copy of the judgment roll containing the award of the *elegit* and return of the inquisition is evidence of his title, without proving a copy of the *elegit* (*o*).

Upon an inquisition on a writ of *elegit*, proof of possession, or receipt of the rent of the land by the party, is *prima facie* evidence of title (*p*). Where a jury, notwithstanding such evidence, found that the party had no lands, the Court set aside the finding, and directed the sheriff to take a new inquisition (*q*).

A creditor issued three *elegits* on three several judgments, and extended the lands of the debtor; he afterwards took a conveyance of part of them. On a question whether the tenancy by *elegit* had been wholly extinguished and the judgment satisfied, the creditor insisted that it had not been shown that the writs had been duly returned, and that no evidence had been given to show in respect of which *elegit* the lands conveyed had been extended. It was held that the *onus* of proof was on the

(*k*) Harris *v.* Booker, *vide supra.*
(*l*) 2 Exch. 103; 18 L. J. Exch. 80.
(*m*) Sharpe *v.* Key, 8 M. & W. 379.
(*n*) Legg *v.* Mathieson, 2 Giff. 71.
(*o*) Ramsbottom *v.* Buckhurst, 2 M. & S. 565.
(*p*) Barnes *v.* Harding, 1 C. B. N. S. 568.
(*q*) *Ibid.*

creditor, he being bound to make out that he was a subsisting incumbrancer, and, secondly, that as it was his duty to have caused a proper return to be made out and filed, he could not take advantage of his own omission (*l*).

What may and what may not be extended.

Term of years, how extended.

A term of years may be extended, and may either be delivered to the plaintiff at an extended annual value, as part of the lands of the defendant; or it may be delivered as part of the defendant's chattel property, the jury having first appraised it at a gross sum (*m*).

Rent arrear.

As mentioned above, rent arrear is not extendible (*n*), nor is a rent-seck, nor an office, for an office cannot be granted over.

Benefices.

A benefice, including the glebe of a parsonage, a vicarage, or an advowson in gross, or a churchyard, are exempt (*o*), though it is said the lands of a bishop are extendible (*p*).

Trust estates.

Before 29 Car. 2, s. 3, lands held in trust for the defendant could not be extended upon an *elegit* issued on a judgment, statute, or recognisance of the *cestui que trust;* but by s. 10 of that statute a simple trust estate for the benefit of the debtor solely, is liable to be taken.

An outstanding term, vested in a trustee upon trust to attend the inheritance, is, it would appear, liable to be taken (*q*).

Simple trust estate for benefit of debtor, liable.

But, when land was vested in a long term of years in a trustee in trust to permit E. G. to receive the rents and profits until default of payment of a rent-charge, or until E. G. should insure the premises; and, in case of such default, in trust to pay to M. G. out of the rents and profits a certain rent-charge; it was held that this was

(*l*) Hele *v.* Bexley (Lord), 17 Beav. 14; 22 L. J. Ch. 1007.
(*m*) Fleetwood's Case, 8 Co. 171; Dalt. 137.
(*n*) Sharpe *v.* Key, 8 M. & W. 379.
(*o*) Wat. Sh., 2nd ed., 309.
(*p*) Dalt. 136.
(*q*) Phillips *v.* Evans, 1 C. & M. 450.

such a trust as could be extended upon an *elegit* against E. G. (*r*).

Trust property.

A judgment affects the legal estate of a party as soon as it is signed; but it affects only such trust property as the debtor is possessed of at the time execution is issued out (*s*); such trust property cannot, therefore, be taken under an *elegit* sued out after a conveyance of it, grounded on a judgment signed before such a conveyance (*t*).

Power of appointment.

In 1822, an estate was conveyed to such uses as A. should by deed appoint, and, in the meantime, to the use of himself for life. In 1826, a judgment was obtained against him, and in 1827 he mortgaged this estate, and appointed the use to C. D. for 500 years. After the execution of this deed, the judgment creditor issued an *elegit*, but it was held that his *lien* upon the land was defeated by the execution of the power (*u*).

Rent.

When rent becomes due after the delivery of the writ to the sheriff, but before the inquisition is taken thereon, the execution creditor is not entitled to the rent (*x*).

Remainder.

An estate in remainder belonging to an infant cannot be taken (*y*): James, L. J., in the case of *In re* Smith, said, "the sheriff is only empowered to seize those lands of which the debtor is 'seised or possessed,' for those are the words of s. 11 of 1 & 2 Vict. c. 110. A man cannot be 'seised or possessed' of a remainder."

Equity of redemption.

Neither a reversion, nor an equity of redemption, whether of a freehold estate or of a term of years, can be taken under an *elegit*.

Mortgaged estates.

By the statute 18 & 19 Vict. c. 15, s. 11, no legal or equitable estate or interest, nor any disposing power in or over lands, vested in a purchaser or mortgagee for valuable consideration can be taken in execution under any writ of *elegit* or other writ of execution, or rendered liable

(*r*) Hull *v.* Greenhill, 4 B. & Ald. 684.
(*s*) 29 Car. 2, c. 3, s. 10.
(*t*) Harris *v.* Pugh, 4 Bing. 335; 12 Moore. 577.
(*u*) Wigan *v.* Jones, 10 B. & C. 459.
(*x*) Sharp *v.* Key, 8 M. & W. 379.
(*y*) *In re* Smith, L. R. 9 Ch. 373.

under any judgment against any mortgagee who shall have been paid off before or at the execution of the conveyance to such purchaser or mortgagee (*a*).

Mortgaged lands.

When the debtor has goods and lands which are mortgaged, the sheriff may take the goods, but not the lands. The jury must find *no lands* (*b*).

Equitable execution.

Since the coming into operation of the Judicature Act, 1873, it is not necessary for a judgment creditor, who seeks to obtain equitable execution of the judgment debtor's equitable interest in land, previously to sue out an *elegit* (*c*).

The appointment of a receiver of the rents of land at the instance of a judgment creditor, though conditional upon the receiver's giving security, operates as an immediate delivery of the land in question.

When the security is afterwards given the order relates back to the date when it was made.

Mortgage of leaseholds.

Thus, a judgment creditor became the transferee of a mortgage of leaseholds belonging to the judgment debtor. He then commenced an action in the Chancery Division, claiming an account and payment of what was due to him on both mortgage and judgment, or a sale of the property and payment out of the proceeds, and further, the appointment of a receiver. On the same day he obtained *ex parte* an order extending over eight days, appointing an *interim* receiver of the rents, without security.

On the eighth day he obtained, on notice, an order absolute for the appointment of the same person to be receiver of the rents, upon his giving security. On the same day the debtor filed a liquidation petition, and a receiver of his property was appointed by the Court of Bankruptcy. It did not appear which receiver was appointed first. The receiver in the action never gave security. The creditor had not sued out an *elegit*.

It was held, affirming the judgment of Bacon, C. J.,

(*a*) See Greaves *v.* Wilson, 4 Jur. N. S. 802.
(*b*) See Hatton *v.* Haywood, 22 W. R. 53.
(*c*) *Ex parte* Evans, *In re* Watkins, 13 Ch. D. 252.

that the appointment of the receiver in the action was such a delivery in execution by lawful authority of the mortgaged lands, within the meaning of the 27 & 28 Vict. c. 112, s. 1, as to render the judgment creditor a secured creditor within the meaning of section 16, sub-s. 5, of the Bankruptcy Act, 1869, and that he was entitled to hold the lands as a security for his judgment debt as well as for his mortgage debt (*d*).

What is equitable execution.

An order appointing a receiver, amounts to equitable execution (*e*), and is equivalent to execution under a writ of *elegit* in respect of legal interests, and is an actual delivery in execution within the meaning of the 27 & 28 Vict. c. 112, s. 1 (*f*).

It is not a contempt of Court for an execution creditor to seize chattels after an order has been made by the Chancery Division appointing a receiver on his giving security, but before the security had been given, or possession taken (*g*).

Equity of redemption.

Prior to the Judicature Act, neither the Court of Queen's Bench nor the Court of Chancery could have made an order for the appointment of a receiver, with the view of obtaining equitable execution of a judgment against an equity of redemption; but by section 25, sub-s. 8, of the Judicature Act, 1873, a receiver may be appointed by an interlocutory order of the Court "in all cases in which it shall appear just and convenient." These words have been held to include the appointment of a receiver to an equity of redemption (*h*).

Interlocutory order.

Interlocutory order there means an order other than a final judgment or decree in an action (*i*).

(*d*) *Ex parte* Evans, *In re* Watkins, 13 Ch. D. 252.

(*e*) Hatton *v.* Haywood, L. R. 9 Ch. 229. Anglo-Italian Bank *v.* Davies, 9 Ch. D. 275.

(*f*) *Ibid.*—Thesiger, L. J.

(*g*) Edwards *v.* Edwards, 2 Ch. D. 291 (explained by James, L. J. in *Ex parte* Evans, *In re* Watkins, 13 Ch. D. 252). The case related to chattels, not to land.

(*h*) Smith *v.* Cowell, 6 Q. B. D. 75; and see Anglo-Italian Bank *v.* Davies, 9 Ch. D. 275—Jessel, M. R.

(*i*) *Ibid.*—Brett, L. J.

In an action on a lease, the defendant pleaded, that, before the lease, P. impleaded the plaintiffs, and had judgment of *elegit* on the lands; that the plaintiffs were found by the inquisition to be seised of the premises, which were leased to B. for seven years, subject to two mortgages; that the sheriff delivered the premises to P. to hold until the damages should be fully levied; that, before any rent became due, P. by virtue of the delivery to him, ejected, expelled, and put out the defendant therefrom. The plaintiffs traversed the eviction in the words of the plea. It was proved at the trial that P. demanded rent of the defendant, and threatened if he did not pay to turn him out; whereupon the defendant paid P. three quarters of a year rent, and attorned to him without the plaintiff's knowledge. It was here held that P., having merely a reversion expectant on the determination of the mortgage terms, had no title to evict the defendant; that the attornment was immaterial, and that the plaintiffs were entitled to succeed on that issue, the expulsion, as pleaded, not having been established by the evidence (*k*).

Elegit for part of sum recovered.

An *elegit* cannot be sued out for part only of the sum recovered by a judgment, unless it shews on the face of it that the residue of the judgment has been satisfied or otherwise disposed of (*l*).

A tenant by *elegit* took a conveyance of part of the lands extended, in satisfaction of part of his debt, and it was held that his tenancy by *elegit* on the rest of the lands was extinguished, and that his judgment was satisfied (*m*).

Where interest in land is not clear.

Where it is not clear that a debtor has any saleable interest in land taken in execution by his judgment creditor, the Court will not order an immediate sale, under 27 & 28 Vict. c. 112, s. 4, but will direct inquiries as to the nature of the debtor's interest.

(*k*) Poole (Mayor) *v.* Whitt, 15 M. & W. 571; 16 L. J. Ex. 229.

(*l*) Sherwood *v.* Clarke, 15 M. & W. 764.

(*m*) Hele *v.* Bexley (Lord), 17 Beav. 14; 22 L. J. Ch. 1004.

Railway company.

It would appear, therefore, that the interest of a railway company in its railway is not saleable under that section (*n*).

Upon petition by a judgment creditor of a railway company who had extended the lands (including superfluous lands) of the company under an *elegit*, for a sale under the Judgment Law Amendment Act, 1864, the Court directed (1) inquiries, and (2) in default of payment of the debt and costs within a month of the date of the certificate, a sale under the direction of the Court of the interest of the company in the lands, or so much thereof as might be necessary to satisfy the petitioner's claim (*o*).

Chattels.

Whatever may be taken as goods and chattels under a *fi. fa.* may be taken under that part of the writ of *elegit* which relates to the taking of the goods of the defendant, and no more (*p*).

Generally all lands may be extended.

It may be taken, generally, that all lands are extendible, whether in fee, in tail, for life or for years, copyhold, customary joint tenancy, tenancy in common, coparcenary, in severalty, or in reversion, and (as will be seen hereafter) trust estates as well as legal (*q*).

Wife's lands.

The wife's lands which the husband has during coverture may be extended (*r*).

Land conveyed to local board of health.

Land which had been conveyed to a local board of health for the purposes of the Public Health Act, was used as a reservoir for the supply of water to the district of the local board. A judgment having been obtained against the local board in the name of their clerk, it was held, that the land was liable to be taken under a writ of *elegit* (*s*).

Estates granted by Crown liable.

A mansion-house excepted from the leasing power of a tenant for life is subject to execution at the suit of his creditors during his life; and estates granted by the Crown

(*n*) *In re* Bishop's Waltham Ry. Co., 2 Ch. 382.
(*o*) *In re* Hull and Hornsea Ry. Co., 2 Eq. 262.
(*p*) Wat. Sh., 2nd ed., 307.
(*q*) 8 Anne, c. 14, s. 1. 1 & 2 Vict. c. 110, s. 11.
(*r*) Dalt. 136.
(*s*) Worral Waterworks Company *v.* Lloyd, L. R. 1 C. P. 719.

for the maintenance of dignities, with reversion to the Crown, have the usual incidents, and may be taken in execution (*t*).

Second *elegit.*

When lands are extended under an *elegit*, there is no interest in them left in the debtor which can be extended under a subsequent writ (*u*).

A creditor issued three *elegits* under three judgments, and the sheriff, by virtue of the first two, extended the whole of a leasehold estate, and returned *nil* to the third. The first two judgments being adjudged to have been satisfied at the time, it was held that the creditor acquired no right under his *elegits* (*x*).

A. being entitled to three annuities secured by covenant and judgment, received for twenty years part of the rents of the grantor's estates under *elegits* issued on satisfied judgments; it was held, notwithstanding, that he was not accountable to a party having a charge on the estate who had taken no proceedings to obtain possession (*y*).

Landlord's claim for rent.

When goods are taken on an *elegit*, the landlord is entitled to a year's rent, in the same manner as when goods are taken on a *fi. fa.* (*z*).

Lien to judgment creditor.

A judgment creditor has no *lien* upon the land of his debtor until he has got a return from the sheriff, though he may, after putting the writ in the hands of the sheriff, and before the return, have a right to file a bill to remove a legal impediment.

Priority of writs of *elegit.*

Priorities of judgment creditors against lands are determined by the date at which the writs issued upon their judgments are placed in the hands of the sheriff. A judgment creditor, therefore, subsequent in point of date, but who was the first to place his writ in the hands of the sheriff for the purpose of getting the lands of the debtor extended under such writ, was held entitled in priority to

(*t*) Davis *v.* Marlborough (Duke), 2 Swans. 122.
(*u*) Carter *v.* Hughes, 2 H. & N. 714; 27 L. J. C. P. 225.
(*x*) Hele *v.* Bexley (Lord), 17 Beav. 14; 22 L. J. Ch. 1007.
(*y*) *Ibid.*
(*z*) Bro. Elegit. 13.

a prior judgment creditor whose writ was subsequently placed in the sheriff's hands before the lands were extended (*a*).

Return to Writ.

Writ to be returned.

The writ of *elegit* must, in all cases, be returned, if the sheriff has done anything under it, and it is essential that the *elegit* and the inquisition taken by the sheriff should be returned and filed, when land is extended by the writ (*b*), otherwise the tenant by *elegit* would have no title. If the defendant has no land, the sheriff need not return the inquisition at all (*c*), the proper return being *nihil* (*d*).

Where sheriff returns *nihil*.

If the sheriff return *nihil* to a writ of *elegit*, the plaintiff formerly could sue out a *ca. sa.* (*e*); if nothing has been done or returned on an *elegit*, the plaintiff may have a writ of *fi. fa.* (*f*), but, when an *elegit* is extended upon the land of the defendant, and returned and filed, it is considered in law as a full satisfaction and end of the suit (*g*).

Mandavi ballivo.

Mandavi ballivo is a good return to an *elegit*. If a sheriff extends the lands of the defendant, but is unable to deliver them to the plaintiff, because a third party has them in extent already, a return to this effect is good. The Court will not alter the return of an *elegit* to a later day, at all events, at the instance of the sheriff, without the consent of the plaintiff (*h*).

On the 4th of February, 1840, judgment was signed against the defendants in an action of debt, at the suit of A., B., and C., assignees of D., a bankrupt. C. (who was the official assignee under the *fiat*) died in February, 1848. On the 4th April, 1849, an *elegit* was sued out at the suit of A., B., and C., without any *scire facias* or suggestion

(*a*) Guest *v.* Cowbridge Ry. Co., 6 Eq. 619.
(*b*) Hoe's Case, 5 Rep. 90. Wat. Sh., 2nd ed., 315.
(*c*) Stonehouse *v.* Owen, 2 Stra. 874.
(*d*) Wat. Sh., 2nd ed., 315. Hildyard *v.* Baker, 1 C. & M. 611.
(*e*) Knowles *v.* Palmer, Cro. Eliz. 165.
(*f*) Cooper *v.* Langworth, Moore, 545.
(*g*) Crawley *v.* Lidgeat, Cro. Jac. 338.
(*h*) Hildyard *v.* Baker, 1 C. & M. 611.

of the death of C., or of the appointment of his successor, who was stated in the *affidavit* to have been duly appointed the official assignee of the estate and effects of D., on C.'s death. The *elegit* was here held to be regular, in thus following the judgment; but the *affidavit* was held to be essentially defective in not showing in precise terms that the appointment of the new assignee took place before the issue of the *elegit* (*a*).

Poundage on an *elegit*.

Under 28 Eliz. c. 4, the sheriff is entitled to poundage on an *elegit*, *i.e.*, one shilling in the pound on the first £100, and 6*d*. per pound afterwards. The tenant by *elegit* only has his land until his debt be levied; when the defendant has paid the debt, he may re-enter on his land. In a Court of Equity, in taking account of the profits of the land, the plaintiff is entitled to interest upon his judgment beyond the sum recovered by his judgment (*b*).

In every case of *elegit* the plaintiff may levy the poundage, fees, and expenses of execution, over and above the sum recovered (*c*). But the sheriff is not entitled to poundage if he does not extend the lands.

The sheriff, under a second *elegit*, at the suit of the same execution creditor, made at his request a special return, extending the same lands subject to the first extent. The sheriff was held not to be entitled to poundage on the second writ, although the amount of the first writ was less than the annual value of the lands (*d*).

For instructions as to execution of writs generally, see Orders 42 and 43 of the Judicature Act, 1875 (*e*).

(*a*) Rolt *v.* Gravesend (Mayor), 7 C. B. 777.
(*b*) Godfrey *v.* Watson, 3 Atk. 517.
(*c*) Judicature Act, 1875, Order 42, r. 13; and Common Law Procedure Act, 1852, s. 123.
(*d*) Carter *v.* Hughes, 2 H. & N. 714.
(*e*) *Vide ante*, pp. 194—201.

CHAPTER XXIII.

WRIT OF EXTENT.

Against body, lands and goods of Crown debtor.

THIS is a writ of execution against the body, lands, and goods, or the lands and goods only, of a Crown debtor (*a*); and is the peculiar remedy to recover debts of record due to the Crown. It differs from an ordinary writ of execution at the suit of a subject, because under it the body (*b*), lands, and goods of a debtor may all be taken at once, in order to compel payment of the debt (*c*). Extents are of two kinds:—

(1) In chief. (2) In aid.

(1) In chief (this may be in the first or second degree); and

(2) In aid. This latter writ, which was at the instance and for the benefit of a Crown debtor, or his surety, against a person indebted to himself, is now practically obsolete (*d*).

Rule of Court on extents in aid.

A general order was issued on Saturday, June 22nd, 1822, with reference to the issuing of extents in aid, as follows:—

"Upon the motion of Mr. Attorney-General, it is ordered, that, from henceforth, no *fiat* for an extent in aid shall be granted, unless the party applying for the same, or some person or persons on his behalf, shall make *affidavit*, that, "unless the process of extent for the debt due to him from his debtor be forthwith issued, the debt

(*a*) Wat. Sh., 2nd ed., 355. For forms of writ see Appendix.
(*b*) 57 Geo. 3, c. 117, s. 6, provides for the discharge of persons imprisoned under extents in aid.
(*c*) Wh. L. L. 5th ed., 369.
(*d*) 57 Geo. 3, c. 117.

due to the Crown from the party applying will be in danger of being lost to the Crown." Since this order was made, extents in aid have fallen into disuse, not a single extent in aid having been issued in connection with the excise department (*a*).

Distinction between extent in aid and extent in second degree.

The distinction between an extent in aid, and an extent in chief in the second degree, is, that the extent in aid is where the extent is issued at the instance of a debtor to the Crown against one who is a debtor to him, in order that by payment of the debt due to him he may be enabled to pay or aided in paying the debt due to the Crown, whilst an extent in chief in the second degree is a hostile proceeding at the instance of the Crown against the debtor of the Crown-debtor, against whom an extent in chief has also issued (*b*).

Effect of extent in chief in second degree.

This extent, however, at the suit of the Crown, against the debtor of the Crown debtor, does not have, before inquisition taken, the effect of depriving the Crown debtor of his right to sue his debtor on his own account, or to receive from him the amount of the debt; and, in an action commenced after an extent issued against the debtor of a Crown debtor, but before the taking of an inquisition under it, and proceeded in by the assignees of the plaintiff (who had in the meantime become bankrupt), in his name, after the inquisition had been taken, and the debt sued for had been seized under it into the hands of the Crown, and an *amoveas manus* (*c*) issued, on the application of the bankrupt after issue joined, it was held that the action had been properly proceeded in, and a rule for setting aside the verdict, and entering a nonsuit, which had been granted on the ground that the plaintiff had no right to continue the suit under such circumstances, was discharged by the Court (*d*).

Bankruptcy in extent.

Writ of *amoveas manus*.

(*a*) B. & D. 133.
(*b*) Rex *v.* Shackell, 11 Price, 772.
(*c*) This writ, which is very rarely issued now, has the effect of restoring the party to the lands, &c., seized.
(*d*) Lakeman *v.* McAdam, 8 Price, 576.

writ *diem clausit extremum*, which issues in the f the death of a Crown debtor, and recites the f the party, is somewhat rare. Writ *diem clausit extremum.*

"*How executed.*"

xtent in chief is an extent in which the Crown is as well as the nominal plaintiff, which is sued out immediate benefit of the Crown, and is for the r of the Crown's debt, whether it be against the original debtor, or the debtor of that debtor, or a in a more remote degree (*z*). The term *writ of* taken from the direction to the sheriff, *extendi* which requires him to appraise the lands, &c., at ll extended value. Extent in chief.

appraisement must be performed by a jury of men, summoned for the purpose by the sheriff; is is done, the sheriff returns the writ, with the ion annexed, to the Court (formerly to the Ex- Division exclusively), which issues out a *venditioni* for the *sale* of the goods. How executed. *Venditioni exponas.*

case, however, where a party claimed goods seized sheriff, the Court admitted the claimant to enter m and traverse the inquisition after a *venditioni* had been executed, where the claimant's attorney taken his course, and brought an action against riff, instead of having claimed and traversed on t of costs (*a*). Party claiming after time expired.

sufficient, if a defendant claiming goods under an traverses the property being in the debtor to the lebtor at the time of the seizure, or of the taking nquisition, and it is not necessary to say that the r was not in the debtor at the time of the issuing xtent (*b*). When claim to be made.

es claiming goods which have been found by in- n to be the property of a defendant under an Claimants must show title.

(*z*) See West on Extents.
(*a*) Rex *v.* Randell, 5 Price, 576.
(*b*) Rex *v.* Lambton, 5 Price, 421.

extent, must show title in themselves, and cannot, unless that title is admitted on the record, object on demurrer to the proceeding on the extent (*c*).

Lapse of time for pleading.

Where a defendant had let the time within which he ought to have pleaded pass by without doing so, the Court refused to give him leave to traverse an extent, on the failure of a motion to set aside the proceedings (*d*).

Scire facias.

The writ ought to be preceded by a *scire facias*, in order to bring the debtor into Court, and afford him an opportunity of showing cause against it; but, if the debt is in danger of being lost, a *scire facias* will not be necessary,

Immediate extent.

and an *immediate extent* may issue on an *affidavit* of debt and danger (*e*).

Procedure.

Fiat for extent.

If the judge is satisfied that there is a Crown debt, and that there is danger of its being lost, he signs a *fiat* for an extent, which on that authority issues. The writ is tested on the day the *fiat* is signed, if issued within twenty-one days afterwards, but it cannot be antedated (*f*).

Teste of writ.

Any number of writs may be issued with the same *teste;* but, if a whole term has intervened between the granting the *fiat* and the issuing of the writ, a motion in Court is necessary for a new writ of the former *teste;* otherwise it must be tested on the day of issue (*g*).

An informality in the *teste* may be amended (*h*).

Return of writ.

Writs of extent are returnable in vacation under 5 & 6 Vict. c. 86, s. 8 (*i*).

Pleadings.

A plea stating that the defendant accepted a bill drawn upon him by the original debtor, which did not become due till after the inquisition was taken, is good (*k*).

A defendant cannot enter a claim and traverse an inquisition after he has moved to quash the proceedings

(*c*) Rex *v.* Soulsby, 1 Y. & J. 249.
(*d*) Rex *v.* Gibbs, 7 Price, 633.
(*e*) Wh. L. L. 6th ed., 369.
(*f*) Rex *v.* Maberly, 2 Dowl. 383; 2 C. & M. 536; 4 Tyr. 45.
(*g*) B. & D. 128, *n.*
(*h*) *Ibid.*
(*i*) Reg. *v.* Renton, 2 Exch. 216; 5 D. & L. 750; 17 L. J. Exch. 264.
(*k*) Rex *v.* Dawson, Wightw. 32.

a *affidavits* which have been satisfactorily answered; and rule which had been obtained for that purpose was there-re discharged (*l*).

The proceedings by *scire facias* are regulated by 22 & 3 Vict. c. 21, and the rules of Court. *Scire facias* thereon.

Where a *scire facias*, founded on an inquisition, mis-cites the inquisition, and therefore fixes by such recital day on which the debt had been found to be due differ-g from the true day named in the inquisition, the Court ill give leave to amend the writ on payment of the costs, ven after the defendants have pleaded (*m*). Misrecital of inquisition.

If, however, an inquisition to find debts were taken in cation, returnable in the following term, and a *scire cias* issued thereon tested as of the term preceding the cation, the Court would set it aside for the repugnancy hich must appear on the face of the record; nor would e Court allow it to be amended by the insertion of the ue dates, by means of a memorandum on the record (*n*). Misrecital as to inquisition in vacation.

The *affidavit* of danger for obtaining an immediate tent should contain not only a general allegation of e defendant's supposed insolvency, but also some rticular fact or reason for the supposition, as, *e.g.* at the Crown's debtor has "stopped payment," "absconded," "committed an act of bankruptcy," &c. (*o*). When the debt is on a bond, the *affidavit* usually includes roof of the execution of the bond and breach of the ndition; and, when the debt is on a simple contract, the bt is sworn to in nearly the same terms as the finding der the inquisition. The *affidavit* may be sworn before y judge, or a commissioner for taking *affidavits* in the een's Bench Division (*p*). *Affidavit* of danger.

Where there was no judgment, it was formerly the rule issue a commission to ascertain what debt was due to Commission not necessary

(*l*) Rex v. Bickley, 4 Price, 323.
(*m*) Rex v. Scott, 4 Price, 181.
(*n*) Rex v. Pearson, 3 Price, 288.
(*o*) B. & D. 127, *n.* Rex v. Smith, Bunb. 300. Smith v. Enderopt, Bunb. 134.
(*p*) B. & D. 128, *n.*

for immediate extent.

the Crown; but, by the statute 28 & 29 Vict. c. 104, s. 47, subject to the alterations effected by the Judicature Acts, a commission to find a debt due to the Crown is not necessary for the authorization of the issue of an immediate extent; an immediate extent may instead be issued on an *affidavit* of debt and danger (*c*), and a writ of *diem clausit extremum* may be issued on an *affidavit* of debt and death, together with the *fiat* of the Chancellor of the Exchequer, or of a judge of the Queen's Bench Division of the High Court of Justice, and an immediate extent is still issuable on this authority.

Affidavit to obtain judge's *fiat*.

It is not necessary in the *affidavit* made for obtaining a judge's *fiat* for an extent in chief in the second degree, that there should be any averment of insolvency of the Crown debtor, or that there should be any fact stated from which it may be inferred (*d*), nor is it necessary in such a case to deny collusion (*e*).

Option of Crown.

The Crown has no option to proceed either by extent or *scire facias*, where the debtor is not insolvent (*f*).

New writ cannot be of same date as former.

The Court will not grant a new writ of extent of the date of a former, tested between eight and nine years before, on the ground that the defendant had been since found to have been further indebted to the Crown, and to have had at the time of issuing the first extent property not then known to belong to him; even although his goods and chattels seized and sold under that writ produced only so much as would satisfy but a very small part of the Crown's original debt: a new writ of present *teste* should be issued, which may be done at any time, on application to a judge, in a case where, while the Crown debt remains unsatisfied, the defendant becomes possessed of newly acquired property (*g*). An *affidavit*

Where defendant acquires new property.

Affidavit

(*c*) Similar to the *affidavit* of debt and danger, or of debt and death, on which, after inquisition returned, an immediate extent or a writ of *diem clausit extremum* had previously been issued.

(*d*) Rex *v.* Shackell, 11 Price, 772.

(*e*) *Ibid.*

(*f*) Rex *v.* Thompson, 3 Price, 278.

(*g*) Rex *v.* Harvey, 7 Price, 238.

for an immediate extent in chief against a bond debtor to the Crown should contain a distinct positive and unequivocal allegation of a breach of the bond; and, consequently, where the allegation of the breach in the *affidavit* was ambiguous, an extent issued against one of the obligors was set aside. But, where the extent is issued against a surety, the *affidavit* need not state that application has been made to the principal debtor for payment or that he is in decayed and insolvent circumstances (*h*).

For immediate extent on a bond.

Extent against surety.

After a defendant has obtained time to plead he cannot object to the *affidavit* on motion (*i*).

Objection to *affidavit*.

An application to discharge a defendant in prison under an extent for duties in his hands (being a part of money received by him for premiums and duties on policies as agent for an insurance company), on the ground of his having been arrested by the company for the whole balance due to them from him, including such duties, prior to the issue of the extent, and that he was afterwards discharged under the Insolvent Act as to such debt, was refused, by discharging a rule to show cause; the Court holding that such a ground raised a question of merits which could not possibly be brought before them except by traversing the inquisition, and that they could not set aside an extent *quia improvide emanavit*, on motion, on a statement of such facts by *affidavit* as would amount to a defence (*k*).

Application to set aside extent.

After the sheriff's return, the debtor, if he dispute the debt, or a third person, if he claim the property set forth in the inquisition, may enter an appearance and plead to the extent; issue is then joined, and it is decided, either on demurrer, or by a trial before a jury. If judgment be given for the defendant or claimant, it is an award of *amoveas manus*. Error will lie on the judgment, provided the Attorney-General consent to the proceedings (*l*).

Entering appearance.

(*h*) Rex *v.* Marsh, McClel. 688; 13 Price, 826.
(*i*) Rex *v.* Rippon, 3 Price, 38.
(*k*) Rex *v.* Seton, 8 Price, 671.
(*l*) Wh. L. L. 6th ed., 369.

Teste of writ.

The writ may bear *teste* on any day certain in term or vacation (*m*).

Warrant to officer.

When the sheriff receives the writ, he should cause a warrant to be made under his seal, to an officer, to take the defendant and seize his goods, according to the exigency of the writ (*n*).

Door may be broken.

If necessary, an outer door may be broken open, and, when once in, the officer may break open inner doors.

Entering a liberty.

As the writ of extent contains a *non omittas* clause, the sheriff may enter a liberty to execute it (*o*).

Crown debtor cannot be admitted to bail.

If the sheriff takes the body of the debtor, he cannot admit him to bail, the extent being an execution, and not a *mesne* process; and, since the prerogative of the Crown is not affected by the Bankruptcy Act, 1869, a bankrupt may be arrested on an extent during his privilege.

Not usual to take body.

It is not now, however, usual to take the defendant's body under this writ, and, in a case where a defendant was taken into custody under an extent, where the sheriff had also seized property sufficient to cover the demand, the defendant was ordered to be discharged (*p*).

Sheriff to seize all goods.

The sheriff must seize all the defendant's goods and chattels, but not sell them till further commanded (*q*).

In the case of seizing goods, the sheriff must hold an inquisition, in order to find out whether the defendant has any further property.

Summons.

A summons should be issued to the defendant and his debtors, to appear and disclose the nature of their property, debts, &c., and to all other persons who can give any evidence as to the defendant's property (*r*).

Penalty for disobeying summons.

The penalty for disobeying this summons is attachment.

If the sheriff refuses to allow all competent witnesses

(*m*) 5 & 6 Vict. c. 86, s. 8.
(*n*) Semayne's case, 5 Rep. 92.
(*o*) Wat. Sh., 2nd ed. 59.
(*p*) Rex v. Kinnear, 3 Price, 566; and see Rex v. Plaw, 3 Price, 94.
(*q*) See Writ, Appendix, p. 549.
(*r*) Wat. Sh. 2nd ed., 370.

o be examined, or does not conduct the iuquisition pro-erly, the Court will quash the inquisition (*s*).

In the findings, every fact should be stated with pre- Findings of jury.
ision, and the lands particularly described; an inquisition, moreover, finding special matter, without stating any conlusion as a fact, is bad, and may be quashed on motion (*t*).

The inquisition is not wholly an *ex parte* proceeding, nd a claimant of property in the goods inquired of may ssert his claim before the sheriff, and put material questions to witnesses examined by him on the part of the rosecution, in the way of cross-examination, to show that he goods belonged to him; and, if the sheriff refuses to llow such interrogatories to be put, the Court will, as in he case where a sheriff refuses to allow competent witesses to be examined, or otherwise misconducts himself n the inquiry, set aside the extent and inquisition (*u*).

Extents in chief take place *inter se*, accordiug to their Priority of writs of extent.
ate. An extent in chief, finding the same goods found pon a former extent in aid, was always preferred and aid before it (*x*). Similarly, after the sale of goods on an xtent in aid, and before the payment over of the money, f an extent in chief came, and the same goods were found n the inquisition, the extent in chief was preferred (*y*).

But now that extents in aid have become practically bsolete, the record of the preference accorded to the xtent in chief is mainly interesting as explaining the urvival of the latter, when the former has fallen into isuse.

It is important, in the consideration of the effect of What will create a debt to the Crown.
his writ, to ascertain what will and what will not create debt for the Crown, and for that purpose to consider wo or three instances where the question is raised.

Where a bankrupt, having been appointed guardian to Recognizance by
minor, entered into a recognizance, with sureties, to

(*s*) Rex *v.* Bickley, 3 Price, 454.
(*t*) *Ibid.* Rex *v.* Sherwood, 3 Price, 269.
(*u*) Wilde *v.* Forte, 4 Taunt. 334.
(*x*) Parker, 281.
(*y*) Parker, 282.

guardian of minor.

account for the property, and a petition was presented by the sureties, praying that certain mortgaged lands belonging to the bankrupt might be sold in order to discharge the mortgage debt, and the residue applied to satisfy the debt due upon the recognizance, on the ground that the debt upon the recognizance was a debt upon record due to the Crown, it was held that the debt upon the recognizance was not a debt due to the Crown, nor one which would warrant the issuing of an extent upon it, as it was not a public debt, and the form of the security did not alter its nature. Had it, however, been a debt due to the Crown, the proper course would have been for the party to issue an extent upon it, and not to seek his remedy by summary proceedings in bankruptcy (*c*). It follows, therefore, that, whether a debt is of record or not, an extent must issue, in order to bind the land.

Duties due to the Crown.

A person who has received money for duties and premiums on behalf of an Insurance Company, is a debtor to the Crown, and is liable to an immediate extent for the duties; the fact that he is liable to the company for the premiums and duty does not exonerate him, even though the company may have taken security for the amount, and are themselves liable to the Crown (*d*).

Person employed in negotiation of Bank of England notes for Pay-master-General.

A person who was employed in the service of the Crown as Deputy Commissary-General to the forces abroad, and Assistant Commissary in the islands of Guernsey and Alderney, being employed in the negotiation of Bank of England notes received from the Pay-master-General of the forces, and of bills of exchange received from the Treasury on account of the public service (having also received specie on the same behalf), is accountable to the Crown, and is for that purpose an accountant within the meaning of the statute 13 Eliz. c. 4, s. 1; his lands, therefore, of which he was seised at the time of his accountability, are bound by his engagement with the public, and subject to extent for security

(*c*) *Ex parte* Usher, 1 Rose, 336; 1 Ball & B. 197, 199.
(*d*) Rex *v.* Wrangham, 1 C. & J. 408; 1 Tyr. 383.

and payment of the balance ultimately declared against him (*e*).

The statute 13 Eliz. c. 4, s. 1, requires that lands purchased by accountants, in the names of others, shall be liable for the accountants' debts to the Crown, whether such land be purchased for the use and profit of the debtor or of any other person, and the manner of purchase and the question of profits and uses are to be ascertained by inquisition. 18 Eliz. c. 4, s. 1.

Where an extent to find debts had been issued against the defendant, and an inquisition had been taken thereon, such proceedings were held to be no objection to a second extent and inquisition by the same Revenue Board against the same property on a *prior* claim (*f*); and a person claiming to be an incumbrancer on the lands seized by the Crown under the extent and inquisition against the Crown debtor, was held not to be entitled to notice of the holding of the further inquisition under the second extent against the same person on the similar charge of prior date; this, too, although on the first inquisition the jury had returned him as an incumbrancer on the estate found to belong to the debtor; the Court, further, refused an application on the part of the incumbrancer for an order that he might have notice of the holding of any further inquisitions (*g*). Second extent and inquisition for prior claim. Incumbrancer on lands seized.

For the finding and support of such proceedings, a statement that the party owes to the king a sum of money claimed to be due by him to the Crown, as the balance of his account delivered in upon oath to the Commissioners for auditing the public accounts, in his particular capacity, is a sufficient averment and finding of a debt due to the Crown (*h*). What constitutes sufficient finding of debt.

A bond to the Crown under 33 Hen. 8, c. 39, is sufficient to bind all lands of the obligor, over which he had Bond to Crown.

(*e*) Rex *v.* Rawlings, *Ex parte* Wilkinson, 12 Price, 834.
(*f*) *Ibid.*
(*g*) *Ibid.*
(*h*) *Ibid.*

a disposing power at the time he entered into the bond; and the giving of such bond is a voluntary act on the part of the obligor, and he cannot by a subsequent exercise of the power defeat the title of the Crown (*x*).

33 Hen. 8, c. 39.

The statute 33 Hen. 8, c. 39, provides generally for the recovery of bonds made to the Crown, and the manner in which such bonds are to be made.

Inquisition not to be lightly set aside.

An inquisition will not be set aside on trivial grounds; and, where an inquisition found A. to be indebted to B. and the other partners and proprietors of a certain society or company called the Kent Insurance Company, the Court declined to set aside the inquisition for uncertainty, holding that it was sufficiently certain without naming the individual members of such company, although they were not incorporated (*y*).

Inquisition taken under commission.

Upon a *scire facias* to recover money found due to the Crown for duties of customs by an inquisition taken under a commission to find debts, it appeared on the record that the commission, which was tested the 21st February, and returnable the 15th April, 1843, authorised the Commissioners to inquire "whether D. is now indebted in any and what sums of money." The inquisition was taken and returned on the 1st of March, 1843, and the jury found that D. was on the day of taking that inquisition indebted to the Crown £262 10*s.* 0*d.* for the duty of customs on silk imported by him between the 6th and 14th February, 1841, and that the sum and every part thereof still remained due and unpaid. This was held to be a good finding, and warranted by the commission. The *scire facias* was tested the 30th March, 1843, but it was held that its having issued before the return day was merely an irregularity, and not a ground of error (*z*).

Irregularity in issue of *scire facias*.

Evidence on inquisition in

In an immediate extent, on an inquisition to find debts, the jury may find the fact of a debt being due to the

(*x*) Ellis *v.* Reg. 6 Exch. 721,—Exch. Cham.; Reg. *v.* Ellis, 4 Exch. 652; 19 L. J. Exch. 77.

(*y*) Ramsbottom v. Rex. (*in error*), 7 Price, 570.

(*z*) Dean *v.* Reg. (in error), 15 M. & W. 475; 3 D. & L. 714; 15 L. J. Exch. 236.

rown, on the sole evidence of an *affidavit* that the debt due; and it is competent to the jury to find the debts ne to the Crown on any evidence that will satisfy them f the fact, and the Common Law rules of evidence are not bligatory on them (*a*). Immediate extent.

In the case of Rex *v.* Hornblower (*b*), which was a case ecided some twenty years before the authority on which ne above principle is based, and which was the authority lied upon against the Crown in the case of Reg. *v.* tyle (*c*), the interests of the Crown were not represented y its law officers, and the inquisition was only supported y counsel appearing on behalf of a private prosecutor. On these grounds, and because no reason was given by he Court for its decision, and that the reason advanced by the counsel in his argument did not satisfy the Court, inasmuch as it appeared that the evidence tendered was perfectly legal, and such as would have been admissible before a jury at *Nisi Prius*, consisting, as it did, of an *affidavit* by the debtor himself, that he owed the debt in question to the Crown, the Court declined, in the case of Reg. *v.* Ryle, to follow the precedent of Rex *v.* Hornblower. Rex. *v.* Hornblower. Reg. *v.* Ryle.

Where it appeared, in an inquiry under an extent, that the defendant had assigned all his property two days before the *teste* of the writ, by a deed, which was an act of bankruptcy, and upon which a *fiat* was issued before the *teste* of the writ, the sheriff returned that to the knowledge of the jurors the defendant had no goods. Upon an application by the Attorney-General, the Court ordered a writ *ad melius inquirendum* to issue, that the facts as to the assignment might be inquired into, and appear upon the inquisition, it being suggested that the Crown would be entitled to the goods as against the assignees (*d*). Return to writ. Writ *ad melius inquirendum*.

(*a*) Reg. *v.* Ryle, 9 M. & W. 227; 1 D. N. S. 431; 6 Jur. 238.
(*b*) 11 Price, 29.
(*c*) *Vide supra.*
(*d*) Reg. *v.* Jobling, 4 Exch. 483; 19 L. J. Exch. 14.

What may and what may not be taken under an extent.

All goods, except victuals, may be taken.

Under an extent all the goods and chattels of the defendant may be taken, excepting necessary victuals for the defendant and his family, and oxen and beasts of the plough (*y*).

Goods may be taken as under *fi. fa.*

Whatever under the denomination of goods and chattels may be taken under a *fi. fa.* may be taken under an extent.

Money.

Money may consequently be taken (*z*).

Goods fraudulently conveyed.

Goods fraudulently conveyed away before the *teste* of the extent to defeat the execution, may be taken as well under an extent as under a *fi. fa.* (*a*).

Debts due to defendant.

Debts due to the defendant are liable to a Crown extent (*b*); even in extents in aid debts to the third degree were liable, that is to say, those of the defendant's debtor's debtor, whether such be by simple contract or specialty (*c*).

Debts are bound from the *teste* of the writ of extent (*d*).

Under an extent against several, the debts due to any one may be seized, and, under an extent against one, debts due to him and others may be seized (*e*).

Specialties.

Specialties, the property of the defendant, may be taken (*f*).

The extent gives no power to the sheriff to collect the debts, but only to seize them. In practice, however, the sheriff receives such as are offered to him before the return of the writ (*g*).

If goods and chattels

"If," says Lord Coke (*h*), "the chattels be sufficient to pay the debt, and so may appear to the sheriff, whereby

(*y*) West, 172.
(*z*) *Vide* pp. 234—236.
(*a*) West, 115.
(*b*) Godb. 291.
(*c*) Wat. Sh., 2nd ed., 369. Parker, 259.
(*d*) West, 164.
(*e*) *Ibid.* 170.
(*f*) *Ibid.* 171.
(*g*) B. & D. 129, *n.*
(*h*) 2nd Inst., 395.

may satisfy the debt, then he ought not to extend the sufficient to satisfy debt.
ıd for the residue." But it seems that now the sheriff
ıy seize the lands, even although the goods are sufficient
satisfy the debt (*i*).

The lands of every person who has received money be- Lands.
ıging to the Crown, or for which he is accountable to
ə Crown, are liable to an extent, under 13 Eliz. c. 4,
d by the Common Law (*k*).

The freehold lands of the Crown debtor are liable, as Freehold lands.
ıo are the trust estates (as well as the legal) of the de-
ıdant (*l*).

A term of years may be either appraised as a chattel or Term of years.
tended as land under the extent (*m*).

An equity of redemption, or lands over which the Equity of redemption.
own debtor has power of revocation may be taken (*n*).
A receiver is now appointed to an equity of redemption,
der a judge's order; formerly it was by writ issued out
Chancery (*o*).

Where A. having, by marriage articles, dated in 1796,
venanted to settle lands to be purchased with a certain
m of money (to uses in strict settlement), but in 1808
tered into bonds to the Crown, and in 1812 purchased
ıds in fee, having a mortgage term assigned to a trustee
attend the inheritance, and the estate then settled to
e uses declared by the articles, under which he himself
ok only a life interest, it was held that the term did not
otect the inheritance of the fee against the Crown debt,
e settlement being voluntary (*p*).

Copyholds are not seizable (*q*). The 1 & 2 Vict. c. Copyholds.

(*i*) West, 80.
(*k*) Rex *v.* Collingridge, 3 Price, 280.
(*l*) Harbert's Case, 3 Rep. 12.
(*m*) Wat. Sh., 2nd ed., 361; Fleetwood's Case, 8 Rep. 179.
(*n*) Wat. Sh., 2nd ed., 367. Rex *v.* De la Motte, Forrest, 165. Ilis *v.* Reg. (in error), 6 Exch. 731—Exch. Cham. Affirming the ligment of the Court below, 4 Exch. 652; 19 L. J. Exch. 77. Rex Coombes, 1 Price, 207.
(*o*) Smith *v.* Cowell, 6 Q. B. D. 75.
(*p*) Rex *v.* St. John, 2 Price, 317.
(*q*) Rex *v.* Lord Lisle, Parker, 195.

110 (*r*), which made copyholds liable to an *elegit*, provided that any persons suing out execution, to whom any copyholds might be delivered in execution, should be liable to render the customary services to the lord of the manor. This the Crown could not do.

Lands, how bound as to time.

The lands are bound, as to time, according to the nature of the debt (*s*).

Where an execution which is by *elegit* is perfected and completed by delivery of the lands before the Crown's writ issued, then the subject's title is prior to the Crown, and is executed (*t*). So that *elegit* is preferred to Crown process, where judgment and execution have been executed on the *elegit*; but no inception of an execution can bar the Crown (*u*).

Goods pawned or pledged.

Goods pawned or pledged, or demised or lent, prior to the day of the *teste* of the writ of extent, for a term certain during the term, or wherever a third person, such as an agent or factor of the debtor, has a *lien*, cannot be taken, although it seems that on satisfaction of the pledge or *lien* they may (*x*).

Goods of bankrupt.

Goods vested in the assignees of a bankrupt previous to the day of the *teste* of the writ may not be taken; but, if an adjudication in bankruptcy and appointment of a trustee take place on the *same day* as an extent, the extent will prevail (*y*).

Goods assigned to creditors without fraud are not liable under an extent (*z*). If the Crown debtor has indorsed over a bill which is not due at the time of the inquisition, such debt should not be found (*a*).

Priority of Crown in winding up company.

Where a company is being wound up under the provisions of the Companies' Act, 1862, the Crown has a right

(*r*) S. 11.
(*s*) Wat. Sh., 2nd ed., 368.
(*t*) Attorney-General *v.* Andrew, Hard. 23. *per* Steel, C.B.
(*u*) Giles *v.* Grover, 1 C. & F. 72, *per* Patteson, J.
(*x*) West, 116.
(*y*) Rex *v.* Marsh, M'Clel. & Y. 250. Reg. *v.* Edwards, 9 Exch. 628; 23 L. J. Exch. 42; 2 C. L. R. 590; 18 Jur. 384.
(*z*) West, 115.
(*a*) Wat. Sh., 2nd ed. 369.

ent in full of a debt due from the company for
r tax before the commencement of the winding-up,
ity to the other creditors (*b*).

relation back of the title of the trustee, in a ion, to the filing of the petition, does not affect ts of the Crown under an extent issued against perty of the debtor between the filing of the and the appointment of a trustee (*c*). Over trustee in liquidation.

rithstanding, therefore, the filing of a liquidation , and the appointment of a receiver by the Court application of the debtor, his property remains n him as before, until the creditors have deter- what they will do, and the property is bound by nt issued by the Crown between the filing of the and the appointment of a trustee (*d*).

this it follows that though the Crown is named of the sections of the Bankruptcy Act, 1869, it is nd by others.

s seized under a *fi. fa.* at the suit of a subject are before sale, to be taken by virtue of the king's tested after the delivery of the *fi. fa.* to the e); this principle has been recognised and adhered ie Court of Exchequer as clear law, and, as it had n contradicted by later authority, although at with former determinations, the Court would not to be questioned on an interlocutory motion (*f*). Priority of Crown over execution of subject.

reement with the principle above laid down as to rity of the Crown over executions of the subject, se where writs of extent and *fieri facias* were gainst the goods of the defendant, tested on the Refusal of *venditioni exponas* to *fi. fa.* where extent has issued.

re Henley & Co., 9 Ch. D. 469.
parte Postmaster-General, *In re* Bonham, 10 Ch. D. 595,

d.
x *v.* Wells, 16 East, 278, *n.* Giles *v.* Grover, 1 C. & F.
L. & Scott, 197; 9 Bing. 128. Grove *v.* Aldridge, 2 M.
568; 9 Bing. 428; S. P. *contra*; Rorke *v.* Dayrell, 4 T. R.
1 Uppom *v.* Sumner, 2 W. Black. 1294.
ex *v.* Sloper, 6 Price, 114; and see Rex *v.* Osbourne, 6
; also, Stacy *v.* Hulse, 2 Dougl. 411; Butler *v.* Butler,
38; S. P. Attorney-General *v.* Aldersey, 1 East, 341.

same day, the Court refused to grant a writ of *venditioni exponas* on the return to the *fieri facias* (*g*), but allowed five days' time to the sheriff to make his return to the *fi. fa.* on the suggestion of the difficulty occasioned by the writ of extent being afterwards issued at the suit of the Crown, the rule for further time being granted on payment of costs (*h*).

Writ of error, while money is in sheriff's hands.

Similarly, where, on a judgment for the Crown in an action for penalties, an extent was issued, and a levy made by the sheriff, and whilst the money levied was in the sheriff's hands the defendant brought a writ of error, the Court, on application, ordered the money to be paid by the sheriff to the officer of the Crown, notwithstanding the objection made that, if the judgment were reversed, the party would not be able to obtain a writ of restitution, but would be driven to obtain a petition of right; the Court holding that the Crown could not be placed in a worse position than a subject in similar circumstances: the Court could not, moreover, take notice of the fact that greater difficulties existed in obtaining restitution from the Crown than from the subject (*i*).

Writ of restitution.

So that, although an execution at the suit of a subject may have been delivered to the sheriff *prior* to the receipt of the Crown extent, nevertheless, if the extent be delivered to the sheriff prior to the subject's sale, the Crown's debt must have precedence of the debt of the subject.

29 Car. 2, c. 3, s. 16.

The reason of this is, that the statute 29 Car. 2, c. 3, s. 16, which binds the defendant's effects from the time of the delivery of the writ to the sheriff, does not extend to the Crown (*k*).

Goods distrained for rent.

The preference accorded to the Crown cannot be defeated by a distress for rent (even although the goods have been actually distrained and appraised before the

(*g*) Rex *v.* Devon (Sheriff), 1 Chit. 643.
(*h*) *Ibid.*
(*i*) Rex *v.* Burns, 1 Y. & J. 579.
(*k*) Rex *v.* Mann, 2 Stra. 749.

teste of the writ, but are still liable to seizure for the Crown's debt), so long as they have not been actually sold (*l*).

The landlord is, moreover, not entitled to a year's rent under the first section of the statute 8 Anne c. 14, it being a generally established rule of law, that, in the construction of Acts of Parliament, the Crown, unless expressly named, is not included (*m*), and in this case the right of the Crown is expressly reserved to levy its debts as if the Act had not been passed (*n*). 8 Anne, c. 14, s. 1.

For the same reason, the statute 56 Geo. 3 c. 50, prohibiting the removal of straw, manure, hay, grass, &c., does not bind the Crown, nor does any covenant against such removal (*o*), but such crops, &c,, when seized under the prerogative powers, must be sold unconditionally. The sheriff cannot sell crops as subject to tithe, he must sell without any qualification (*p*). 56 Geo. 3, c. 50. Growing crops.

The execution of the plaintiff is, however, completed by the sale, after which no priority attaches to the Crown over the subject, even though the proceeds of the sale may remain in the hands of the sheriff: in a case, therefore, where a *fieri facias* issued at the suit of the plaintiff on Friday, the 14th of November, against the goods of J. S. (the sheriff seizing and selling part of the goods on Saturday, the 15th, and the remainder by 12 o'clock on Monday, the 17th), and after the goods had been delivered to and removed by the purchasers, but while the money arising from the sale remained in the sheriff's hands, viz. at 6 o'clock in the evening of the 17th, a writ of extent was delivered to the sheriff, upon which he handed over the money, it was held that the sheriff was not justified in so doing, and that, the execution of the plaintiff being completed by the sale, the plaintiff Crown has no priority after sale.

(*l*) Rex *v.* Cotton, Parker, 112, 141; and see Bunb. 42, 269; West, 101.
(*m*) Rex *v.* Cook, 3 T. R. 521—*per* Lord Kenyon.
(*n*) S. 8.
(*o*) Rex *v.* Osbourne, 6 Price, 94.
(*p*) *Ibid.*

might recover the amount arising from the sale from the sheriff in an action for money had and received (*q*).

Lien to the Crown.

In addition to the preference generally accorded to the Crown, the excise laws have given the Crown a specific *lien* on goods and materials liable to excise duties, and on vessels and utensils made use of in the defendants' excise manufactory, whether they are the property of the defendant or not (*r*) The statute 15 Car 2, c. 11, s. 13, gave a special *lien* on brewing vessels and utensils, and this was extended to other incidents by various other statutes, until ultimately the *lien* was extended to the goods and utensils of excise traders generally (*s*).

This *lien*, however, does not apply to goods which have been duly charged with duty, and afterwards sold in the ordinary course of trade (*t*).

Lien of Crown to override that of subject.

The *lien* of the Crown will override that of the subject (*u*). W. having made advances upon malt sent to him by A. for sale, claimed against the Crown, to whom A. was indebted for duties, a *lien* for the amount he had advanced. The malt having been seized under an extent, the solicitor of excise wrote to the collector, in substance as follows, "Sir, the Board has under their consideration the petition from W., and have ordered that the claim of W., as found by the jury on the sheriff's inquisition, should be allowed; you will, therefore, communicate this minute to W., and the undersheriff. The amount of W's *lien* is £2488 16*s.* 8*d.*, but you will satisfy yourself as to the correctness of this amount by examination. If the whole of parties interested consent to an immediate sale, and the undersheriff is satisfied with such consent, the undersheriff may at once sell. You had better attend and watch the sale, and as soon as the sales have been effected,

(*q*) Swain *v.* Morland, 3 Moore, 740; 1 B. & B. 370; Gow, 39.
(*r*) B. & D. 126, *n.*
(*s*) 28 Geo. 3, c. 37, s. 21; and 7 & 8 Geo. 4, c. 53, s. 28; 4 Vict. c. 20, s. 24; 25 Vict. c. 22, s. 8; and see 10 & 11 Will. 3, c. 21, s. 19; 10 Anne, c. 19, s. 25; 19 Geo. 2, c. 12, s. 28; c. 50, s. 10; 24 Geo. 3, st. 2, c. 24, s. 20.
(*t*) 4 Vict. c. 20, s. 24.
(*u*) Attorney-General *v.* Warmsley, *vide infra.*

u will acquaint me with the amount realized, and how :h amount has been disposed of, or is proposed to be. ıu will consult with the undersheriff and all other rties as to the best mode of sale, whether it is likely ıt as much will be obtained by a forced sale by public :tion, as by allowing W. to dispose of it in the market in ı ordinary course, when a favourable opportunity may sent itself." This letter was shewn to W., who sold the lt, with the consent of all parties, but whether for dy money or on bills did not appear. The Court ring afterwards decided that the *lien* of the Crown rrode that of the factor, the solicitor to the excise ıte to the collector, "no further steps must be taken ıecting the sale of the malt, or the appropriation of the ıeeds." That letter was shown to W., who, on the owing day, paid a sum to the undersheriff, as the ınce due to the Crown, after deducting the amount of own *lien*. Here it was held that the Crown was tled to recover the entire proceeds of the sale, upon an ırmation for money had and received, the facts not ıunting to an authority from the Crown to W. to ropriate them, or to payment by the Crown of his m (*x*).

The question, therefore, which was mooted, whether the wn can recover money paid under a full knowledge of circumstances, but in ignorance of the law, did not e, and was, consequently, not decided.

Where the adjudication in bankruptcy and the appoint- Bankruptcy of defendant.
ıt of an official assignee took place *at an earlier period* *the same day* on which a writ of extent was issued inst the bankrupt for a Crown debt, it was held that a tion of a day was not to be taken into account, and t the title of the Crown must prevail (*y*).

The *lien* of the Crown for duties in arrear attaches on Goods of

(*x*) Attorney-General *v.* Warmsley, 12 M. & W. 179; 13 L. J. h. 66.
(*y*) Reg. *v.* Edwards, 9 Exch. 32 (affirmed in error), 9 Exch. ; 23 L. J. Exch. 42; 2 C. L. R. 590; 18 Jur. 384—Exch. m.

bankrupt subject to duty.

the subject-matter in respect of which they arise, although process may not issue upon it, until after an assignment of it to a provisional assignee under an adjudication of bankruptcy (*z*).

Lien of Crown.

It has been held, further, that goods which have become chargeable to the Crown for duties cannot be discharged, except by an actual *bonâ fide* sale (*a*).

Lien divisible.

It would appear, however, that the *lien* of the Crown for duties in arrear is divisible, and confined to the several specific matters in respect of which the various sums of the duties have accrued, and that the whole is not liable generally to the satisfaction of the duties arising on each several part (*b*).

Lien for stage-coach duties in bankruptcy.

The statute 3 Geo. 4, c. 95, s. 10, gave a *lien* for arrears of stage-coach duties, upon the coaches and horses and harness employed therein, in respect of which the arrears of duty had accrued; but it was held that the *lien* attaching through the property passed to the assignees under a commission of bankruptcy (*c*); and, further, that the duties on each coach attached as a *lien* upon that coach, &c., only, and did not attach as a *lien* upon the general stock of coaches, horses, harness, &c. (*d*).

Title of Crown and debtor identical.

Although, therefore, the title of the Crown attaches from the *teste* of the writ, it is commensurate only with the interest of its debtor: and when, in another case, the debtor's interest was determined by the act of seizure under a claim of forfeiture in a lease, the title of the Crown was defeated by the same event (*e*).

Taxes discounted in bank.

A tax collector was accustomed to pay monies received on account of taxes to R., who paid the sum into his banker's to his private account, with knowledge of the banker that the same were blended with monies of R. Upon the banker becoming insolvent, it was held that an

(*z*) Rex v. Dale, 13 Price, 739.
(*a*) Attorney-General v. Tuxeman, 11 M. & W. 694; 13 L. J. Exch. 73.
(*b*) Rex v. Dale, 13 Price, 739.
(*c*) Ex parte Day, M'Cle. 354.
(*d*) Ibid.
(*e*) Rex v. Topping, M'Cle. & Y. 544.

extent in chief might issue against him for the recovery of the Crown monies, the amount being a question for the jury (*f*).

Interest on money in bank.

An extent in chief may also issue against a banker for the recovery of interest allowed by him on the half-yearly balance of a tax collector's account, in which his own and the Crown monies are blended together (*g*).

Banker's promissory note.

An extent in chief may, further, issue against a banker to recover the amount of a promissory note given by him to a tax collector in payment of taxes (*h*).

Money in hands of Accountant-General.

A sum of money in the hands of the Accountant-General in Bankruptcy, to the credit of a party against whom an extent had been issued, was seized by the sheriff into the hands of the Crown, although, in consequence of its being in the hands of the Accountant-General, he could not obtain actual possession of it: here the Court granted a rule calling on the sheriff to pay over the money to the use of the Crown, but refused to make the Accountant-General a party to the rule (*i*).

Term of years.

A term of years originally created out of an estate purchased by a person who afterwards became indebted to the Crown, to secure a sum of money due by one of the vendors, and vested in a trustee for that purpose, and after several *mesne* conveyances assigned to a trustee for another purchaser of the estate for a valuable consideration without notice, to attend and protect the inheritance, such latter purchaser claiming directly under the first incumbrancer by a title paramount to the Crown debtor, was held not to be liable to an extent for a Crown debt (*k*).

Purchasers and mortgagees.

It is enacted by the statute 2 & 3 Vict. c. 11, that "no debt due to the Crown on judgment, by statute, or on recognizance, inquisition of debt, obligation, or specialty,

(*f*) Reg. *v.* Ward, 2 Exch. 301.
(*g*) Reg. *v.* Adams, 2 Exch. 299.
(*h*) *Ibid.*
(*i*) Reg. *v.* Austin, 1 D. N. S. 666; 10 M. & W. 691; 6 Jur. 222; 12 L. J. Exch. 85.
(*k*) Rex *v.* Lambe. M'Clel. 402; 13 Price, 649.

or acceptance of office, shall affect any lands, tenements, or hereditaments, as to purchasers or mortgagees, unless and until such memorandum or minute thereof, containing the name and the usual or last place of abode, and the title, trade, or profession, of the person whose estate is intended to be affected thereby, and, also, in the case of any judgment, the Court and the title of the cause in which such judgment was obtained, and the date of the judgment, and the amount of the debt, damages, and costs thereby recovered, and also in the case of a statute or recognizance the sum for which the same was acknowledged, and before whom the same was acknowledged, and the date thereof, and, in the case of an inquisition, the sum thereby found to be due, and the date thereof, and, also, in the case of an obligation or specialty, the sum in which the obligee is bound, or for which the obligation or specialty is made, and the date thereof, and in the case of an acceptance of office, the name of the office and date of acceptance, shall be left with the senior master of the Court of Common Pleas" (now one of the Masters of the High Court of Justice), who is required to enter the particulars in a book called the Index to debtors and accountants to the Crown (*l*).

Certificate of discharge.

A certificate of discharge of the estates of debtors or accountants to the Crown is by the same statute to be granted, in certain cases (*m*), but a certificate of discharge of a part of the estate of a debtor or accountant to the Crown will not affect the claim of the Crown on other lands liable (*n*).

Quietus.

Provision is also made in the same Act that whenever a *quietus* or discharge is given to any accountant to the Crown, (and this may be in the case of the sheriff), an entry may be obtained in the book of debtors and accountants to the Crown, of the name of the person and estate discharged by such *quietus* (*o*).

(*l*) S. 8.
(*m*) S. 10.
(*n*) S. 11.
(*o*) S. 9.

The statute 18 & 19 Vict. c. 15 enacts that no estate, ier legal or equitable, nor similar interest, or disposing ver, in or over lands, tenements, or hereditaments, ied in a purchaser or mortgagee for valuable considera- shall be taken in execution or rendered liable under judgment against, or Crown debt, &c., due from, any tgagee who shall have been paid off before or at execution of the conveyance to such purchaser or tgagee (*p*). Crown debt by previous mortgagee.

ands of a debtor in the hands of a *bonâ fide* purchaser not be bound by a simple contract debt to the wn (*q*); and now by the statute 28 & 29 Vict. c. 104 s provided that "any judgment, decree, or order ined after the commencement of this Act by or on alf of the Crown, or any recognizance entered into r the commencement of this Act on the proper account he Crown, or any inquisition finding after the com- cement of this Act a debt due to the Crown, or any gation or specialty made after the commencement of Act to the Crown, or any acceptance of office accepted r the commencement of this Act from or under the wn, shall not affect any land (of whatever tenure), as to *nâ fide* purchaser for valuable consideration, or a mort- e (whether such purchaser or mortgagee have or have notice of the judgment, decree, order, recognizance, isition, obligation, specialty, or acceptance of office), ss a writ of extent or of *diem clausit extremum*, or r writ or process of execution, in pursuance of or in ion to such judgment, decree, order, recognizance, isition, obligation, specialty, or acceptance of office, been issued and registered before the execution of the eyance or mortgage to such purchaser or mortgagee, the payment by him of the purchase or mortgage ey (*r*). *Bonâ fide* purchaser, when not bound. Mort- gagee, when not bound.

ut the Court will not interfere to assist a purchaser of Part-paid

(*p*) S. 11.
(*q*) Rex v. Smith, Wightw. 34.
(*r*) S. 48.

Purchase-money

an estate seized under an extent, for which he has paid part of the purchase money, on an offer of arrangement (*s*).

Equitable mortgage, when available.

An equitable mortgage by deposit of title-deeds by an accountant of the Crown, in the hands of one who has an opportunity of knowing that the depositor is, or may become, a debtor of the Crown, is not available against an extent; but, in a case where the circumstances were not established as to the knowledge by the receiver of the position of the depositor, or his opportunity for knowing, an equitable mortgage by a deposit of title-deeds was established against the claim of the Crown under an extent (*t*).

29 & 30 Vict. c. 39, s. 42.

By the statute 29 & 30 Vict. c. 39, where the estate of a public accountant is sold under a writ of extent, and the purchase money paid, the purchaser is exonerated from all further claims of the Crown, even though the debt may not be discharged (*x*).

Partnership property.

Under an extent against one partner, the Crown can only take the separate interest of the partner, liable to the partnership debts (*y*).

Where there are a joint debt and a separate debt.

If two writs of extent are issued, the one for a joint debt, and the other for a separate debt, in the same sum, and the inquisitions find a joint debt and a separate debt in different sums, the Court will not set them both aside on the ground of irregularity, but will support that which is correct (*z*).

Death of partner.

Where a joint debt has been found, the death of one of the debtors does not vitiate the proceedings as against the survivor (*a*).

A. and B. carried on business in partnership; they were also members of a firm which traded as C. & Co.; A. & B. for the purpose of paying off certain of their debts assigned in trust to the other members of the firm of C.

(*s*) Rex *v.* Hollier, 2 Price, 394.
(*t*) Broughton *v.* Davis, 1 Price, 216.
(*u*) Casberd *v.* Attorney-General, 1 Daniel, 238.
(*x*) S. 42.
(*y*) Rex *v.* Sanderson, Wightw. 50.
(*z*) Rex *v.* Mallett, 1 Price, 395.
(*a*) *Ibid.*

ions of their shares in that firm. The assign-
ch was *bonâ fide*, was regularly intimated, and it
ntered in the books of the firm. An extent
of the Crown, afterwards issued against A. & B.
wever, held that the portions of their shares
ed could not be seized under the extent (*b*).

Surplus over Crown debt.

urt will order the residue of the proceeds, after
f the Crown has been satisfied, to be paid into
he credit of the cause (*c*).
y, the Court will, on motion, order the surplus
nded with costs, where a greater sum than is
ie has been levied (*d*).

Interference of court.

he trial of the cause, there should appear reason
ering the proceeding to be framed for the pur-
nduly obtaining an extent which could not be
the defendant would be protected by the Court,
uld stay proceedings after the verdict, and on
ation of the defendant would recollect that a
d been made (*e*).

Part-paid purchase-money.

urt will not, however, interfere to assist a pur-
iere the purchase-money of an estate seized under
has been partly paid (*f*); nor, in a case where
ir, having paid the money into the bank, after-
l before any conveyance was executed, sold the
o another person for a less sum, and applied to
that the sub-purchasers name might be substi-
he conveyance for that of the original purchaser,
o avoid the necessity of paying the *ad valorem*
both conveyances, would the Court grant the
n, unless with the consent of all the parties,
s ultimately obtained, and an order made (*g*).

a v. Lord Advocate, 6 C. & F. 180; 1 Rob. 585.
v. Freame, 1 Price, 299.
v. Edwards, 1 Price, 447; and see *In re* Delamotte, 27
. 110. S. C. *nom.* George III. *v.* Delamotte, 2 H. & N.

s. Burbery, 10 Price, 46.
v. Hollier, 2 Price, 394.
v. Rawlings, 2 C. M. & R. 471; 4 Dowl. 407; 5 Tyr.

Sale. A sale under an extent is not vitiated as against a purchaser, by the agent of the Crown making a *bonâ fide* bid for himself (*h*).

Poundage. Sheriff's poundage in extent is chargeable under 3 Geo. 1, c. 15, s. 3, which provides—

That . . . . . "all sheriffs who shall levy any debts, duties, or sums of money whatsoever, except post-fines, due or hereafter to become due to the King's Majesty, his heirs or successors, by process to them directed upon the summons of the pipe or green wax, by *levari facias* out of the Court of Exchequer [now the High Court of Justice], shall from time to time, for their care, pains, and charges, and for their encouragement therein, have an allowance upon their accounts of twelve pence out of every twenty shillings, for any sum not exceeding one hundred pounds so by them levied or collected, and the sum of six pence only for every twenty shillings over and above the first one hundred pounds; and for all debts, duties, and sums of money, except post-fines, due or to become due to his Majesty, his heirs and successors, by process on *fieri facias* and extent issuing out of any of the offices of the Court of Exchequer, the sum of one shilling and sixpence out of every twenty shillings for any sum not exceeding one hundred pounds so by them levied or collected; and the sum of twelve pence only for every twenty shillings over and above the first one hundred pounds: Provided always such sheriff shall duly answer the same upon his account by the general sealing day of such term in which he ought to be dismissed the Court, or in such time to which he shall have a day granted to finish his said accounts, by warrant signed by the Lord Chief Baron or one of the barons of the coif [now one of the Judges of the High Court] of the said Court for the time being, and not otherwise.

Before that Act the sheriff was not entitled to any fees for executing extents.

(*h*) Rex *v.* Marsh, 1 C. & J. 407.

re an extent in chief had been issued for the re- Poundage.
of a sum of money the proceeds of assessed taxes
of a year deposited by a collector with a banking-
which had stopped payment, and such sum was
omposed of balances left in the hands of the col-
pon his several monthly payments to the receiver-
the Court refused to refer it to the King's re-
ncer to see (in effect) whether the poundage upon
e payments ought not to be deducted from the
ntioned in the extent as being the collector's and
King's money; upon the grounds:
hat the application was without precedent;
that the collector's title did not accrue till the
ion of his collection and payment of his entire
ent;
that the same did not come within the jurisdiction
Court as a debt or liquidated demand, but was
to the control of the Lords of the Treasury who
the requisite accounts before them, as an equitable
o be adjusted or wholly disallowed according to
tances;
that it would be impossible for the master, without
ounts, to see whether ultimately the collector
have any claim (*i*).

Writ of Diem clausit Extremum.

is a special writ of extent in chief, issuing after *Diem clausit extremum.*
th of the King's debtor, against lands and chattels.
rer an extent might have issued against the King's
in his lifetime, a *diem clausit extremum* may issue
s death; but no *diem clausit extremum* can regularly
gainst the estate of a person who was not a debtor
Crown, or found to be so, in his lifetime (*k*).

id. For fuller information on poundage under an extent,
ter on sheriff's fees and poundage.
mb. 119; Parker, 95; West, 320; Sewell, 265.

CHAPTER XXIV.

SECTION I.

Writ of Attachment (*a*).

Nature of writ of attachment.

AN attachment is a writ directed to the sheriff commanding him to attach the person against whom it is issued, and have him before the Court to answer his contempt. The writ must be returned by the sheriff, like other writs of execution.

Writ of attachment.

By the Judicature Act, 1875, Order xliv., r. 1, it is provided that "a writ of attachment shall have the same effect as a writ of attachment out of the Court of Chancery has heretofore had."

By rule 2, "no writ of attachment shall be issued without the leave of the Court or a judge, to be applied for on notice to the party against whom the attachment is to be issued."

The practice in the Chancery Division has hitherto been governed by the Order of January 7, 1870 (*b*).

Attachments will lie against all officers of Courts of record, for abuse of their powers or for corrupt practices in the execution of their duties (*c*).

An interlocutory order, under Order 52 of the Judicature Act, 1875, may be enforced by attachment (*d*).

A judgment or order, under that Order or otherwise, for the payment into Court of money, can only be

(*a*) For form of writ, see Appendix, pp. 551, 552.
(*b*) Dan. Ch. Pr., 5th ed., pp, 907, *et seq.*
(*c*) Hawk. P. C., b. 2, c. 22, s. 2.
(*d*) Hutchinson *v.* Hartmont, W. N. 1877, 29.

forced by attachment if the case falls within the ceptions in the Debtors Act, 1869 (32 & 33 Vict. 62) (*e*).

Contempt of court.

Generally, an attachment may issue in all cases for a ntempt of Court, arising from a refusal to obey or to mply with its process. As to what is "contempt of urt" justifying a committal, see The Republic of Costa ica *v.* Erlanger (*f*).

Sheriff's duty in attachment.

The sheriff's duty on an attachment for contempt, is to ke the defendant, and keep him in custody, so that he ay have him in Court at the return of the writ.

Abud *v.* Riches.

With regard to the 2nd rule of Order xliv. (*vide supra*), s intention is explained by Jessel, M.R., in the case of bud *v.* Riches (*g*). He says: "The intention of the resent rule, following the analogy of the Act for the bolition of Imprisonment for Debt (*h*), was, that the itor shall not have the power of imprisoning anybody, t the *Court* only. This rule once for all deprives the itor of the right he formerly had of imprisoning his ponent, if he chose to do it, at his own risk. The suitor ting thus might be a pauper, and unable to pay the sts, or might do it maliciously. *It is now an order of ourt, made upon motion*, and therefore, in many instances, ter discussion. That is the new position of matters."

Notice to be served on solicitor who has conduct of execution

As to the "notice" mentioned in the rule, it appears to s sufficient to serve the notice of motion to commit, or of n application for a writ of attachment, on the solicitor of he party sought to be committed or attached (*i*).

This was already the rule in the Common Law Courts, xcept in the case of an attachment against a sheriff for isobeying an order to return a writ, in which case the le was made absolute *ex parte* (*k*).

(*e*) *Ibid.* See also Phosphate Sewage Co. *v.* Hartmont, 25 W. R. 3, V. C. M.
(*f*) 46 L. J. Ch. 375.
(*g*) 2 Ch. D. 528.
(*h*) 32 & 33 Vict, c. 62.
(*i*) Richards *v.* Kitchen, 36 L. T. N. S. 730; 25 W. R. 602 V.C.B
(*k*) Wil. Jud. Act, 288, *n.* See also R. G. H. T. 1853, Rule 168.

Costs in the discretion of the court.

The provisions of Order 55, rule 1, of the Judicature Act, 1875, apply to an application for an attachment. The costs are, therefore, in the discretion of the Court, and are limited to a fixed amount. Costs should be asked for and disposed of on the application for the attachment (*l*).

A person attached for misconduct will not be detained for costs (*m*).

Poundage.

The sheriff is not entitled to poundage on money received by him in executing an attachment (*n*).

Section 2.

Writ of Capias ad Satisfaciendum (Ca. Sa.), including Commitment Orders in Bankruptcy under the Debtors Act, 1869.

The former importance of the writ of *ca. sa.* is very much diminished by the Debtors Act, 1869 (*o*), which, with certain exceptions, abolished imprisonment for debt. "It is a writ directed to the sheriff commanding him to take the body of the defendant, and him safely keep, so that he may have his body in Court immediately after the the execution thereof, or on a return day named in the writ, to satisfy the plaintiff" (*p*).

Cases in which imprisonment for debt is allowed.

The cases in which, under the Debtors Act, 1869, s. 4, imprisonment is allowed are:—

1. "Default in payment of a sum in the nature of a penalty other than a penalty in respect of any contract."
2. "Default in payment of any sum recoverable summarily before a justice or justices of the peace."

Costs at

Costs which have been awarded by Quarter Sessions

(*l*) Wil. Jud. Act, 288. See also Abud *v.* Riches, 2 Ch. D. 528; Browning *v* Sabin, 5 Ch. D. 511.

(*m*) Jackson *v.* Mawby, L. R. 1 Ch. D. 86. V. C. H. Lewes (Earl) *v.* Barnett, L. R. 6 Ch. D. 252, C. A.

(*n*) Rex *v.* Palmer, 2 East, 411. Rex *v.* Sheriff of Devon, Dowl. 10.

(*o*) 32 & 33 Vict. c. 62.

(*p*) Wat. Sh., 2nd ed., 189.

ast one of the parties to an appeal, and which by Quarter Sessions.
s 12 Vict. c, 43, s. 27, and 12 & 13 Vict. c. 43, s. 5,
be enforced before a justice by warrant of distress,
in default of distress by commitment, are within this
ption (*q*).

"Default by a trustee or person acting in a fiduciary capacity, and ordered to pay by a Court of Equity any sum in his possession or under his control." Default by trustee.

oney which a trustee has misapplied is "in his pos-
on or control" within this exception (*r*).

"Default by an (attorney or) solicitor in payment of costs when ordered to pay costs for misconduct as such, or in payment of a sum of money, when ordered to pay the same in his character of an officer of the Court making the order." Default by solicitor.

efault by a solicitor in payment of a balance found
from him upon taxation of his bill of costs under the
non order for that purpose, is default in payment of a
of money ordered to be paid by the solicitor "in his
acter of an officer of the Court," and an attachment
be issued against him (*s*).

"Default in payment, for the benefit of creditors, of any portion of a salary, or other income, in respect of the payment of which any Court having jurisdiction in bankruptcy is authorized to make an order." Default by bankrupt.

"Default in payment of sums, in respect of the payment of which orders are in this Act authorized to be made." [This Act does not apply to Crown debts] (*t*).

Provided, first, that no person shall be imprisoned in any case excepted from the operation of this section, for a longer period than one year; and, secondly, that nothing in this section shall alter the effect of No person may be imprisoned for a longer period than one year.

Reg. *v.* Pratt, L. R. 5 Q. B. 176. Will. Bankruptcy, 562.
Middleton *v.* Chichester, L. R. 6 Ch. 152.
In re Rush, L. R. 9 Eq. 147. Will. Bankruptcy, 563.
See *In re* Smith, 2 Exch. D. 47.

any order of any Court for payment of money, except as regards the arrest and imprisonment of the person making default in paying such money."

An order of the Court is required for the discharge of the prisoner, after the year has expired (*u*).

"Subject to the provisions hereinafter mentioned, and to the prescribed rules, any Court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other competent Court."

Restrictions.

"Provided that the jurisdiction by this section given of committing a person to prison, shall, in the case of any Court other than the superior Courts of Law and Equity, be exercised only subject to the following restrictions, that is to say":—

(*a*). "Be exercised only by a judge or his deputy, or by an order made in open Court, and showing on its face the ground on which it is issued."

(*b*). "Be exercised only as respects a judgment of a superior Court of Law or Equity when such judgment does not exceed fifty pounds, exclusive of costs."

(*c*). "Be exercised only as respects a judgment of a County Court, by a County Court judge or his deputy."

It must be shown that the debtor has, or had since the date of the order or judgment, means to pay, and has refused or neglected to pay.

Summary arrest.

The jurisdiction given by the 5th section may be exercised by a judge at chambers. The debt may be paid by instalments.

"Persons committed under this section by a superior Court may be committed to the prison in which they would have been confined if arrested on a

(*u*) *In re* Thompson's Estate, 43 L. J. Ch. 721.

writ of *capias ad satisfaciendum* (*n*), and every order of committal by any superior Court shall, subject to the prescribed rules, be issued, obeyed, and executed in like manner as such writ."

Order valid for a year.

These words apply only to the mode of executing the r and not to the time within which it is to be uted (*o*). An arrest by the sheriff under an order of dge, founded on the 5th section is valid, though such st is not made till a year after the order.

he 6th section further enacts that—

After the commencement of this Act a person shall be arrested upon *mesne* process in any action.

Power under certain circumstances to arrest defendant about to quit England.

'Where the plaintiff in any action in any of her jesty's superior Courts of Law at Westminster, in which, brought before the commencement of this Act, the endant would have been liable to arrest, proves at any e before final judgment, by evidence on oath, to the sfaction of a judge of one of those Courts, that the intiff has good cause of action against the defendant, the amount of fifty pounds or upwards, and that there robable cause for believing that the defendant is about quit England unless he be apprehended, and that the ence of the defendant from England will materially judice the plaintiff in the prosecution of his action, h judge may in the prescribed manner order such fendant to be arrested and imprisoned for a period not eeding six months, unless and until he has sooner given prescribed security, not exceeding the amount claimed the action, that he will not go out of England without leave of the Court. Where the action is for a penalty, sum in the nature of a penalty, other than a penalty in pect of any contract, it shall not be necessary to prove at the absence of the defendant from England will terially prejudice the plaintiff in the prosecution of his ion, and the security given (instead of being that the fendant will not go out of England) shall be to the effect

Security to be given.

(*n*) Hermitage *v.* Kilpin, L. R. 9 Exch. 205; 30 L. T. N. S. 873.
(*o*) Armitage *v.* Upton, 33 L. T. N. S. 872.

that any sum recovered against the defendant in the action shall be paid, or that the defendant shall be rendered to prison."

The sheriff or other officer, either in an order of committal or an order to arrest under section 6 of the Act must, within two days after the arrest, indorse on the order the true date of such arrest (*q*).

Crown debtors excluded.

It should be mentioned that a defendant at the suit of the Crown is liable to arrest, the same as if the Debtors' Act, 1869, had not passed, Crown debts not being either directly or indirectly referred to in that Act. Under these circumstances it is not necessary to go through the form of an inquisition as in the case of an extent (*r*).

Arrest by a sheriff under an order of a judge.

An arrest made by a sheriff under an order of a judge, founded upon the Debtors' Act, 1869 (*s*), is valid, notwithstanding that such order is dated more than a year before the date of such arrest. Such an order does not require renewal at the end of a year from its date, but remains in force until it is executed (*t*).

The directions for this and other writs of execution will be found laid down in the Judicature Act, 1875, Order 42.

Writ of *ca. sa.* in force for one year.

The writ of *ca. sa.* remains in force for one year, unless renewed. The sheriff may not arrest on a Sunday in civil process, although it seems that he may in order to retake after an escape (*u*).

What constitutes an arrest.

It is advisable for the sheriff, or his officer, to touch the defendant in arresting him, as that constitutes an arrest (*x*); although if the defendant be in the custody of the sheriff, as in a room with the door locked, this, too, is considered an arrest (*y*).

Officer to be present.

It seems that it is not necessary for the officer to be in

(*q*) C. L. Rule 11. Will. Bankruptcy, 569.
(*r*) Attorney-General *v.* Edmunds, 22 L. T. N. S. 667—Willes.
(*s*) Hermitage *v.* Kilpin, L. R. 9 Exch. 205; 30 L. T. N. S. 873.
(*t*) S. 5.
(*u*) Parker *v.* Moore, 2 Salk. 226.
(*x*) Fish's case, 2 Rolls' Rep. 138.
(*y*) Williams *v.* Jones, Hard. 301. Wat. Sh., 2nd ed., 129.

ht at the time of the arrest, but he must be near and ing in the arrest (*z*).

The sheriff must take, if necessary, the *posse comitatus* (*a*); *Posse comitatus.* l when he has taken the defendant, it is his duty to p him *in salvâ et arctâ custodiâ:* "for if the sheriff w the defendant arrested by him on a *ca. sa.* to go at e for the shortest time, without the consent of the intiff, it is an escape, for which the sheriff is liable" (*b*). Escape. s defendant must be taken to prison, when the respon- lity of the sheriff is at an end, and for a subsequent pe he is not liable (*c*). Under this writ bail cannot Bail. aken.

Who may not be taken under a Ca. Sa.

lembers of the Royal family, or their servants;
eers or peeresses;
nglish, Scotch (*d*), and Irish (*e*) bishops;
lembers of Parliament, for forty days before and forty Permanent privilege. after each meeting of parliament (*f*);
mbassadors and their servants (*g*) (consuls are *not* leged (*h*));
ll persons attending judicial proceedings, who have Temporary privilege. relation to a cause which demands their attention in rt, whether compelled by process or not, and whether ies attorned, witnesses, or bail (*i*);
lagistrates attending petty sessions or police court, in discharge of their duty (*k*);
ersons adjudicated bankrupts, in respect of any debt able in the bankruptcy (*l*);

(*z*) Blatch *v.* Archer, Cowp. 63.
(*a*) Dalt. 355.
(*b*) Wat. Sh., 2nd ed., 194.
(*c*) 40 & 41 Vict. c. 21, s. 31.
(*d*) Digby *v.* Stirling, 1 M. & Sc. 116.
(*e*) Coates *v.* Hawarden (Lord), 1 M. & R. 110.
(*f*) Gondy *v.* Duncombe, 5 D. & L. 209.
(*g*) 7 Anne, c. 12, s. 3.
(*h*) Vivash *v.* Becker, 3 Maule & Sel. 284.
(*i*) Walpole *v.* Alexander, 3 Dougl. 45.
(*k*) Clendenning *v.* Brown, 3 Ir. C. L. R. 115.
(*l*) Cobbam *v.* Dalton, L. R. 10 Ch. 655.

Barristers on circuit, and *eundo, morando, et redeundo*, while attending Court (*n*);

Solicitors and parliamentary agents, while acting for their clients in Court (*o*) (but their clerks are not privileged (*p*));

Clergymen, *eundo, morando, et redeundo*, from performing divine service (*q*);

Members of Convocation;

Deputy Coroners, while preparing to hold an inquest (*r*);

Persons attending before arbitrators (*s*);

Bail, when attending to justify (*t*);

Persons not exempt. Aliens (*u*), married women (*x*), insane persons (*y*), and persons acquitted on a criminal charge (*z*) are not privileged.

If the sheriff arrest certain persons who are protected by permanent privilege, *e.g.*, Royal family, peers, members of parliament, &c., he is liable to punishment (*a*); but in other cases it is better for the sheriff to arrest the defendant, and leave him to apply to the Court for his discharge (*b*).

Discharge.

Discharge, how obtained. If the plaintiff authorises the discharge of the defendant, and there are no detainers against him, the sheriff is bound to discharge him (*c*). If the plaintiff does not so authorise the sheriff, the defendant must apply to the Court for his discharge (*d*); and if he is within section 4 of

(*n*) Meekins *v.* Smith, 1 H. Black. 636; but see Newton *v.* Constable, 2 Q. B. 166.
(*o*) *In re* Hope, 9 Jur. 846. Attorney-General *v.* Skinners' Co., 1 Coop. 1.
(*p*) Phillip *v.* Pound, 7 Ex. Ch. 881.
(*q*) Goddard *v.* Harris, 7 Bing. 320.
(*r*) *Ex parte*, Deputy Coroner (Middlesex), 6 H. & N. 501.
(*s*) Spence *v.* Stuart, 3 East, 89.
(*t*) Rimmer *v.* Green, 1 M. & S. 638.
(*u*) Trimby *v.* Vignier, 1 Bing. N. C. 157.
(*x*) Dillon *v.* Cunningham, L. R. 8 Exch. 131.
(*y*) Kernot *v.* Norman, 2 D. & East, 390.
(*z*) Goodwin *v.* Lordon, 3 N. & M. 879.
(*a*) 7 Anne, c. 12, s. 4.
(*b*) Wat. Sh., 2nd ed., 196.
(*c*) Wat. Sh., 2nd ed., 197.
(*d*) *Re* Thompson, 22 W. R. 857. See also *Re* Deere, L. R. 10 Ch. 658.

the Debtors' Act, 1869, he will be entitled to be discharged at the end of a year.

Search for other writs against defendant.

If the defendant succeeds in getting an order of discharge, this is given to the sheriff, who may take reasonable time for making search for any other writs in his office against the defendant (*e*). The defendant is then discharged.

In case of several writs.

When the sheriff has several writs against one defendant, he must execute according to the order in which he received them.

Fees in *ca. sa.*

Upon executing a *ca. sa.*, the sheriff is only entitled, by 5 & 6 Vict. c. 98, to the fees allowed under 7 Will. 4 and 1 Vict. c. 55, and not to the poundage given by 28 Eliz. c. 4. He is entitled to the same fees in respect of an order for committal, under the Debtors' Act, 1869, s. 5, as are payable under a *ca. sa.* (*f*).

Sheriff or gaoler may discharge prisoner by authority of attorney in the cause.

By the 126th section of the Common Law Procedure Act, 1852, it is provided that "a written order under the hand of the attorney in the cause, by whom any writ of *capias ad satisfaciendum* shall have been issued, shall justify the sheriff, gaoler, or person in whose custody the party may be under such writ, in discharging such party, unless the party for whom such attorney professes to act shall have given written notice to the contrary to such sheriff, gaoler, or person in whose custody the opposite party may be; but such discharge shall not be a satisfaction of the debt, unless made by the authority of the creditor; and nothing herein contained shall justify any attorney in giving such order for discharge without the consent of his client."

SECTION 3.

De contumace capiendo.

53 Geo. 3, c. 127.

By 53 Geo. 3, c. 127, excommunication was discontinued, except in certain cases therein specified, and in

(*e*) Samuel *v.* Buller, 1 Exch. 439.
(*f*) Day C. L. Prac., 4th ed., 144; see Table of Fees, pp. 319—324.

section 1 of that Act is contained the above writ, which is directed to the sheriff, and issues when contempt in the face of the Ecclesiastical Courts has been committed (*g*).

After the *significavit* is, by which the contempt is signified to the Queen in Chancery, the writ is sued out against the defendant.

Hudson v. Tooth. It appears from the case above cited, that, after the contempt had been duly signified to the Queen in Chancery, a writ *de contumace capiendo*, directed to the sheriff of the county, and returnable in the Queen's Bench Division, issued out of the Petty Bag Office, the writ being under the Chancery Common Law seal, and under it the defendant was arrested and lodged in gaol (*h*).

Section 4.

Ne exeat regno.

In connection with section 6 of 32 & 33 Vict. c. 62 (Debtors' Act, 1869), as to the writ of Ne exeat regno.

Ne exeat regno. This writ is a high prerogative writ, originally applicable to purposes of state, afterwards extended to private transactions; it is confined to cases of equitable debts, and is equivalent to equitable bail.

When it lies. It issues when a person owes an actually due pecuniary debt, and it appears that he is going to quit the country, in order to evade payment (*i*).

Affidavit necessary. The writ is obtained by motion on an *affidavit*, but a writ of *ne exeat regno* will not be granted on a general *affidavit* of belief of the defendant's intention to quit the country, the circumstances on which that belief is founded not being stated (*k*), and there must be distinctive evidence of a debt due, otherwise the Court will not grant a writ (*l*).

Evidence of debt necessary.

(*g*) Hudson v. Tooth, 1 P. D. 125. See Appendix.
(*h*) See Schedule A of the above Act.
(*i*) Hudson v. Tooth, *vide supra*.
(*k*) Fisher Dig. *sub. tit.* For form of writ, see Appendix.
(*l*) Perry v. Dorset, 19 W. R. 1048.
(*m*) See also section 6 of Debtors' Act, 1869.

so that mere belief, on the part of the plaintiff, that, if the accounts were taken, a balance would be found due to him, is not sufficient (*n*).

A Court of Equity will not grant a writ for a mere legal demand (*o*).

But when a sum of money admitted to be due is ordered to be paid on a certain day, a writ may issue against the debtor before the day has arrived (*p*).

Affidavit.

The *affidavit*, in addition to what has been mentioned above, must state that the debt or property would be endangered by defendant's going abroad.

When and how prayed for.

It should be prayed for in the statement of claim, if sought against a defendant in an action. When obtained, it is delivered to the sheriff of the county in which defendant is, for execution.

Writ, how discharged.

The writ will be discharged by the defendant paying the amount of the debt into Court, or if the plaintiff have no case (*i.e.*, if the defendant be not going abroad), either with or without giving security (*q*).

Security, how given.

The defendant may either deposit the amount of the debt with the sheriff, or may execute a bond of double the amount of the debt, with two sufficient sureties, not to go abroad or into Scotland without leave of the Court.

SECTION 5.

Habere facias possessionem (*Hab. fac. poss.*) (*r*). *Writ of Possession.*

Issues for successful plaintiff in ejectment.

This is a writ that issues for a successful plaintiff in ejectment, to put him in possession of the premises recovered. By the Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), s. 185, it is provided, that, "upon

(*n*) Thompson *v.* Smith, 11 Jur. N. S. 276; 34 L. J. Ch. 412.
(*o*) Pearne *v.* Lisle, Amb. 75.
(*p*) Sobey *v.* Sobey, 42 L. J. Ch. 271.
(*q*) See pp. 401, 402.
(*r*) For forms of Writ of Possession see Appendix. See Judicature Act, 1875, Order 48, r. 1; also Appendix F. to that Act, No. 7.

a finding for the claimant, judgment may be signed, and execution issue, for the recovery of possession of the property, or such part thereof as the jury shall find the claimant entitled to, and for costs, within such time, not exceeding the fifth day in term after the verdict, as the Court or judge before whom the cause is tried shall order; and if no such order be made, then on the fifth day in term after the verdict, or within fourteen days after such verdict, whichever shall first happen."

Successful defendant.

By section 186, "upon a finding for the defendants, or any of them, judgment may be signed and execution issue for costs against the claimants named in the writ, within such time, not exceeding the fifth day in term after the verdict, as the Court or judge before whom the cause is tried shall order; and if no such order be made, then on the fifth day in term after the verdict, or within fourteen days after such verdict, whichever shall first happen."

Several writs.

By section 187, "upon any judgment in ejectment for recovery of possession and costs, there may be either one writ or separate writs of execution for the recovery of possession and for the costs, at the election of the claimant."

Proceedings need not be enrolled.

By section 206, "it is not necessary before issuing execution upon the judgment in ejectment to enter the proceedings upon any roll, but an *incipitur* thereof must be made upon paper, shortly describing the nature of the judgment, according to the practice heretofore used, and judgment may thereupon be signed, and costs taxed, and execution issued."

Judicature Act, 1875.

By order 48, rule 1, of the Judicature Act, 1875, it is provided, that "a judgment that a party do recover possession of any land may be enforced by writ of possession in manner heretofore used in actions of ejectment in the superior Courts of Common Law."

Rule 2 enacts, that "where by any judgment any person therein named is directed to deliver up possession of any lands to some other person, the person prosecuting such judgment shall, without any order for that purpose,

entitled to sue out a writ of possession, on filing an *idavit* showing due service of such judgment, and that e same has not been obeyed."

Claimant, when entitled to writ.

A claimant in ejectment is entitled to a writ of possession, notwithstanding that the lease under which he ims, although in force at the time the action was commenced, has expired before the time of trial, unless the fendant shows affirmatively that the claimant has no tle whatever (*s*).

Objection overruled.

It is no objection to the legality of a writ of *hab. fac.* ss. that the names of the officers to whom it was directed ere inserted by interlineation after the writ was sealed, nd while it remained in the hands of the undersheriff (*t*).

How executed.

How executed.

The execution of this writ is very similar to that of the writ of *fi. fa.* (*u*). The sheriff makes out his warrant to an officer; he is bound to execute within a reasonable time; he acts under the immediate direction of the lessor of the plaintiff or his solicitor; he may break open outer and inner doors of the house, in order to execute the writ; he may raise the *posse comitatus*, but (unlike the proceedings under a *fi. fa.*) he must remove all persons off the premises; for, if persons be left on the premises, it is not a complete execution, unless the tenants attorn to the plaintiff (*x*); he must only deliver land mentioned in the writ, otherwise he is a trespasser.

All persons removed from premises.

Sheriff to deliver full and quiet possession.

The sheriff must deliver full and quiet possession to the plaintiff. Where, therefore, the tenant, immediately after the sheriff had given possession, ejected the plaintiff, it was held that the sheriff might restore him to possession (*y*); but, after possession once given under a writ, the plaintiff cannot sue out another writ of possession (*z*),

(*s*) Gibbins *v.* Buckland, 1 H. & C. 736.
(*t*) Rex *v.* Harris, 2 Leach C. C. 929.
(*u*) *Vide supra*, p. 208.
(*x*) Upton *v.* Wils, 1 Leon. 145.
(*y*) Molineux *v.* Fulgam, Palm. 289.
(*z*) Pate v. Roe, 1 Taunt. 55.

even though he be disturbed by the same defendant, and though the sheriff has not yet returned the former writ(x).

Indemnity to sheriff. It is usual for the lessor of the plaintiff to give the sheriff an indemnity for executing the writ (*y*); but as a further safeguard, the plaintiff or some one on his behalf is bound to point out to the sheriff, at his peril, the precise lands he is entitled to (*z*); if more be taken, the Court will order it to be restored (*a*).

Delivery of part is sufficient. In delivering the thing recovered, whether it be land, or a house, or the like, it is sufficient for the sheriff to deliver part of the thing recovered, *e.g.*, the key of the door of the house, a twig of the land, and so on.

Highway. If a highway be recovered, it is delivered subject to the right of way (*b*).

If delivery is to be made of a certain number of acres, the sheriff must give so many acres in quantity, according to the estimation of the country where the land lies (*c*).

Writ of restitution.

If immediately, or soon after the sheriff has given possession, the defendant forcibly ejects the lessor of the plaintiff, the Court will order a writ of restitution, before the former writ is returned (*d*). But it seems that the Court will not interfere if the writ *has* been returned (*e*).

A further remedy is provided under the statute 32 Hen. 8, c. 5, by *scire facias* (*f*).

Return of Writ of Possession.

Not usual. It is not usual, nor in fact necessary, for the sheriff to

(*x*) *Ibid.*
(*y*) Com. Dig. Ex. (A.) 3.
(*z*) Davenport *v.* Rhodes, 11 M. & W. 608.
(*a*) Cottingham *v.* King, 1 Burr. 627.
(*b*) 1 Burr. 133.
(*c*) Floyd *v.* Bethell, 1 Roll. Rep. 420.
(*d*) Pitcher *v.* Roe, 9 Dowl. 971.
(*e*) Wilson *v.* Chanton, 10 W. R. 465.
(*f*) See under heading *scire facias*.

ake a return to a writ of *hab. fac. poss.* unless called on to do so.

The ordinary return is "by virtue of this writ to me rected I have given full and peaceable possession unto e within-named . . . . of the messuages, lands, and emises, with the appurtenances, within-mentioned, as ithin I am commanded" (*f*). Ordinary return.

The sheriff may also, if such be the case, return that no erson on behalf of the plaintiff came to receive possession (*g*); or that no person on behalf of the plaintiff came o shew the premises (*h*).

Poundage.

By the statute 3 Geo. 1, c. 15, s. 16, the sheriff, on the xecution of this writ, is entitled to 1*s.* in the pound on he yearly value of the lands delivered, when the whole early value does not exceed £100, and 6*d.* in the pound or every pound above that sum. Sheriff entitled to usual poundage.

SECTION 6.

Writ of delivery (*i*).

By Order 42 of the Judicature Act, 1875, it is provided, that "a writ for delivery of any property, other than land or money, may be issued and enforced in the manner heretofore in use in actions of detinue in the Superior Courts of Common Law." Judicature Act, 1875.

This writ was given by section 78 of the Common Law Procedure Act, 1854, which is as follows: "The Court or judge shall have power, if he or they see fit to do so, upon the application of the plaintiff in any action for the detention of any chattel, to order that execution shall issue for the return of the chattel detained, without giving the defendant the option of retaining such chattel, Specific delivery of chattels when detained.

(*f*) Wat. Sh., 2nd ed., 321.
(*g*) Floyd *v.* Bethell, Roll. Abr. Retorn. (H.)
(*h*) Saville, 28.
(*i*) For form of writ see Appendix.

upon paying the value assessed; and that if the said chattel cannot be found, and unless the Court or a judge should otherwise order, the sheriff shall distrain the defendant, by all his lands and chattels in the said sheriff's bailiwick, till the defendant render such chattel, or, at the option of the plaintiff, that he cause to be made of the defendant's goods the assessed value of such chattel: provided that the plaintiff shall, either by the same or a separate writ of execution, be entitled to have made of the defendant's goods the damages, costs, and interest in such action."

And 19 & 20 Vict. c. 97, Mercantile Law Amendment Act, 1856, s. 2, is to the following effect:—

Breach of contract.

"In actions for breach of contract to deliver specific goods at a price, the Court may order execution to issue for the delivery of the goods, on payment of the price, without giving the defendant the option of retaining them on paying the damages assessed, and for distraining the defendant's goods until delivery, or for payment of value or damage assessed."

Judicature Act, 1875, Order 42.

By Order 42, r. 4, of the Judicature Act, 1875, "A judgment for the recovery of any property, other than land or money, may be enforced:—

"By writ for the delivery of the property;

"By writ of attachment;

"By writ of sequestration."

Judgment against defendant without satisfaction does not vest property in plaintiff.

In connection with this writ it should be mentioned, that a judgment against a defendant without satisfaction does not vest the property in the goods in the plaintiff (*k*), or, in other words, a judgment for the plaintiff in an action of detinue does not change the property in the detained chattel, until satisfaction of the value found by the judgment, even though satisfaction was prevented by the bankruptcy of the defendant (*l*).

Ex parte Drake.

In the course of his judgment in the case of *Ex parte* Drake, Jessel, M.R., says: "I am of opinion that, after the

(*k*) Brinsmead *v.* Harrison, L. R. 7 C. P. 547.
(*l*) *Ex parte* Drake, 5 Ch. D. 866.

ision in Brinsmead *v.* Harrison, we are bound to hold Brinsmead
t the property was never divested from Drake. He had *v.* Harrison.
property, unless something which he did under the judg-
at divested it from him. It is clear that the judgment
lf did not divest the property. Did the execution
est it? Upon that question the authority of Brinsmead
Harrison is distinctly in point. *It shows that the exe-*
tion does not divest the property unless there is satisfac-
n of the judgment. There are several ways in which
execution might produce nothing. One way would be
the amount produced by the sale of the goods seized did
ot cover the expenses of the sale. Another way would
e if, as happened in the present case, there was a prior
ct of bankruptcy which nullified the execution. The
dgments in Brinsmead *v.* Harrison, and especially that
f Mr. Justice Willes, show that the theory of the judg-
ent in an action of detinue is that it is a kind of in-
oluntary sale of the plaintiff's goods to the defendant.
he plaintiff wants to get his goods back, and the Court
ves him the next best thing, that is, the value of the
oods. If he does not get that value, then he does not
se his property in the goods."

SECTION 7.

Writ of Levari facias.

Levari facias is a writ of execution at Common Law, *Levari facias.*
ommanding the sheriff to levy or make of the lands or
hattels of the judgment debtor the sum recovered by the
dgment. The sheriff is not authorised to sell or to extend
ie lands, or to deliver them to the creditor, but must
ollect the debt from the issues and profits of the lands,
id from the sale of the chattels.

The sheriff is bound *ex officio* to levy the fine imposed Levy of
on a defendant on his conviction for a misdemeanour; fine.
all events the writ of *levari facias* is regular when it
as been adopted on the part of the Court (*m*).

(*m*) Rex *v.* Woolf, 2 B. & Ad. 609; 1 Chit. 428.

By the Crown.

Where a defendant, convicted of a misdemeanour, is sentenced to be imprisoned for a certain term, and to pay a fine, and to be further imprisoned till the fine is paid, a *levari facias* may issue to levy the fine on his goods, chattels, and lands, even before the expiration of the term for which the defendant is sentenced to be imprisoned (*n*).

Goods passed under bill of sale.

Where a sheriff seized goods of a debtor under a *fi. fa.* delivered to him by a judgment creditor, and executed a bill of sale of them to the creditor, and gave him possession, a *levari facias* issued by the Crown on a judgment entered up for penalties incurred by the debtor for frauds on the revenue, under a verdict obtained on an information filed before the subject creditor's judgment, comes too late, for the property in the goods becomes, by a bill of sale, completely altered; in such a case the sheriff might well return *nulla bona;* if, however, any of the goods included in the bill of sale have been chargeable with the duties of excise in arrear, on a breach of the revenue laws, on which the information was founded, the Crown will be entitled to a verdict for the value of such goods, notwithstanding the sale, and the return of *nulla bona* will not be a good return as to them (*o*).

Where a party had been returned in the schedule of the collector of land tax for a particular parish, under 48 Geo. 3, c. 141, as in default for a sum assessed upon him for land tax in that parish, and, the schedule having been duly certified to the Court, a *levari facias* issued, under which the sum was levied on his goods and paid into the Exchequer, it was held that the Court could not afterwards set aside the writ, on the ground that the party had been assessed in the wrong parish (*p*).

This writ, excepting in the case of outlawry, has been almost superseded by that of *elegit* (*q*).

Whence issued.

A writ of *levari facias*, however, still issued from the

(*n*) Rex *v.* Woolf, 2 B. & Ad. 609; 1 Chit. 428.
(*o*) Attorney-General *v.* Ford, 8 Price, 364, *n.*
(*p*) *In re* Glatton Land Tax, 4 M. & W. 570.
(*q*) 1 Chit. Arch. Prac., 12th ed., 693.

: side of the Exchequer Division against defaulters
lectors, until the absorption of that Court in the
: Bench Division, from whence it is presumed that
t of *levari facias* will issue in future.

SECTION 8.

Writ of Scire facias.

re the Judicature Acts a *scire facias* was a judicial Original or judicial.
)unded upon some record, and requiring the person
; whom it was brought to show cause why the party
ig it should not have advantage of such record, or
the case of a *scire facias*, to repeal letters patent)
ie record should not be annulled and vacated (*r*).

as, however, held in a variety of cases that a *scire* Distinction between writs.
was an action (*s*), and might be an original writ,
able in the Chancery Division, or a judicial writ,
able in the superior Courts; *e.g.*, a *scire facias*
t bail on their recognizance is an original proceeding,
a *scire facias* against an executor to show cause
lamages assessed against his testator on a writ of
y should not be paid to the plaintiff, is a continua-
f the original action, although, in addition, it creates
right (*t*).

the case of proceedings against shareholders in Against shareholders
nies, the writ states the recovery of the judgment,
l atever facts are necessary to show that the person
it whom the writ is issued is liable to be proceeded
it on that judgment; and the shareholder against
: the writ is issued is commanded to appear to show
the plaintiff ought not to have execution against
(*u*).

2 Chit. Arch., 13th ed., 934.
Winter *v.* Kretchman, 2 D. & East, 46—Butler, J.
Exors. of Wright *v.* Nutt. 1 D. & East. 389—Ashurst, J.
1 Lind. 523. See also pp. 524—539, for cases of *sci. fa.* against nies generally. 2 Chit. Arch., 13th ed., 924.

Under the 8 & 9 Vict. c. 16, s. 36, the Courts would not, before the Judicature Acts, order execution to issue against a shareholder of a company without a *scire facias*, but would only, on sufficient ground being shown, allow a *scire facias* to issue, in order that execution may be obtained against such shareholder, to the extent pointed out by that section (*x*). It was discretionary with the Court to grant a *scire facias* under this section (*y*). But the Courts will now in a clear case order execution to issue (*z*).

Duty of sheriff with regard to *scire facias*.

The duty of the sheriff, in a writ of *scire facias*, is to indorse on it the day of the month on which it was left with him, and if he knows the defendant can be served, to issue his warrant thereon to two or more bailiffs, to warn the defendant; the bailiffs make an indorsement on this warrant either that they have or have not served the process, and return it to the sheriff. Conformably thereto, the sheriff returns *nihil* or *scire facias* (*a*).

Letters patent.

A *scire facias* is the only means of repealing letters patent (*b*). Formerly a lapsed judgment was revived by a writ of *scire facias*, but the Common Law Procedure Act, 1852, substituted a writ of revivor, and, by the Judicature Acts, an application to the Court or judge is, by Order 42, rule 19, sufficient. The Judicature Acts do not mention a *scire facias*, but their general provisions for actions apply.

Issuing without leave.

The issuing of a *scire facias* without the leave of the Court cannot be pleaded as a defence in bar of the action, but is merely an irregularity, for which an application may be made to the Court to set aside the writ (*c*).

(*x*) 2 Chit. Arch. 11th ed. 1156. Hutchings *v.* Kilkenny Ry. Co., 10 C. B. 160; 23 L. J. C. P. 31.

(*y*) Devereux *v.* Kilkenny & G. S. & W. Ry. Co., 20 L. J. 37; 5 Exch. 834.

(*z*) Judicature Act, 1875, Order 42, r. 21.

(*a*) See warrant on writ in Appendix, p. 576.

(*b*) 2 Chit. Arch., 13th ed., 934, *n.*

(*c*) Bradley *v.* Warbury, 11 M. & W. 452.

Concurrent writs.

A judgment creditor may issue as many concurrent writs *scire facias* against as many shareholders as he thinks oper, and it is no defence, so long as his debt is unsatisd, for one shareholder to allege that the plaintiff is oceeding against others (*d*).

Second execution.

By 32 Hen. 8, c. 5, where lands delivered to a creditor execution are recovered from him before satisfaction ade, the creditor may have a *scire facias* and new exetion against the lands of the debtor.

Pleas to writ.

It is no objection to a *scire facias*, that a *fi. fa.* has sued within a year after the judgment was entered up, that the plaintiff might have had execution by conuing it, without a *scire facias* (*e*); and a plea to a *scire cias*, that, under a *fi. fa.* for the sum recovered under the dgment, goods were seized in the dwelling-house of the debtor, should state that the goods were the property of the debtor, or that they produced satisfaction (*f*).

Section 9.

Assize and Sessions Process, Estreats, &c.

Recovery of fines, estreats, &c.

The recovery of fines, estreats, &c., imposed by justices of the peace, is regulated by 3 Geo. 4, c. 46 (*g*), which enacts that statements of fines, &c., are to be forwarded to the clerk of the peace by the justice by whom such fine, &c., is imposed, and the clerk of the peace is to copy on a roll such fines, &c., at Quarter Sessions, and send a copy of such roll with writ of *distringas* and *capias*, or *fi. fa.* and *capias*, to the sheriff (*h*).

Sheriff's duty.

The duty of the sheriff with reference to the roll of the fines forwarded to him by the clerk of the peace under the

(*d*) Rigby *v.* Dublin Trunk Ry. Co., L. R. 2 C. P. 586.
(*e*) Burmester *v.* Crofton, 3 Exch. 397. Reg. *v.* Derbyshire Ry. Co., 23 L. J. Q. B. 333. Addison *v.* Tate, 24 L. J. Exch. 249.
(*f*) See Burke *v.* Dublin Trunk Ry. Co., L. R. 3 Q. B. 47.
(*g*) See p. 588; for form of estreat roll, see p. 574.
(*h*) 3 Geo. 4, c. 46, s. 2. As to the time when recognizances are o be estreated in default of payment of costs ordered by a Court of uarter Sessions, see Reg. *v.* Justices of Ely, 25 L. J. M. C. 1; E. & B. 489.

directions of the statute, is not wholly ministerial, and he is not justified in levying a fine stated in the roll to be unpaid, but which had previously been paid to himself (*u*).

The sheriff's duty is further regulated by the statute 4 Geo. 4, c. 37 (*x*).

Appeal to Quarter Sessions.

Persons upon whose goods the sheriff has levied may appeal to Quarter Sessions against the fines, &c., on giving security to the sheriff (*y*).

Recovery of fines out of county.

The sheriff may recover out of the county, when imposed, by getting his warrant backed by a justice of the peace of the county where the offender is found (*z*).

Return of writ.

The sheriff must return the writ to Quarter Sessions, and indorse on the roll what has been done in the execution of the process, which return is to be forwarded by the clerk of the peace to the Treasury (*a*).

Sheriff's fee.

The sheriff is entitled to the usual fee on the discharge of the forfeited recognizance, and is liable to a penalty of £50 for neglect of the above duty (*b*).

Assize process, fines, penalties, &c.

By 22 & 23 Vict. c. 21, clerks of assize are required to estreat fines, penalties, recognizances, &c., into the Exchequer, and to send a copy of the roll with the writ to the sheriff (*c*). The sheriff must return the writ to the Treasury (*d*).

Until fines, &c., are levied, the sheriff is to retain the writ, which will continue in force and be his authority to act (*e*).

Resident out of county.

When a party resides in another county, or has removed, the sheriff is to issue his warrant to the sheriff of the other county, who is to make his return in thirty days (*f*).

(*u*) Wildes *v.* Morris, 22 L. J. M. C. 4.
(*x*) See Appendix.
(*y*) 3 Geo. 4, c. 46, s. 5.
(*z*) *Ibid.* s. 7.
(*a*) *Ibid.* s. 8.
(*b*) *Ibid.* s. 10.
(*c*) S. 32.
(*d*) S. 34.
(*e*) S. 35.
(*f*) S. 36.

For neglect of duty the sheriff is, by the 37th section, liable to a fine of £50, as in the case of neglect of duty in the matter of Quarter Sessions fines. Fine for neglect.

SECTION 10.

Writ of Venire.

This writ, according to "Corner's Crown Practice" (*g*), is used in order to compel the appearance of a defendant to an indictment which has been removed by *certiorari* into the Queen's Bench Division, "unless he appear voluntarily;" it is used when the defendant *has been held to bail in the inferior Court.* Writ of *venire.*

The writ must be made out by the solicitor, according to form, and must be signed at the Crown office, sealed at the seal office, and lodged at the sheriff's office. How made out.

The sheriff may be ruled to return the writ within four days next after service, in London or Middlesex, and within eight days in any other county. Return of writ.

SECTION 11.

Writ of Venditioni exponas.

This is a judicial writ addressed to the sheriff, commanding him to expose for sale goods taken into his hands to satisfy a judgment creditor. This is the proper and legal way of compelling a sale by the sheriff (*h*). It is a branch of the writ of execution upon which it is issued, *e.g.*, *fi. fa.* or extent, not a distinct process (*i*). Compelling sale by sheriff.

When the sheriff gets the writ, it is his duty to sell for as much as he is able (*k*). Sheriff's duty.

If he refuses to sell under the *venditioni exponas*, a *distringas* may issue against him, directed to the coroner, and if he does not sell the goods and pay over the money If sheriff refuses.

(*g*) P. 128.
(*h*) Cameron *v.* Reynolds, Cowp. 406. For form of writ, see Appendix, pp. 575, 576.
(*i*) Hughes *v.* Rees, 4 M. & W. 468.
(*k*) Keightley *v.* Birch, 3 Camp. 520.

before the return of that writ, he will be compelled to forfeit issues to the amount of the debt (*l*).

Priority of Crown.

The Courts will give priority to the Crown in granting a writ of *venditioni exponas*, where writs are tested the same day; and, in a case where writs of extent and *fieri facias* were issued against the goods of the defendant, tested on the same day, the Court refused to grant a writ of *venditioni exponas* on the return to the *fieri facias* (*m*).

Return to writ.

The common and proper return to a *venditioni exponas* to be made by the sheriff, is the amount of money in his hands, on which the Court will order him to pay it over, deducting poundage; if he has any further claim, he must make an application for its allowance (*n*).

Poundage.

A sheriff selling under a *venditioni exponas* on an extent, is not entitled to deduct anything either for extra expenses or poundage, or to return such a deduction (*o*).

(See, further, Chapter on Poundage.)

SECTION 12.

Capias in Withernam, &c.

Capias in withernam.

The writ of *capias in withernam* was formerly used in actions of replevin; but, since the sheriff has no longer any jurisdiction in matters of replevin, it is unnecessary to dwell longer on the subject.

Capias pro fine.

Capias pro fine a misericordiâ, now unnecessary.

Capias ad respondendum, formerly used in cases of outlawry, now abolished.

Capias, a writ of execution against the person, now almost entirely superseded. (See writs of attachment, *ca. sa.*, and *ne exeat regno*).

(*l*) Clerk *v.* Withers, 6 Mod. 300.
(*m*) Rex *v.* Devon (Sheriff), 1 Chit. 643.
(*n*) Rex *v.* Jones, 1 Price, 205.
(*o*) *Ibid.*

CHAPTERS XXV—XXVII.

REMEDIES AGAINST THE SHERIFF.

CHAPTER XXV.

BY ATTACHMENT.

THE remedies against the sheriff are of two kinds: first, by attachment; second, by action.

Criminal process.

Attachment is a criminal process, directed to the coroner when it issues against the sheriff, or to the present sheriff when it issues against his predecessor (*a*).

Against coroner.

If the coroner does not execute the writ, the Court will, in the first instance, grant an attachment against him, directed to elizors (*b*).

Civil process.

Attachment for contempt is so far considered in the nature of a civil process that it cannot be executed on a Sunday (*c*).

Attachment for abuse of authority

Attachment will be granted for escapes (*d*), extortion, using needless force in making an arrest, breaking open doors when there is no excuse for doing so, illtreating arrested persons, detaining them in custody till they pay money for their release, making arrests without due authority, as by force of a blank warrant filled up with the name of a special bailiff by the party himself or bailiff,

(*a*) Tidd. Prac., 8th ed., 314. Chit. Arch., 7th ed., 556. W..t. Sh., 2nd ed., 174.
(*b*) Hawk. P. C., b. 2, c. 22, s. 2.
(*c*) R. *v.* Myers, 1 D. & East, 266.
(*d*) Arden *v.* Goodacre, 11 C. B. 367, 371. Reg. *v.* Leicestershire (Sheriff), 1 L. M. & P. 414.

without the privity or subsequent agreement of the sheriff (*e*).

Attachment for corrupt practices.

Where a sheriff or his officer is guilty of corrupt practices, as in depriving a party who sues out a writ of execution of the advantage of the execution, *e.g.* by levying the debt and keeping the money in his own hands, he may be punished by attachment; but, unless there appear some gross and palpable corruption in a sheriff neglecting to return a writ, or to bring in the body or the money, &c., the Court will hardly grant an attachment immediately, but will rather proceed against him by rules to return the writ, and gradually increase the fines for disobedience until he obeys; the Court will, however, on the failure of this method, grant an attachment for contempt (*f*).

Attachment for false return.

Where a sheriff makes a return to a writ of a matter known by him to be false, he is, in strictness, liable to be punished in this manner for his contempt. Yet it seems that the Court will not easily be prevailed on to proceed in this manner for a bare false return, but will rather leave the party injured by it to his remedy by an action, unless there be some extraordinary circumstances of hardship or oppression; as, where an officer who had arrested a certain person on a *capias*, returned that he had taken him, but that he was unable to bring in his body at the day, for fear of endangering his life, whereas, in truth, the person had been all the while in good health, and was only detained under such pretence in order to extort money from him (*g*).

Where defendant dies.

Where a sheriff has been guilty of a contempt in the course of a civil suit, and the defendant afterwards dies, an attachment may still issue against the sheriff for the prior contempt (*h*).

Where

Where the coroner is the defendant in the cause, the

(*e*) Hawk. P. C., b. 2, c. 22, s. 3.
(*f*) *Ibid.* s. 4.
(*g*) *Ibid.*
(*h*) *Ibid.*

tachment against the sheriff must issue to elizors in the st instance (*i*). coroner is defendant.

Until the attachment is granted, it is on the plea side of e Court, but, as soon as it is granted, it is on the Crown de (*k*).

A rule for an attachment against a sheriff for not obey- g a rule to return a writ is absolute in the first stance (*l*), but a rule for an attachment against a eriff for the non-payment of money directed to be id by an order made a rule of Court, and of the te of the rule, is only, in the first instance, a rule show cause (*m*). In cases of attachment, it is essen- al to the regular service of a rule or order that the iginal rule or order be shown (*n*). Rule for attachment, when absolute. Original rule to be shown.

The remedy by attachment will be granted when the eriff has neglected to execute the process of the Court, has in any other way committed a contempt, as, by sufficiency of return, &c., &c. When attachment will be granted.

The motion for the attachment must be grounded on an *fidavit* of the service of a copy of the rule, and that the iginal was shown at the same time; and also that no bail s been put in, or that bail has been put in, but not stified. In the case of a judge's order to bring in the ody, the *affidavit* should also state that the order was ade a rule of Court in the term next following the order. n the Queen's Bench and Exchequer, it seems that the ractice was, formerly, for the judge's order to be made rule of Court, and an attachment for not obeying it to e obtained in one motion, but it was otherwise in the ommon Pleas; in the Queen's Bench, it was necessary to ave two rules (*o*). Motion to be grounded on *affidavit*, &c.

(*i*) Reg. *v.* Glamorganshire (Sheriff), 1 Dowl. N. S. 308.
(*k*) 1 Tidd. Prac., 8th ed., 314.
(*l*) Reg. Gen., Q. B., C. P. & Exch., H. T., 16 Vict., r. 168. 1 El. Bl. App. xxviii.
(*m*) Hatfield *v.* Haverfield or Hatherfield, 6 M. & G. 724; 1 D. & 809; 7 Scott. N. R. 430.
(*n*) Reg. Gen., Q. B., C. P. & Exch., H. T., 16 Vict., r. 163.
(*o*) Wat. Sh., 2nd ed., 174. Barnard *v.* Berger, 1 N. R. 121. Rex Smithies, 3 T. R. 351. In this last case, the Court allowed the laintiff to make a supplemental *affidavit*. Arch. 556, 7th ed.

As the High Court is now one, these distinctions no longer exist, and it is submitted that the old practice of the Queen's Bench will prevail.

Where two rules have been given.

Where there are two defendants in one writ, and separate rules have been given to bring in the body of each defendant, it is proper to issue two attachments against the sheriff for not obeying those rules (*p*).

Attachment set aside for irregularity.

If any of the proceedings against the sheriff be irregular, the Court will set aside the attachment; and, an attachment against the sheriff for not bringing in the body, after the defendant had surrendered, was held to be irregular, though the surrender was not made until after the rule for bringing in the body had expired (*q*).

Rule 133, Reg. Gen., Hilary Term, 16 Vict.

This latter principle must, however, be taken to be overruled by the provisions of Rule 133, Reg. Gen., Q. B., C. P. and Exch., H. T., 16 Vict., which are as follows, "In case any rule shall issue in vacation for the return of any writ of *capias*, *ca. sa.*, *fi. fa.*, *elegit*, *habere facias possessionem*, *venditioni exponas*, or other writ of execution, and such rule shall have been duly served, but obedience shall not have been paid thereto, an attachment shall issue for disobedience of such rule, whether the thing required by such rule shall or shall not have been done in the meantime."

Sheriff when not liable.

A sheriff is not liable to attachment for not returning a writ which has not been transferred to him by his predecessor in office, notwithstanding the provisions of 3 & 4 Will. 4, c. 99, s. 7 (*r*); nor is he liable for not returning a writ, if not called upon by a rule of Court within six months after the expiration of his office, notwithstanding that he was requested by the party to return it before the six months expired (*s*).

Attachment to be moved for

If the plaintiff has not moved for an attachment within a reasonable time, the Court will set it aside, for, by such

(*p*) Constable *v.* Bristow, 8 Moore 162.
(*q*) Rex *v.* Sheriff of Middlesex, 2 Maule & Sel. 562.
(*r*) Thomas *v.* Newman, 2 D. N. S. 33.—B.C.—Wightman.
(*s*) Rex *v.* Jones, 2 T. R. 1.

delay the sheriff may be deprived of his remedy against the party (*t*); and, where a plaintiff, on account of negotiations between himself and the defendant, delayed for a term his proceedings against the sheriff, the latter was held to be discharged by the laches of the plaintiff (*u*). within reasonable time.

In an action against the sheriff for the extortion of his officer, the latter, in consideration of stay of proceedings, undertook by a written memorandum to pay a certain sum of money to the plaintiff within seven days, together with the costs of the action, and, in default of payment, to withdraw his plea, and suffer the plaintiff to have judgment. The officer neither paid the money nor withdrew the plea. Attachment was moved for against the officer for not performing his undertaking, or the Court was asked to order him to withdraw his plea according to his undertaking. The rule was refused, on the ground that the sheriff was not an officer of the Court for that purpose, nor a party in the cause, and therefore could not be compelled on motion to perform his undertaking (*v*). Sheriff when not officer of court.

When a rule expires in term time, and the sheriff has not returned the writ on or before the day on which the rule expires, the plaintiff may move for an attachment at the rising of the Court on that day, if the rule be not returned (*x*). When attachment may be moved for.

Where a rule to return the writ expires on the last day of term, an attachment against the sheriff may be moved for at the rising of the Court, after the period for closing the office has passed, if the motion is made on an *affidavit* stating that no return was made at the closing of the office (*y*). Expiration of rule.

If a sheriff fail to return a writ, in vacation, at the Failure to

(*t*) Rex *v.* Perring, 3 Bos. & Pul. 151.
(*u*) Rex *v.* Middlesex (Sheriff), 1 Dowl. 53.
(*v*) Brown *v.* Gerard, 1 C. M. & R. 595; 3 Dowl. 217; 5 Tyr. 220. The sheriff is, however, an officer of the Court for the execution of writs.
(*x*) Rex *v.* Sheriff of Surrey, 11 East. 591.
(*y*) Reg. *v.* Shropshire (Sheriff), 9 Jur. 12.—B.C.—Wightman.

return writ in vacation.

expiration of the rule, an attachment may be obtained on the first day of the next term (*y*).

No attachment can issue for disobedience of an order made by a judge in vacation, until such order has been made a rule of Court (*z*).

Direction to proceed with execution.

A plaintiff does not waive his right to an attachment against a sheriff for not duly returning a *fi. fa.*, by directing him, after the expiration of the rule to return the writ, to proceed with the execution, which had been suspended by an adverse claim (*a*).

Delivery of attachment to clerk.

Delivery of an attachment against a sheriff to the managing clerk of the London agent of the coroner, is not sufficient to allow of an attachment issuing against the coroner for not returning the attachment (*b*).

Against former sheriff.

An attachment against a late sheriff for disobedience to a judge's order, calling on the "sheriff" to return the writ, instead of the "late" sheriff, is irregular, and may be set aside, though the sheriff has not applied to set aside the order (*c*).

Office copy of return, &c., to be produced.

In discussing a rule *nisi* for an attachment against a sheriff for an insufficient return to a writ, the Court will not take cognizance of the return unless an office copy is produced verified by *affidavit* by a party as to his belief that no sufficient return has been made (*d*).

At what point attachment is granted.

An attachment may be said to be granted when the rule for the attachment is obtained, and, after that, the proceedings being (as explained above) on the Crown side of the Court, *affidavits* in the matter are properly intitled as "Rex *v.* The Sheriff of Middlesex, &c." (*e*).

Service to be personal.

To ground an attachment absolute against a sheriff for not returning a writ, the service must be personal on the

(*y*) Rex *v.* Sheriff of Middlesex, 1 Marsh. 270, S. C. 5 Taunt. 647. Smith *v.* Blyth, 9 Price, 225.
(*z*) 2 & 3 Will. 4, c. 39, s. 15.
(*a*) Howitt *v.* Rickaby or Rickby, 9 M. & W. 52; 1 D. N. S. 389.
(*b*) Fever *v.* Aubin, 1 H. & W. 332.
(*c*) Reg. *v.* Cornwall (Sheriff), 7 Dowl. 600.
(*d*) Wilton *v.* Chambers, 5 N. & M. 431; 1 H. & W. 582.
(*e*) Rex *v.* Middlesex (Sheriff), 2 M. & W. 107.

ndersheriff at his public office, or upon his deputy ppointed under 3 & 4 Will. 4, c. 42, s. 20 (*g*).

Where a sheriff's officer was, as he alleged, in possession f goods under a *fi. fa.* issued out of the Court of Common 'leas, and an officer of the Palace Court levied and took way the goods under process of that Court, using no iolence, the Court refused to grant an attachment against he officer of the Palace Court, there being reason to believe hat the possession of the sheriff's officer was a matter in lispute (*h*). Taking goods from officer.

Where an interpleader order directed the sheriff to sell oods seized under a *fi. fa.*, but, the judgment debtor becom- ng bankrupt before the sale, the goods were claimed by a essenger of the Court of Bankruptcy, and the sheriff ave up possession to the messenger, the Court refused an ttachment against the sheriff for contempt of Court in ot selling the goods (*i*). Not selling goods.

Where a sheriff, after being ruled to make a return to a *fa.*, made a return that he had sold the goods seized, nd had received for them sufficient to satisfy the monies irected to be levied; but that he afterwards had notice rom the landlord that two quarters' rent were due; that e had applied to the landlord, but had not been permitted y him to have evidence of his claim; and that, though e, the sheriff, had used due diligence, he was unable to scertain whether the landlord had any just claim in respect of the rent, the Court quashed the return for in- sufficiency, and allowed an attachment to issue (*k*). Insufficient return.

Where an application was made against the deputy constable of Dover Castle, on the ground of his having been guilty of extortion, but only the usual fees had been allowed by the master, the Court refused to grant an attachment, but left the party to his action (*l*). Deputy constable of Dover Castle.

(*g*) Woodland *v.* Fuller, 2 P. & D. 570; 11 A. & E. 859.
(*h*) White *v.* Chapple, 4 C. B. 628; 11 Jur. 543; 16 L. J. C. P. 33.
(*i*) Collins *v.* Cliff, 11 W. R. 786, Exch.
(*k*) Hall *v.* Crawley, 11 W. R. 344—B. C.
(*l*) Primrose *v.* Bradley, 2 C. & M. 687; 2 Dowl. 662; 4 Tyr. 95.

Affidavits in support of rule.

Affidavits in support of a rule for an attachment against a sheriff or his officer for extortion in the execution of a *fi. fa.* are properly entitled "in the cause" (*n*).

Setting aside an attachment.

The discretion of the Court, on setting aside an attachment against the sheriff for the escape of a prisoner taken on a *ca. sa.*, was taken to be governed by the principle laid down in an action for damages under 5 & 6 Vict. c. 98, s. 31, and, where necessary, an action was directed to ascertain the amount of damages, the attachment standing over.

The true measure of damages in such a case was, therefore, the value of the custody of the debtor at the moment of the escape, and no deduction was made on account of anything which the plaintiff might have obtained by diligence after escape. But, if the plaintiff had done anything to aggravate the loss occasioned by the sheriff's neglect, or had prevented the sheriff from retaking the debtor, the damages were materially affected by his conduct (*o*).

Attachment against the sheriff for not returning a writ of *fi. fa.* is not, as formerly, obtained as a matter of course; but, since Order 44, rule 2, of the Judicature Act, 1875, can only be applied for on notice (*p*).

A sheriff's officer not present at the sale, who has no actual notice of an injunction, is not responsible for the act of a deputy who allows the sale to be continued after notice by telegram of an injunction (*q*).

(*n*) Masters *v.* Lowther, 11 C. B. 948; 16 Jur. 347; 21 L. J. C. P. 130.
(*o*) Arden *v.* Goodacre, 11 C. B. 367, 371. Atk. Sh., 5th ed., 187.
(*p*) Jupp *v.* Cooper, 5 C. P. D. 26.
(*q*) *Ex parte* Langley, *ex parte* Smith, *in re* Bishop, 13 Ch. D. 110.

CHAPTER XXVI.

BY ACTION.

Actions against the sheriff.

Besides the remedy by attachment, there is a further remedy against the sheriff, by action, and the liabilities of the sheriff, under this heading, form an important item in the law of sheriffs. All actions for breach of duty in the office of sheriff must be brought against the high sheriff, though by default of the undersheriff or bailiff (*a*).

Sheriff liable for misconduct.

If a sheriff's officer takes money *colore officii* for anything done in the course of his duty, and to which he is not entitled by law, an action lies against the sheriff, although there be no evidence that the money came to his hands (*b*).

Sheriff when liable for acts of officer.

The sheriff is responsible for the acts of his officer, though not within the limits of his duty, provided such acts are afterwards assented to or adopted by the sheriff; and he is civilly liable for the misconduct of his officer in executing a writ, though the act done is contrary to the express terms of the writ, *e.g.* if he takes the person under a *fi. fa* (*c*).

When not liable.

Though the sheriff is liable for the acts of his officer, when he is acting in a ministerial capacity, he is not liable when acting in a judicial capacity (*d*).

(*a*) Cameron v. Reynolds, Cowp. 403. Anon. Lofft. 81.
(*b*) Jones v. Perchard, 2 Esp. 507—Kenyon.
(*c*) Smart v. Hutton, 8 A. & E. 568, n.; 2 N. & M. 426.
(*d*) Holroyd v. Breare, 2 B. & Ald. 473. Pitcher v. King, 9 A. & E. 288.

Misrecital of statute.

A misrecital of a statute is immaterial in an action against the sheriff (*e*).

If the sheriff neglects or refuses to execute any writ, when he has the opportunity, and is required to do so, he is liable to an action (*f*).

Delaying to execute possession.

So, where the lessor of a plaintiff in ejectment against a casual ejector obtained a writ of *habere facias possessionem*, and delivered the warrant to the sheriff's officer to be executed, and, the sheriff having received notice that the landlord intended to apply to set aside the proceedings for irregularity, his officer did not execute the possession, and the proceedings were afterwards set aside by a judge's order, but not for irregularity, the landlord being let in to plead on payment of costs, the lessor of the plaintiff was held to be entitled, in an action against the sheriff for delaying to execute the possession, to recover the expense incurred by him, before the judgment was set aside, in endeavouring to get the writ issued, which expense the master had refused to allow on taxation (*g*).

After a return to a writ of *fi. fa.* that the money is levied, the sheriff is liable to an action for money had and received, without any demand for payment (*h*). Nevertheless, where any vexatious proceedings are instituted against the sheriff, the Court will protect him (*i*).

When no action will lie.

No action will lie against a sheriff for executing a writ against a defendant wrongly named in the writ, provided that the person upon whose body or goods the writ is executed be *in fact* the person against whom the judgment was entered up and the writ issued; and, where A. B. executed a warrant of attorney in the name of C. B., and judgment was entered up and a *fi. fa.* issued

(*e*) Holmes *v.* Sparkes, 12 C. B. 242; 15 Jur. 975; 21 L. J. C. P. 194.
(*f*) Brown *v.* Jarvis, 1 M. & W. 704. Mason *v.* Paynter, 1 Q. B. 974.
(*g*) Mason *v.* Paynter, 1 Q. B. 974.
(*h*) Dale *v.* Birch, 3 Camp. 346.
(*i*) *Ibid.*, *per* Lord Ellenborough.

against him by that name, it was held that this was right, and that the sheriff was bound to execute it (*k*).

Taking goods of wrong person.

But, if an officer, on a writ against A., take the goods of B., a different person, the sheriff is liable to an action of trespass or trover for the act of his officer (*l*); and, if there are two persons of the same name and address, and a writ issues against one of them, and the sheriff through inadvertence or mistake executes the writ against the wrong person, he is liable to an action (*m*).

Plaintiff entitled to proceeds of sale.

In such an action, however, the plaintiff will only be entitled to the amount actually realized by the sale, whereas in an action *ex delicto* he might recover the value of the goods seized, without reference to the price for which they were sold, and also compensation for the inconvenience, &c., occasioned by the seizure (*n*).

Where party obtrudes himself.

But, where a party intentionally misrepresents himself, and takes a name which does not belong to him, it is not permitted to him to take advantage of his own wrongful act, so as to enable him to avoid the consequences of it; for, a mistake induced by his own affirmation cannot give him a right of action (*o*).

Lord Ellenborough, in the case of Morgan *v.* Brydges, mentions another case, where a person had obtruded himself instead of another on the sheriff's officers, and, after having been arrested, brought an action against them, which Lord Loughborough held unmaintainable.

If a sheriff have seized goods under a writ founded on a judgment fraudulent against creditors, he is compellable to seize and sell such goods as are capable of being seized, under a subsequent writ founded on a *bonâ fide* debt, and is liable to an action, if, after notice of the fraud, he neglects to sell, and returns *nulla bona* to the second writ.

(*k*) Wat. Sh., 2nd ed., 119. Reeves *v.* Slater, 7 B. & C. 486.
(*l*) Wat. Sh., 2nd ed., 120. Jarmain *v* Hooper, 1 D. & L. 769; 6 M. & G. 827, S. C.
(*m*) *Ibid.*
(*n*) *Ibid.*
(*o*) Morgan *v.* Brydges, 1 B. & Ald. 650; 2 Stark. 314. Mace *v.* Cadell, Cowp. 232.

His liability will not be removed by his having disposed of the goods to a party to the fraud, whom he believed to be a *bonâ fide* purchaser (*m*).

Misconduct of bailiff.

Where a party arrested by a bailiff acting under the warrant of the sheriff paid into the hands of the bailiff the amount of the debt and costs, to be paid over to the execution creditor, and, the bailiff having failed to pay over the money, a second *ca. sa.* was issued, which occasioned the re-arrest of the debtor, it was held that the sheriff was not liable for this breach of contract on the part of the bailiff, the plaintiff's remedy being against the bailiff (*n*) But, in a more recent case, where a bailiff to whom the sheriff had given his warrant to execute a *fi. fa.* sent a bailiff's assistant to execute it in the bailiff's absence, which was done, it was held that the ruling of the judge at the trial that the sheriff was answerable for this act, as being done by colour of the warrant, was correct; Jervis, C.J., observing that "the principle which governed the case would be found to be hinted at, if not clearly explained, in Parrot *v.* Mumford (*o*), in which it is said that the extended liability of the sheriff beyond that of an ordinary party who delegates his authority, is, that he is bound in the first instance, and is supposed to execute his duty in person. The impossibility of so doing justifies him in law in delegating that authority to another; but he puts that party in his own place, and for whatever that party does, not only *virtute mandati*, but *colore mandati*, the sheriff is responsible. . . . If an application had been made to the Court to set aside the execution of a *capias ad satisfaciendum* or *fieri facias*, in order to support them as good the Court would require the presence of the delegated officer in person, either actually or constructively, for the protection of the subject. It is because the Courts are tender of the liberties and interests of the subject,

Reason of liability of sheriff.

Presence of officer in person required

(*m*) Christopherson *v.* Burton, 3 Exch. 160; 10 L. J. Exch. 60.
(*n*) Woods *v.* Finnis, 7 Exch. 363; 16 Jur. 936; 21 L. J. Exch. 138.
(*o*) 2 Esp. 585.

that they require the presence of an officer over whom they have control during the execution of the writ; but it does not follow, because they will set aside the process on the execution for the absence of the officer, that therefore the sheriff is not liable for every wrongful act of the officer; on the contrary, the same principle which requires the attendance of the responsible officer to protect the party, in order that the writ may be properly executed, shows that if, by the want of the attendance of the officer who was by the sheriff originally set in motion, a wrong has been done, for that wrong the sheriff is liable" (*p*).

Court will set aside execution, for absence of officer.

In the above case the bailiff's assistant did not pay over the money to the bailiff, and the sheriff never in fact received the money, but payment under such circumstances was held to be good as against the sheriff, and to have satisfied the writ.

Payment to bailiff's assistant.

Where a bailiff in possession of goods under a landlord's distress received a *fi. fa.* from a sheriff, and sold the goods under it, the sheriff was held liable in an action for pound breach and rescue, at the suit of the landlord (*q*).

But, where goods were taken in execution by the sheriff on a *fi. fa.*, and whilst they remained in his hands unsold an extent came at the King's suit, tested after the entry of the sheriff under the *fi. fa.*, and the sheriff thereupon seized the said goods subject to the former seizure, and afterwards sold them under a *venditioni exponas* issued upon such extent, and paid over the proceeds of such sale by order of the Court of Exchequer, it was held, that, at all events, without determining whether the King's extent was under the circumstances entitled to priority, the plaintiff could not maintain an action for money had and received against the sheriff for the proceeds of such sale (*r*).

The decision in the above case was grounded on the fact that the sheriff did not levy the money under the *fi. fa.*

(*p*) Gregory *v.* Cotterell, 5 El. & Bl. 571; 2 Jur. N. S. 16; 25 L. J. Q. B. 33—Exch. Chamb.
(*q*) Reddell *v.* Stowey, 2 M. & Rob. 358—Erskine.
(*r*) Thurston *v.* Mills, 16 East. 254.

but under the *venditioni exponas* authorized by the Court of Exchequer. It could not, therefore, be said that that which was not the money of the plaintiff, but was a conversion of the goods into money under another authority, in defiance, as it may be termed, of the plaintiff's writ, was money had and received to the use of the plaintiff under that writ. It would have been different had the money been levied under the plaintiff's writ; and, in a case where a *fieri facias* issued at the suit of the plaintiff on Friday, the 14th of November, against the goods of the defendant, the goods being all seized and sold by twelve o'clock on Monday, the 17th, a writ of extent was delivered to the sheriff after the goods had been removed by the purchasers, but while the money remained in the sheriff's hands, it was held, that, the plaintiff might recover the money resulting from the sale from the sheriff in an action for money had and received, as the execution of the plaintiff was completed by the sale (*s*).

Executing writ after notice to stay.

Where, after a direction of the plaintiff not to execute a writ, the sheriff does execute it, or if, after notice from the plaintiff that he has released the debt, the sheriff persists in executing the writ, he is liable to an action of trespass (*t*).

Evidence to disclaim act of officer.

Where a sheriff's officer is guilty of excess, even though such excess be committed by the officer contrary to the orders of the undersheriff, the sheriff will not be allowed to bring evidence which would tend to disclaim his responsibility (*u*). The sheriff is liable, also, to an action for the misconduct of his officer in executing a writ, though the act done be contrary to the express terms of the writ (*x*).

Refusing to accept vote.

If a sheriff be guilty of any other excess or defect in duty, he will be liable to an action (*y*), *e.g.* if he as returning officer maliciously refuses the vote of a person having a

(*s*) Swain *v.* Morland, 1 B. & B. 370; Gow, 39; Moore, 740.
(*t*) Barker *v.* St. Quintin, 12 M. & W. 441.
(*u*) Scarfe *v.* Hallifax, 7 M. & W. 288.
(*x*) Smart *v.* Hutton, 8 Ad. & E. 568, n.
(*y*) Ratcliffe *v.* Burton, 1 Bos. & Pul. 223.

right to vote (*z*); and the fact that the candidate for whom the voter intended to record his vote was successful, makes no difference so far as the right to bring the action is concerned (*a*).

Property of third party.

Where a sheriff under a writ of *fi. fa.* against A. seized and sold the furniture in his house, where he lived with a woman with whom he had gone through the ceremony of marriage, and to whom the goods belonged before the marriage, it was held that the woman, having afterwards discovered that the marriage was void, might maintain trover against the sheriff, and recover the value of the goods, although it exceeded the price for which they were sold (*b*).

Where a sheriff took the furniture of A. who had let his house furnished to B., under an execution against B., though notice was given to the sheriff that the goods belonged to A., it was held that no action lay against the sheriff (*c*).

Assignees afterwards becoming entitled.

Where a sheriff under a *fi. fa.* seized goods in the possession of the defendant, to which the defendant had only a defeasible title, and such title was afterwards defeated by events having a retrospective effect, as frequently happens in cases of bankruptcy, the sheriff formerly became liable to an action of trover (*d*). Thus, if a sheriff, having seized goods under a *fi. fa.*, sold after an adjudication of bankruptcy, he was liable to an action of trover at the suit of the assignees, for such an execution was defeated, and the property in the goods transferred to the assignees, after adjudication before sale (*e*). If the sheriff had also

(*z*) Ashby *v.* White, 2 Ld. Raym. 938, 958; Salk. 19, S. C.; 6 Mod. 45; Holt. 524 (1703). This case has been reviewed and overruled in the American Courts (Bevard *v.* Hoffman, 18 Maryland Reports, 483. Anderson *v.* Baker, 23 Maryland Reports, 531—Bowie, C. J.).

(*a*) *Ibid.*

(*b*) Glasspoole *v.* Young, 9 B. & C. 696.

(*c*) Ward *v.* Macauley, 4 T. R. 489.

(*d*) Wat. Sh., 2nd ed., 120. Cooper *v.* Chitty, 1 Burr. 20. Smith *v.* Miles, 1 T. R. 475. Whitmore *v.* Greene, 12 M. & W. 184.

(*e*) Cheston *v.* Gibbs, 1 D. & L. 420; 12 M. & W. 111. The decision in this case, having been misunderstood, was referred to by Parke, B., in the case of Congreve *v.* Evetts (10 Exch. 298; 18 Jur.

received the proceeds, he could be sued for money had and received (*f*). But it is now no longer necessary that seizure should be followed by sale in order to bind the goods as against the bankrupt's assignees, and seizure alone before bankruptcy suffices (*g*).

Interference of debtor.

The interference of a debtor will not make an officer his agent so as to relieve the sheriff of his liability. In a case where the sale of goods under a *fi. fa.* had been fixed for the 26th of July, the sheriff's officer, at the request of the debtor, delayed issuing advertisements till the 25th. On that day a further delay of some hours was granted at the request of the debtor's attorney, who ultimately instructed the officer to go on and sell at the same time under another writ which had been delivered to the officer during the day. The goods were thereupon sold together, without being lotted, at a considerable loss. Here it was held, that the interference of the debtor did not make the officer his agent, and that the sheriff was not relieved from his liability in respect of the negligent conduct of his officer in conducting the sale (*h*).

Directions to officer.

In another case, on the 26th of January, the sheriff, under a *fi. fa.* sued out by the plaintiff, seized the defendant's goods. At the plaintiff's request, the sale was deferred. On the 9th of May the plaintiff paid all expenses up to that date, and wrote to the officer in possession, "Provided the defendant satisfies all future claims, the sale may be postponed." The officer remained in possession till September, and after a peremptory order from the plaintiff, sold the goods on the 20th of that month. On being ruled, the sheriff returned, on the

655; 23 L. J. Exch. 293; 2 C. L. R. 1253 (1854)), and explained to mean that the sheriff in disobeying the writ and the clause in the Act of Parliament directing its operation, was dealing wrongfully with the goods, which, but for that writ, would be the property of the assignees, and therefore responsible in an action of trover.

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4th of October, that, after deducting various sums for xpenses (among which was an item of £20 possession-noney), he had £34 ready to pay to the plaintiff. The laintiff applied to the Court to order the sheriff to pay im the £20 possession-money, as well as the £34. Here ; was held that the plaintiff, by his communications with nd directions to the officer, did not thereby discharge he sheriff, and that the proper course to enforce the heriff's liability was by summary application, and not by n action (*i*).

Seizing hired goods.

The sheriff is liable to an action by the owner of goods ent on hire, if, having seized them under an execution gainst the hirer, he sells the entire property in the oods; but, to support the action, the owner of the goods nust show that as soon as the goods were seized he pprised the sheriff that the goods were lent for a term nly, and that the hirer had consequently only a ualified property in the goods (*k*). The sheriff will ot, however, be liable to an action by the owner of the oods, if he has seized, but not sold (*l*). This will be he case, even though notice be given to sheriff that the goods are not the property of the hirer (*m*).

The fact that the owner cannot maintain an action of trover against the sheriff results from the owner not having the right of possession as well as the right of property at the time of seizure (*n*).

Extortion by sheriff's officer.

Where more than the sum allowed by statute had been taken for a bail-bond by an officer of the sheriff who kept a lock-up house, to which the debtor was brought after the arrest, but who was not the officer to whom the warrant was directed, it was held, that no action would lie against he sheriff (*o*).

(*i*) Botten *v.* Tomlinson, 16 L. J. C. P. 136.
(*k*) Dean *v.* Whitaker, 1 C. & P. 347—Abbott.
(*l*) Duffil *v.* Spottiswoode, 3 C. & P. 435—Best.
(*m*) Ward *v.* Macauley, 4 T. R. 489. Panton *v.* Robart, 2 East, 8; 4 Esp. 33.
(*n*) Pain *v.* Middlesex (Sheriff), R. & M. 99—Abbott.
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24th of October, that, after deducting various sums for expenses (among which was an item of £20 possession-money), he had £34 ready to pay to the plaintiff. The plaintiff applied to the Court to order the sheriff to pay him the £20 possession-money, as well as the £34. Here it was held that the plaintiff, by his communications with and directions to the officer, did not thereby discharge the sheriff, and that the proper course to enforce the sheriff's liability was by summary application, and not by an action (*i*).

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(*n*) Pain *v.* Middlesex (Sheriff), R. & M. 99—Abbott.
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Costs will be allowed to a plaintiff who recovers damages from the sheriff for extortion (*p*).

Notice as to goods being in bailiwick.

A sheriff is not liable for not seizing goods of the presence of which in his bailiwick he has no notice. A summons and plaint against a sheriff stated the delivery of a writ, and that at the time of its delivery and afterwards during a reasonable time in that behalf, goods of the debtor were within the bailiwick, and that he had notice thereof, yet he did not levy, and made default in the execution of the writ, and falsely returned *nulla bona*. Plea, that except certain goods of the value of £3, there were not at the time of the delivery of the writ or afterwards during a reasonable time in that behalf any goods of the debtor within the bailiwick whereof he had notice, although he used during all the time aforesaid all due and proper diligence to discover the same. As to the default made in the execution of the writ, on levying out of the goods, he brought into Court a sum of money; it was held, that, as the measure of damages would be the same in an action for neglect to levy, and in an action for a false return, and as even if a plaint contained a count upon each there would be only one set of damages recovered,—the money was substantially lodged in reference to the entire default, and the plea was good.

Reasonable time.

It was held, also, that the meaning of the averment in the count, "that there were goods within his bailiwick for a reasonable time in that behalf," was, that the goods were within the bailiwick for such a time that it was possible for the sheriff to have seized them, and that the same construction should be put upon the same words in the plea (*q*).

Notice of bankruptcy.

A sheriff, who, having seized goods under a *fi. fa.*, receives notice in general terms that the execution debtor has committed an act of bankruptcy, may take reasonable time to inquire whether the statement is true before

(*p*) Tyte *v.* Glode, 7 T. R. 267. Deacon *v.* Morris, 2 B. & Ad. 393.

(*q*) Yourrell *v.* Proby, 2 Ir. R. C. L. 460—C. P.

eeding to sell, unless he is aware of circumstances
h cause him to think that the notice is a mere
nce (*r*).

n action cannot be maintained against the sheriff by Partner-
partner in a joint business, because, on an execu- ship.
against the other partner for a separate debt, the
ff has sold the share in the partnership property of
nindebted partner (*s*).

n action cannot be maintained against a sheriff for Pecuniary
igence in not levying under a *fi. fa.*, without showing damage to be
l pecuniary damage; and although *primâ facie* the shown.
ure of damage is the value of the goods which might
been and were not levied, yet it is for the jury to
looking at the probabilities of the case, whether or
if the execution had been levied, the creditor would
derived any benefit from it, by reason of the other
tors of the execution debtor being in a position to
e him bankrupt (*t*).

an action against a sheriff for negligence in not Landlord's
ing under a writ of *fi. fa.*, the defence was that the rent.
ff had withdrawn, on notice from the landlord that
was due. At the trial the landlord stated that rent
due, but on cross-examination it transpired that the
ution debtor held under a lease, which was not pro-
d. Here it was held that the fact of rent being due
l not be proved without the production of the lease,
that the plaintiff was entitled to a verdict (*u*).

ne fact of a sheriff being a public officer to whose Actual
ce the plaintiff is entitled, does not constitute the damage to be proved.
an exception to the rule that, in an action for tort,
l damage must be proved, or a presumption of law
ying damage established. This principle was held
in the following case,—S. having obtained a judg-

Ayshford *v.* Murray, 23 L. T. N. S. 470—Blackburn.
Mayhew *v.* Herrick, 7 C. B. 229; 13 Jur. 1078; 18 L. J. C.
9. See also under heading "Partners."
Hobson *v.* Thelluson, L. R. 2 Q. B. 642; 36 L. J. Q. B. 302;
. R. 1037; 16 L. T. N. S. 837.
Augustien *v.* Challis, 1 Exch. 279.

ment against F., issued a *fi. fa.*, and placed it in the hands of the sheriff for execution, who, on proceeding to make a levy, found that the goods were claimed by his brother, under a bill of sale; F. being informed of this, requested the officer to remain on the premises, which he did until after the goods were sold under the bill of sale, and then at F.'s request withdrew. The sheriff, being ruled to make a return to the writ, returned that he had seized the goods and chattels of the debtor, and kept them safely until ordered by F. to withdraw from possession. F. thereupon brought an action against the sheriff for not levying, and for making a false return, but on the trial gave no evidence of having sustained any damage by the sheriff's neglect. The defence set up was the validity of the bill of sale, and the jury found that it was valid, and returned a verdict for the sheriff (*x*).

Goods not property of debtor.

In the same case it was held that the sheriff was not estopped by the admission in his formal return from setting up as a defence that the goods were not the goods of the debtor at the time of the attempted seizure, and that consequently the plaintiff had not sustained actual damage; and that the facts were not such from which the law would imply damage necessarily resulting.

Reasonable diligence.

A sheriff who has used reasonable diligence in the execution of a writ is not liable to an action because he did not use extraordinary exertion, or provide against an unexpected or unforeseen contingency (*y*).

When no action lies.

No action of trespass lies against the sheriff, or any one lawfully acting in aid of the sheriff, for acts done in executing process or orders of the Court. In an action brought by B. for assault and false imprisonment against the sheriff and the attornies, they pleaded a justification under a judge's order made under the Debtors Act, 1869, ordering the plaintiff as judgment debtor to pay a certain sum of money within two months, and in default of

(*x*) Stimson *v.* Farnham, 20 W. R. 183—Q. B.; L. R. 7 Q. B. 175; 41 L. J. Q. B. 52; 25 L. T. N. S. 747.
(*y*) Hodgson *v.* Lynch, 5 Ir. R. C. L. 353—C. P.

payment to be imprisoned, which order was after default made delivered by the attornies for the judgment creditors to be executed by the sheriff. The plaintiff demurred, on the ground that the order was not warranted by the Debtors Act. Here it was held, that the question of the validity of the order was not arguable, for, the order having been made by the judge under the statute, no action of trespass lay against the sheriff (*z*).

Sheriff's justification.

In an action of trespass against the sheriff, the writ is a sufficient justification, for the sheriff, being a mere ministerial officer in the execution of writs, is not required to examine into their legality (*a*).

The writ, however, would appear to be sufficient justification only so far as it was evidence that a judgment existed (*b*).

Writ served on wrong person.

A writ of summons in an action against A. was served on B., who told the person so serving him that his name was B. and not A., and, further, that he was not the person against whom the writ issued, and knew nothing of the matter. B. having taken no notice of the service, judgment was signed, and a writ of *ca. sa.* issued, under which he was taken in execution. Thereupon B. brought an action of trespass against the sheriff, who justified under a writ of *ca. sa.* directed to him against B. in the name of A. It was held that the above facts did not prove the plea, and that the sheriff was liable (*c*).

Judgment obtained by fraud.

But this principle does not always hold good, for, in an action against the sheriff for a false return of *nulla bona*, the sheriff proved that he had seized all the goods of the debtor under a *fi. fa.*, in another suit, before the plaintiffs' writ was delivered to him. The plaintiffs, in answer, proved that the judgment upon which the first execution was sued out was entered up upon a warrant of attorney fraudulently executed by the debtor in order to defeat the

(*z*) Brown *v.* Watson, 23 L. T. N. S. 745—Exch.
(*a*) Parsons *v.* Lloyd, 3 Wils. 345; 2 Keb. 705; Cro. Eliz. 271.
(*b*) White *v.* Morris, 11 C. B. 1015; 21 L. J. C. P. 185—Jervis, C.J.
(*c*) Kelly *v.* Lawrence, 3 H. & C. 1.

plaintiffs' execution, and that they gave notice to the sheriff to retain the proceeds of the goods levied. The sheriff, on the first day of the next term, was served with a rule to return the writ of *fi. fa.* under which he had first levied. He did not give any notice to the plaintiffs, by whom the second *fi. fa.* had been sued out, that he had been served with such a rule, and at the expiration of the six days mentioned in that rule, the sheriff's officer paid over the proceeds of the goods levied to the plaintiffs at whose suit the first *fi. fa.* had been sued out. Here it was held, that this was misconduct in the sheriff, and rendered him liable to the plaintiffs in the second execution (*d*).

Reason of decision.

This decision, however, does not rest upon the ground that the sheriff should try the question of fraud, and decide which of the two creditors should have the preference, for that he is not bound to do in a ministerial capacity, but on the ground that he should stand indifferent between the parties, and not lend himself to either. Having received in this case notice from the creditors who sued out the second *fi. fa.* that the first judgment was questionable, he ought to have given notice to them that he had been served with a rule to return the writ, and that unless they took some steps before that rule expired, he should be forced to pay over the money to the plaintiffs in the first execution.

Evidence of fraud.

In a later case it was held, that, where goods seized under a writ founded upon a judgment fraudulent against creditors remain in the hands of the sheriff, or are capable of being seized by him, he is compellable to seize and sell such goods under a writ afterwards received by him, and founded on a *bonâ fide* debt; and, if he neglect to do so, having notice of the fraud, and return *nulla bona* to the latter writ, he is liable to an action for a false return. Therefore, evidence of the fraud in the previous judgment and execution is admissible in such action, in answer to a defence founded on the outstanding writ; and the conduct

(*d*) Warmoll *v.* Young, 5 B. & C. 660.

of the debtor in reference to the execution of the previous judgment is admissible in evidence as a part of the fraud (*e*).

Writ bad on the face.

But the sheriff would not be justified in executing a writ which upon the face of it appeared to be utterly unauthorised by law (*f*),—as, for example, if a writ be delivered to a sheriff for execution against the goods or person of some one permanently privileged, *e.g.* an ambassador, it appears that the sheriff would not be liable for not executing (*g*).

Action for breaking, entering, &c.

A judge's order directed goods seized under a *fi. fa.* to be sold, and the money to be paid into Court to abide the event of an issue between the claimant and an execution creditor. A verdict was found for the claimant, who thereupon brought an action against the sheriff for breaking and entering his dwelling-house and seizing and converting his goods. The Court made absolute a rule to strike out of the declaration so much as charged the defendant with seizing and converting the plaintiff's goods (*h*).

Action for special damage.

Where, under 9 & 10 Vict. c. 95, s. 118, a judge of a County Court adjudicated in favour of a claimant whose house had been broken and entered, and his goods seized and taken away as the goods of an execution creditor in the County Court; it was held that the claimant was afterwards entitled to proceed in an action for the special damage occasioned by the wrongful breaking and entry, but not for the trespass in taking away his goods (*i*).

It was formerly held that the Courts could not afford protection to the sheriff in actions for breaking and entering a house on the occasion of the seizure of goods to which there was a disputed claim which was subsequently

(*e*) Imray *v.* Magnay, 11 M. & W. 267.
(*f*) Carratt *v.* Morley, 1 Q. B. 18, referred to in the case of Pease *v.* Chaytor, 3 B. & S. 620, by Blackburn, J.
(*g*) See Isabel, Countess of Rutland's Case, 6 Rep. 64.
(*h*) Abbott *v.* Richards, 15 M. & W. 194; 3 D. & L. 487; 15 L. J. Exch. 330.
(*i*) Chater *v.* Chigwell, 14 Jur. 697; 19 L. J. Q. B. 520; 15 Q. B. 217.

substantiated, and that the relief afforded by the statute 1 & 2 Will. 4, c. 58, s. 6, was confined to disputed claims to the goods seized, or their proceeds (*j*): but in a later case, where a sheriff entered the house of A., and seized therein his goods and also goods belonging to the execution debtor, and A. brought an action against the sheriff, who thereupon obtained an interpleader summons, the judge ordered that the execution creditor should be barred as to the goods of A., and that all further proceedings should be stayed. This decision was upheld, on the ground that the judge had power to stay proceedings, and that the power was properly exercised, it not appearing that the sheriff had committed any excess (*k*).

Staying proceedings.

The Court will not stay proceedings in an action for damage arising out of a seizure under a County Court execution, merely because there has been an interpleader order in the County Court in favour of the plaintiff; the plaint containing no claim for damages, and there having been no adjudication except as to the right to the goods so taken (*l*).

Expunging name of sheriff.

The Court will sometimes order the name of the sheriff to be struck out, in an action against the sheriff, where the main point is a question of ownership. Thus, a horse pointed out by A., an execution creditor, as the property of B., the execution debtor, having been seized by the sheriff, under a *fi. fa.*, C., claiming the property of the horse, brought trespass against the sheriff, who applied for relief. The Court, instead of directing an interpleader issue, ordered that the action should proceed, and that A.'s name should be substituted for that of the sheriff, subject to the terms usually imposed where an issue is directed (*m*).

Selling freehold under a *fi. fa.*

Where, under a *fi. fa.*, the sheriff, without any actual or formal seizure of the execution debtor's lands and

(*j*) Hollier *v.* Laurie, 3 C. B. 334; 4 D. & L. 205; 10 Jur. 860; 15 L. J. C. P. 294.
(*k*) Winter *v.* Bartholomew, 11 Exch. 704; 25 L. J. Exch. 62.
(*l*) Jones *v.* Williams, 4 H. & N. 706; 28 L. J. Exch. 324.
(*m*) Brown *v.* Ludham, 6 M. & G. 169; 6 Scott, N. R. 934.

crops, advertised them for sale, and conveyed them to the plaintiff by a deed reciting that the sheriff had caused the interest in the lands and crops to be seized, it turned out that the execution debtor's interest in the lands was a freehold, so that the purchaser could not get possession, it was held, that the purchaser was not entitled to recover the purchase-money from the sheriff, in an action for money had and received, as for a consideration that had wholly failed (*n*).

Selling interest of debtor.

Where, under a *fi. fa.*, the sheriff sold the interest of the execution debtor "whatever it might be" in certain lands, and the plaintiff was declared the purchaser, and paid a deposit, and it turned out that the execution debtor had no interest at all in the lands, the plaintiff, in an action against the sheriff for recovery of the deposit, as money had and received for a consideration that had wholly failed, was held not to be entitled to recover (*o*).

Recovering the purchase-money

Where a lease for three lives, or thirty-one years, contained a clause of forfeiture if any writ of execution should issue by virtue of which the property was liable to be taken in execution and sold, and under a *fi. fa.* issued against the lessee the sheriff sold and conveyed his interest under the lease, "if any," to the plaintiff, who, before he bid at the auction, knew it was a freehold lease, and was aware of the clause of forfeiture, the purchaser got possession, and was evicted,—it was held, that he could not recover the purchase-money in an action against the sheriff for money had and received (*p*).

Sheriff when liable for false return.

The sheriff of a colony was held liable, without proof of malice or want of probable cause, in an action for a false return of rescue made by him upon a writ of *capias ad respondendum*, for the damage which resulted to the plaintiff therefrom (*q*). Such return was conclusive at that stage of the proceedings as to the truth of the

(*n*) Murphy *v.* Sandes, 10 Ir. R. C. L. 309—C. P.
(*o*) Kearney *v.* Ryan, 10 Ir. R. C. L. 500—C. P.
(*p*) Griffin *v.* Caddell, 9 Ir. R. C. L. 488—Q. B.
(*q*) Brayer *v.* Maclean, L. R. 6 P. C. 398; 44 L. J. P. C. 79; 33 L. T. N. S. 1.

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(*f*) Notley *v.* Buck, 8 B. & C. 160.

(*g*) For fuller particulars on this alteration in the law, see pp. 239—243.

(*h*) Wright *v.* Child, L. R. 1 Exch. 358; 35 L. J. Exch. 209; 15 L. T. N. S. 141; 4 H. & C. 529.

an action of trover against the sheriff, for an ejectment under a writ of assistance issued in pursuance of an order of the Chancery Division, an injunction will be granted to restrain further proceedings in such action, although the action also seeks damages for a trespass by the sheriff, in taking chattels not included in the order (*u*). When granted.

(*u*) Walker *v.* Micklethwait, 1 Dr. & Sm. 49.

Costs will be allowed to a plaintiff who recovers damages from the sheriff for extortion (*p*).

Notice as to goods being in bailiwick.

A sheriff is not liable for not seizing goods of the presence of which in his bailiwick he has no notice. A summons and plaint against a sheriff stated the delivery of a writ, and that at the time of its delivery and afterwards during a reasonable time in that behalf, goods of the debtor were within the bailiwick, and that he had notice thereof, yet he did not levy, and made default in the execution of the writ, and falsely returned *nulla bona*. Plea, that except certain goods of the value of £3, there were not at the time of the delivery of the writ or afterwards during a reasonable time in that behalf any goods of the debtor within the bailiwick whereof he had notice, although he used during all the time aforesaid all due and proper diligence to discover the same. As to the default made in the execution of the writ, on levying out of the goods, he brought into Court a sum of money; it was held, that, as the measure of damages would be the same in an action for neglect to levy, and in an action for a false return, and as even if a plaint contained a count upon each there would be only one set of damages recovered,—the money was substantially lodged in reference to the entire default, and the plea was good.

Reasonable time.

It was held, also, that the meaning of the averment in the count, "that there were goods within his bailiwick for a reasonable time in that behalf," was, that the goods were within the bailiwick for such a time that it was possible for the sheriff to have seized them, and that the same construction should be put upon the same words in the plea (*q*).

Notice of bankruptcy.

A sheriff, who, having seized goods under a *fi. fa.*, receives notice in general terms that the execution debtor has committed an act of bankruptcy, may take reasonable time to inquire whether the statement is true before

(*p*) Tyte *v.* Glode, 7 T. R. 267. Deacon *v.* Morris, 2 B. & Ad. 393.

(*q*) Yourrell *v.* Proby, 2 Ir. R. C. L. 460—C. P.

Production of warrant.

Although the regular way of connecting the sheriff with his officer, so as to make him responsible, is by the production of the warrant, any recognition by the sheriff that the officer acted under his authority will dispense with the necessity of producing it (*d*).

Identity of bailiff.

Evidence as to the identity of the bailiff to whom the warrant was delivered to be executed has often been given by the production of the writ with the bailiff's name indorsed thereon by someone in the sheriff's office authorised to do so. Where, however, a plaintiff produced only an examined copy of the writ, which had been returned *non est inventus* and filed, and on the back of the copy was written the copy of a name proved by external evidence to be the bailiff's name, but no evidence was given that the name indorsed on the writ itself was written by a person authorised to do so, it was held that this copy was no evidence to prove that the warrant was made to that bailiff, and the plaintiff was nonsuited. Upon motion to set aside the nonsuit, the evidence was held to have been properly rejected (*e*).

Acts of officer of London agent.

A warrant obtained from the officer of the London agent of the sheriff is sufficient to connect the sheriff with the acts of the officer who executes it (*f*), but it should be shown that the sheriff has either granted the warrant to the officer, or has subsequently recognized his act (*g*).

Evidence against officer.

In an action against a sheriff's officer for an illegal arrest, the fact of the warrant being addressed to him is evidence against him (*h*).

Production of copy of precept.

In order to charge the sheriff with the act of the bailiff, in an action for extortion, it was held not sufficient to produce a copy of the precept with the bailiff's name indorsed upon it, although the sheriff had returned *cepi corpus*; the plaintiff in such case must either produce the

(*d*) Jones *v.* Wood, 3 Camp. 228—Ellenborough.
(*e*) Hill *v.* Middlesex (Sheriff), 7 Taunt. 8; Holt, 217.
(*f*) Shepherd *v.* Wheble, 8 C. & P. 534.
(*g*) Martin *v.* Bell, 1 Stark. 413.
(*h*) Slack *v.* London (Sheriffs), 1 Esp. 42—Kenyon.

Costs will be allowed to a plaintiff who recovers damages from the sheriff for extortion (*p*).

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Reasonable time.

It was held, also, that the meaning of the averment in the count, "that there were goods within his bailiwick for a reasonable time in that behalf," was, that the goods were within the bailiwick for such a time that it was possible for the sheriff to have seized them, and that the same construction should be put upon the same words in the plea (*q*).

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(*p*) Tyte *v.* Glode, 7 T. R. 267. Deacon *v.* Morris, 2 B. & Ad. 393.

(*q*) Yourrell *v.* Proby, 2 Ir. R. C. L. 460—C. P.

established rule of law, never doubted until the case of Bessey *v.* Windham, that the mere production of the writ, and nothing more, will not enable the sheriff to show that a deed, good as against all except creditors, is fraudulent and void. He must show that he represents a creditor. For this purpose the bare production of the writ is not enough. The writ merely authorizes and directs the sheriff to do a certain act, and his indorsement or return thereon is a mere statement that he has done as he was directed. There is no statement that a judgment exists; but only that somebody says that a judgment has been obtained. I think that the production by the plaintiff in this case of the writ was not evidence for the defendants that a judgment existed. I am aware that, in coming to this conclusion, we cannot avoid conflicting with the decision of the Court of Queen's Bench in Bessey *v.* Windham, where it was held that the officer was protected by the warrant, although there was no evidence of the existence of any judgment."

Where the sheriff of the County Palatine of Lancaster was sued for goods alleged to have been wrongfully seized and sold under an execution, and the defence was that the plaintiff claimed the goods by virtue of an assignment, which was void against creditors, it was held that the sheriff could take advantage of this defence without, as in ordinary cases, showing his authority by proof of the writ, and that proof of the mandate to him from the chancellor of the county was sufficient for the purpose (*o*).

Secondary evidence.

In an action against a sheriff for not arresting under a *ca. sa.*, in order to connect the sheriff with the transaction, the bailiff (who had not been served with a *subpœna duces tecum*) proved, that, when the defendant went out of office, the warrant was sent to the persons who acted as his London agents while he was sheriff, and who were also his attornies on the record. It was held, that notice to them to produce the warrant, after the defendant had gone

(*o*) Ogden *v.* Heaketh, 2 C. & K. 772—Coleridge.

out of office, was sufficient to entitle the plaintiff to give secondary evidence of its contents (*p*).

Plea of "not guilty."

In an action against the sheriff, for removing goods, without paying a year's rent in arrear, the plea of "not guilty" admits the seizure by the sheriff, and it is not necessary to produce the warrant, in order to connect him with the officer (*q*).

Swearing sheriff's officer.

A sheriff's officer, who is subpœnaed to produce his warrant, need not be sworn (*r*).

Indorsement on writ, how to connect sheriff.

Proof of the indorsement of the officer's name on the writ by a clerk in the undersheriff's office was formerly held sufficient to connect the officer with the sheriff, and to show that the indorsement was made with his authority, without calling the officer himself, or producing the warrant under which he acted (*s*), but it was afterwards held to be insufficient, without proving that his name was written upon it by the authority, or with the privity of the sheriff (*t*).

But where the plaintiff, in an action for the extortion of the officer, proved an examined copy of the writ on which the officer's name was indorsed, and that a person of that name actually executed the writ, and that the course of the sheriff's office was that the name of the officer to whom the warrant was granted was usually indorsed on the writ, it was held, that this was sufficient *primâ facie* evidence to connect the sheriff with the officer (*u*).

Where, also, in an action for an escape, the writ in the former action was produced, to connect the sheriff with the officer, on which was indorsed "warrant to B.," who, on being called, stated that he had delivered the warrant to

(*p*) Suter *v.* Burrell, 2 H. & N. 867; 27 L. J. Exch. 193.

(*q*) Reed *v.* Thoyts, 8 Dowl. 410; 6 M. & W. 412; 9 C. & P. 515.

(*r*) Rex *v.* Meulis, M. & M. 515, *n.* Shepherd *v.* Wheble, 3 C. & P. 534.

(*s*) Francis *v.* Neave, 6 Moore, 120; 3 B. & B. 126. Tealby *v.* Gascoigne, 2 Stark. 202—Richards.

(*t*) Morgan *v.* Brydges, 2 Stark. 314; 1 B. & Ad. 647. Hill *v.* Middlesex (Sheriff), Holt 217; 7 Taunt. 8.

(*u*) Scott *v.* Marshall, 2 C. & J. 238; 2 Tyr. 257.

ther who did not produce it, it was held, that it should ve been left to the jury to say whether B. acted under sheriff's authority, the indorsement being *primâ facie* idence that he did so act (*x*).

Sheriff's officer agent for coroner.

Where a sheriff obtained judgment against A., in an ion on a bail-bond, and a *fi. fa.* issued, directed to the oner, S., who was attorney for the sheriff, and also for iers, indorsed the name of the sheriff's officer on the writ; coroner's broker seized a barge, which was bought by and the price paid to the officer; subsequently the ge was claimed by others, and B. lost his purchase; was held, that, under these circumstances, the officer s not the agent of the sheriff, so as to make the sheriff ble for money had and received, at the suit of B., hough it was proved to be the practice at the sheriff's ice to indorse the name of the officer on the writ (*y*).

Substitution of sheriff's name.

In an action by the assignees of a bankrupt, for goods ten by the sheriff under an execution, it appeared that goods were taken at about that period of the year en the sheriffs were changed; and it was proved, that a ness, after the cause was set down for trial, saw a form return indorsed on the writ, which had never been urned. This form of return was signed by the sheriff. is was held to be sufficient evidence that he was the riff who executed the writ; and that if the writ, when duced at the trial, has his name erased, and the name the previous sheriff substituted, it will be a question for jury, whether that substitution was made to correct a stake, or to defeat the plaintiff (*z*).

Return of two sheriffs.

In an action against a surviving sheriff of London, a urn to a writ directed to both the sheriffs, purporting be the return of both, is conclusive to show that the urn was authorised by the survivor (*a*).

(*x*) Fennor *v.* Phillips, 5 Moore, 184, *n.*; 3 B. & B. 27, *n.*; Holt

(*y*) Sarjeant *v.* Cowan, 5 C. & P. 492; 1 C. & M. 491; 3 Tyr.

(*z*) Whitehouse *v.* Atkinson, 3 C. & P. 344—Tenterden.
(*a*) Carlile *v.* Parkins, 3 Stark. 163—Abbott.

Subsequent recognition of act of officer.

Where a sheriff's officer, to whom a *fi. fa.* was directed, offered to stay the execution on receiving a sum of money, and his partners and assistants afterwards executed the writ illegally, by breaking open an outer door in his absence, and he subsequently withdrew the execution on the payment of the levy and a *bonus* to himself, it was held that there was sufficient evidence to justify a jury in finding him guilty as a co-trespasser, on the ground that he had authorised the unlawful act (*b*).

Production of warrant.

In an action for a penalty against the sheriff for taking the plaintiff, who had been arrested by the sheriff, to a public drinking-house, without the plaintiff's consent, the plea traversed the taking the plaintiff to the drinking-house without his consent. Evidence was given at the trial, that the same officer of the sheriff who arrested the plaintiff also took him to a drinking-house without his consent. It was held, that as the plea admitted that the officer who arrested was the sheriff's agent, and the evidence showed that the same officer took the plaintiff to the drinking-house, it was not necessary to produce the warrant to make the sheriff liable (*c*).

Evidence of time of execution of writ.

Where a sheriff's officer, having a *fi. fa.* against A., called at his house when he was from home, waited till he returned, and then informed him of his business, it was held, that this was sufficient evidence to warrant the jury in finding that the writ was executed at the time of the officer's entry (*d*).

Officer's responsibility.

If a man employing an officer attends with the officer, who seizes in his presence the goods of a third person, under an execution which he has sued out, he makes himself responsible for the officer's acts (*e*).

Admissions by officers.

Admissions by the undersheriff are not evidence in an action against the sheriff, unless they accompany some

(*b*) Brunswick (Duke) *v.* Slowman, 8 C. B. 317; 18 L. J. C. P. 299.
(*c*) Barsham *v.* Bullock, 2 P. & D. 241; 10 Ad. & E. 23.
(*d*) Bird *v.* Bass, 6 M. & G. 143; 6 Scott, N. R. 928.
(*e*) Meredith *v.* Flaxman, 5 C. & P. 99—Lyndhurst.

official act of the undersheriff, or tend to charge himself (*f*). Therefore, in an action against the sheriff for taking illegal poundage, declarations of the undersheriff, after he was out of office, are not admissible to prove that the bailiff charged with having committed the extortion was the sheriff's authorised agent (*g*).

Affidavit by officer.

In an action against the sheriff for taking the goods of the plaintiff, an *affidavit* made by the officer under the Interpleader Act, respecting the goods, is admissible to prove that the officer who seized the goods is the servant of the sheriff (*h*).

Statement to the plaintiff's attorney.

In an action against the sheriff for a false return to a writ, what was said by the bailiff, to whom the warrant under it was directed, when asked by the plaintiff's attorney, before the return of the writ, why he did not execute it, is evidence against the sheriff (*i*).

Similarly, declarations made by him whilst the party was in his custody may be given in evidence in an action for an escape against the sheriff (*k*).

Evidence that the original defendant acknowledged the debt is admissible in an action against the sheriff for a false return (*l*).

Declarations made by an officer whilst in possession of goods, after the return of the *fi. fa.*, are evidence against the sheriff, and no new warrant is necessary after a *venditioni exponas* to connect the officer with the sheriff (*m*).

Notice to under-sheriff's agent.

In an action against the sheriff for not arresting a person on *mesne* process, notice of this person being within the defendant's bailiwick, given to the undersheriff's agent in town, was held to be no evidence of such notice to sheriff (*n*).

(*f*) Snowball *v.* Goodricke, 4 B. & Ad. 541.
(*g*) *Ibid.*
(*h*) Brickill *v.* Hulse, 2 N. & P. 426; 7 Ad. & E. 454; see also Gardner *v.* Moult, 2 P. & D. 403; 10 Ad. & E. 464.
(*i*) North *v.* Middlesex (Sheriff), 1 Camp. 389—Ellenborough.
(*k*) Bowsher *v.* Wilts (Sheriff), 1 Camp. 391—Ellenborough.
(*l*) Kempland *v.* Macauley, 1 Peake's N. P. C. 95.
(*m*) Jacobs *v* Humphrey, 2 C. & M. 413; 4 Tyr. 272.
(*n*) Gibbon *v.* Essex (Sheriff), 2 Camp. 189—Ellenborough.



APPENDIX.

1.

Warrant of Appointment.

3 & 4 Will. 4, c. 99, Sch.

At the Court at —— the —— day of ——.

Present, the Queen's most Excellent Majesty in Council.

To A. B. of, &c.

Whereas H. M. was this day pleased, by and with the advice of her privy council, to nominate and appoint you for and to be sheriff of the county of —— during her Majesty's pleasure: These are therefore to require you to take the custody and charge of the said county, and duly to perform the duties of sheriff thereof during her Majesty's pleasure, and whereof you are duly to answer according to law.

Dated this —— day of ——.

By H. M.'s command.
C. D.

2.

The High Sheriff's Oath of Office.

[Excepting the sheriffs of the several Counties in Wales, and of the County Palatine of Chester.]

3 Geo. 1, c. 15, s. 18.

I, A. B., do swear that I will well and truly serve the Queen's majesty in the office of sheriff of the county of ——, and promote her Majesty's profit in all things that belong to my office as far as I legally can or may; I will truly preserve the Queen's rights, and all that belongeth to the Crown; I will not assent to decrease, lessen or conceal the Queen's rights, or the rights of her franchises; and whensoever I shall have knowledge that the rights of the Crown are concealed or withdrawn, be it in lands, rents, franchises, suits, or services, or in any other matter or thing, I will do my utmost to make them be restored to the Crown again; and if I may not do it myself, I will certify and inform the Queen thereof, or some of

her judges; I will not respite or delay to levy the Queen's debts for any gift, promise, reward or favour, where I may raise the same without great grievance to the debtors; I will do right as well to poor as to rich in all things belonging to my office; I will do no wrong to any man, for any gift, reward or promise, nor for favour or hatred; I will disturb no man's right, and will truly and faithfully acquit at the Exchequer all those of whom I shall receive any debts or duties belonging to the Crown; I will take nothing whereby the Queen may lose, or whereby her right may be disturbed, injured or delayed; I will truly return and truly serve all the Queen's writs, according to the best of my skill and knowledge; I will take no bailiffs into my service but such as I will answer for, and I will cause each of them to take such oaths as I do, in what belongeth to their business and occupation; I will truly set and return reasonable and due issues of them that be within my bailiwick, according to their estates and circumstances, and make due panels of persons able and sufficient and not suspected or procured, as is appointed by the statutes of this realm; I have not sold or let to farm, or contracted for, nor have I granted or promised for reward or benefit, nor will I sell or let to farm, nor contract for or grant for reward or benefit, by myself or any other person for me or for my use, directly or indirectly, my sheriffwick or any bailiwick thereof, or any office belonging thereunto, or the profits of the same, to any person or persons whatsoever; I will truly and diligently execute the good laws and statutes of this realm, and in all things well and truly behave myself in my office for the honour of the Queen and the good of her subjects, and discharge the same according to the best of my skill and power.—So help me God.

3.

Power of Attorney to make out List of unexecuted Writs, &c.

To ALL TO WHOM THESE PRESENTS SHALL COME, GREETING: Whereas by H. M.'s warrant of appointment, A. B., esq., of ——, hath been duly appointed high sheriff of the county of C. in my stead: NOW KNOW YE, that I have nominated, constituted and appointed, and by these presents do nominate, constitute and appoint, D. E. of —— in the said county, gentleman, for me and in my stead to make out and deliver to the said A. B., esq., a true and correct list and account of all writs and other process in my hands not wholly executed by me, with all such particulars as may be necessary to explain to him the several matters intended to be transferred to him, and to turn over and transfer to his care and custody all such writs and process, and all records, books and matters appertaining to the said office of sheriff, and further for me and in my stead to accept and receive a duplicate of such list and

account, and all such writs, process, records, books and matters appertaining to the said office.

In witness, &c.

4.

Power of Attorney to receive same.

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING: Whereas I, A. B. of ——, in the county of ——, by H. M.'s warrant of appointment bearing date the —— day of —— A.D. ——, have been appointed high sheriff of the said county instead of C. D., esq.: NOW KNOW YE, that I have nominated, constituted and appointed, and do by these presents nominate, constitute and appoint, E. F. of —— in the said county, gentleman, for me and in my stead to receive and take from the said C. D. or from his undersheriff, or from such other person or persons as he shall or may appoint for that purpose, a true and correct list and account of all writs and other process in his hands not wholly executed by him, with all such particulars as shall be necessary to explain to me the several matters intended to be transferred to me, and all records, books, and matters appertaining to my office of sheriff; and further for me and in my stead to sign and give a duplicate of such list and account to the said C. D., and whatever else may be necessary to carry the same into effect.

In witness whereof I have hereunto set my hand and seal this —— day of —— A.D. ——.

5.

List of unexecuted Writs.

Writs.	Court.	Plaintiff.	Defendant.	Debt.	When delivered.
Fi. fa.	H. C. of J. Q. B. Div.	A. B.	C. D.	£100	

6.

Affidavit in support of Bill of Cravings.

I, A. B. of ——, gentleman, and late undersheriff to C. D., esq., late sheriff of ——, make oath and say that the several sums of money above mentioned and charged to be paid were paid and expended by me, and by other the said sheriff's officers and ministers; and that the services above-mentioned as done, and for which the other above-mentioned sums are craved, were done, as I have been informed and verily believe.

Sworn, &c.

7.

Appointment of Undersheriff.

To all to whom these presents shall come, I, A. B. of —, in the county of E., esq., send greeting: Whereas I, the said A. B., have been appointed during her Majesty's will and pleasure high sheriff of the county of E., by her Majesty's warrant of appointment bearing date the —— day of —— A.D. ——. Now know ye, that I have nominated, constituted and appointed, and by these presents do nominate, constitute and appoint, C. D. of ——, in the same county, gentleman, my undersheriff of and for the said county, and do depute and authorize him to act, do, and execute for me and in my stead all things to the said office of undersheriff in anywise belonging or appertaining. Dated this —— day of ——, in the year of our Lord ——. A. B.

8.

Undersheriff's Oath.

[Stated by the statute to be for "all undersheriffs of any county or counties in South Britain, except the several counties of Wales, and County Palatine of Chester."]

3 Geo. 1, c. 15, s. 19.

I, A. B., do swear, that I will well and truly serve the King's Majesty in the office of undersheriff of the county of ——, and promote his Majesty's profit in all things that belong to the said office, as far as I legally can or may; I will preserve the King's rights, and all that belongeth to the Crown; I will not assent to decrease, lessen or conceal the King's rights, or the rights of his franchises; and whensoever I shall have knowledge that the rights of the Crown are concealed or withdrawn, be it in lands, rents, franchises, suits or services, or in any other matter or thing, I will do my utmost to make them be restored to the Crown again; and if I may not do it of myself, I will certify and inform some of his Majesty's judges thereof; I will not respite or delay to levy the King's debts for any gift, promise, reward or favour, where I may raise the same without great grievance to the debtors; I will do right as well to poor as to rich, in all things belonging to my office; I will do no wrong to any man for any gift, reward or promise, nor for favour or hatred; I will disturb no man's right, and will truly and faithfully acquit at the Exchequer all those of whom I shall receive any debt, duties or sums of money belonging to the Crown; I will take nothing whereby the King may lose, or whereby his right may be disturbed, injured or delayed; I will truly return, and truly serve all the King's writs to the best of my skill and knowledge; I will truly set and return reasonable and due issues of them that be within my bailiwick, according to their estates and circum-

stances; and make due panels of persons able and sufficient, and not suspected, or procured, as is appointed by the statutes of this realm; I have not bought, purchased, or taken to farm, or contracted for, nor have I promised, or given any consideration, nor will I buy, purchase, or take to farm, or contract for, promise or give any consideration whatsoever, by myself or any other person for me or for my use, directly or indirectly, to any person or persons whatsoever, for the office of undersheriff of the county of —— which I am now to enter upon and enjoy, nor for the profits of the same, nor for any bailiwick thereof, or any other place of office belonging thereunto; I have not sold nor contracted for, or let to farm, nor have I granted or promised, for reward or benefit, by myself or any other person for me or for my use, directly or indirectly, any bailiwick thereof, or any other place or office belonging thereunto; I will truly and diligently execute the good laws and statutes of this realm; and in all things well and truly behave myself in my said office for his Majesty's advantage, and for the good of his subjects, and discharge my whole duty according to the best of my skill and power. So help me God.

9.

Covenant between Sheriff and Undersheriff.

This indenture, made the second day of February, in the —— year of the reign of her Majesty, Queen Victoria, and in the year of our Lord ——, between A. B. of E., in the county of F., esq., of the one part; and C. D., &c., gentleman, of the other part; witnesseth, that the said A. B., being elected, and having this day taken upon himself the office of sheriff of the county of F.; in consequence of the trust and confidence which he hath in the said C. D., and that he will take care that the office of undersheriff of the said county be honestly, uprightly and duly discharged; and for other the considerations hereinafter mentioned, he, the said A. B., hath deputed and ordained, and by these presents doth depute and ordain the said C. D. to be his undersheriff of the said county of F.: And doth authorize, appoint, and empower him to sign, seal, and execute, and as the act and deed of the said sheriff to deliver, all assignments of bail-bonds, bills of sale, assignments of goods and chattels taken in execution; And also to take inquisitions upon process directed to the said sheriff; to make out precepts for the election of members to serve in Parliament; to preside or to assist in the County Courts, and at the election of knights of the shire; to appoint bailiffs; to receive rules for the returning of writs; and give receipts and discharges for all monies whatever, to be received or collected in the office of sheriff of the said county; to sign the name of the said sheriff to all certificates, and other instruments and writings requiring the same; and to do all other acts in the name of the said A. B., as sheriff of the county of F., necessary

and requisite in the due execution of the said office. In consideration whereof the said C. D., and the said G. H., as surety for the said C. D., for themselves, their heirs, executors, and administrators, do hereby covenant, promise, and agree to and with the said A. B., his executors and administrators, in manner following, that is to say: that he, the said C. D., shall and will well and sufficiently perform the office of undersheriff during the shrievalty of the said A. B.; and in that capacity summon and return all juries and inquests to be empanneled before her Majesty's justices of assize or of the peace, or upon any issue whatsoever to be tried, or inquisition to be taken, within the said county; and also grant warrants on, and execute, or cause to be executed, all writs, process, precepts, mandates, and warrants, to be directed to the said sheriff from the several Courts of law or equity, or other competent authority; and make due and sufficient inquisitions and returns thereon, as by law is required; and shall and will save harmless, and keep indemnified, the said sheriff, his heirs, executors, and administrators, and his and their goods and chattels, lands and tenements, of and from all and all manner of action and actions, cause and causes of actions, suits, fines, and amerciaments, contempts and forfeitures, and all other charges and incumbrances whatsoever, which shall or may happen to be assessed or imposed upon the said A. B. as sheriff, by reason of the executing or not executing, returning or not returning, or the misreturning any such writs, process, precept, mandate, or warrant, or touching or concerning the same, or the summoning or empanneling the juries as aforesaid; and also of and from any escapes, rescues, or the letting any prisoner voluntarily or negligently go at large; or the taking of insufficient bail, or the refusing to take bail, or for the making or not making any assignments of a bail bond or bonds; or the not filing any warrant of attorney in any of the Courts of record at Westminster or elsewhere; or for or by reason of any negligence, misfeasance, nonfeasance, abuse, omission, delay, or contempt, or any other cause or thing whatsoever, that should or ought to be done by the said undersheriff or agent, or by the clerks, bailiffs, or servants to be employed, concerning the said office: And also shall and will upon demand produce and show, or deliver to the said sheriff, a true inventory or account of the different writs in the office of the said sheriff, and what has been done thereon respectively; and that it shall be in the power of the said sheriff, upon complaint, to discharge any bailiff or other person in the service of the said sheriff, and to appoint another in his stead for the remainder of the shrievalty: And further, that the said undersheriff shall, from time to time, give due notice to the said sheriff of such personal attendance as shall be requisite to be made by him; and shall attend on, and assist him thereat, and be aiding and assisting in raising and levying such force within the said county as the sheriff shall be enjoined to raise; and from time to time give his personal

nce on the said sheriff when required, and collect and
s post fines, forfeitures, profits, services, fee farm rents,
ver, exchequer silver, goods of traitors, felons, and out-
ıd all taxes, levies, charges, or impositions, to the use
Majesty, by virtue of any writ or process whatsoever,
y issued for that purpose, and directed to the said
and shall duly account for and pay the same to her
ıjesty's use, and obtain acquittances from the proper
and deliver the same to the sheriff when thereunto
l: And shall duly pass the sheriff's accounts before
ımissioners and auditors of the Exchequer (or before
esty's auditor in Wales); and obtain a *quietus* for the
› that the lands and tenements, goods and chattels of
sheriff may stand fully acquitted: And shall and will
d pay such costs, charges, and expenses, as shall attend
:ution of the duties of the said office (except the costs
ırges of the recognizance and patent) and appointment
undersheriff; the seal of office and deed of covenant;
ertising the assizes; the expenses attending the trum-
nd javelin men, and their clothes, and the clothes of
ers and bailiffs; the fees to the chaplain and inferior
; the executing prisoners, the judges' lodgings, Court-
and tavern expenses at the assizes; and the expenses
undersheriff, deputy, and agent, to, at, and from the
and all the expenses of an election of members or
s; also the charges of passing the sheriff's accounts
ıer Majesty's auditor; and obtaining the *quietus* and the
ı rents, if any, charged to the sheriffs, and not recover-
nd the personal expenses of the undersheriff and deputy
ıding any public meeting within the county (which are
paid by the sheriff); and cause to be executed and
ıd all such persons as shall be convicted or attainted,
ıg to his or her sentence; and well and faithfully do,
and perform all and every act, matter and thing belong-
the said office of undersheriff. And the said A. B.
ıreby, for himself, his heirs, executors, and adminis-
covenant, promise, and agree to and with the said
ıis respective executors and administrators, in manner
ıg, that is to say: that the bonds or obligations to be
into or given to the said sheriff by the bailiffs, or by
son or persons to be arrested during the said shrievalty,
› considered as well for the indemnity of the said under-
ır agent, as of the said sheriff: and that the said under-
performing the aforesaid covenants, shall have and
he said office of undersheriff during the shrievalty of the
B.; and keep, by himself or deputy, the Courts of law
hed in the said county; and have and take all lawful
ıes, profits, and emoluments whatsoever, belonging to
l office of sheriff. Provided, nevertheless, that nothing
ontained shall preclude the said sheriff from receiving
wances for judges' lodgings, and also for the execution
iets, allowed in the bill of cravings to his own use. In

witness whereof the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, &c.

10.

Appointment of Deputy in London.

A. to wit. B. C., sheriff of the county aforesaid, to D. E., gentleman, greeting: I do hereby nominate, constitute and appoint you to be my deputy for the receipt of writs, granting warrants thereon, making returns thereto and accepting of all rules and orders to be made on or touching the execution of any process or writ to be directed to me as sheriff as aforesaid.

Given under the seal of my office this —— day of —, A.D. 18—.

B. C.

11.

Writs and Notices to Sheriffs (*a*).

The following are the modes of addressing writs and notices to the sheriffs of the different counties of England:—

In *London* there are two sheriffs, and the writ is directed accordingly "To the sheriffs of London."

In *Middlesex* the two sheriffs of London act as sheriff, and in law constitute but *one* sheriff; the writ is directed accordingly "To the sheriff of Middlesex."

In the *counties palatine* writs are, by the Common Law Procedure Act, 1852, in cases within the provisions of that act, to be directed and delivered to the sheriffs (s. 122).

Writs and notices may now, therefore, be addressed "To the sheriff of the county palatine of Lancaster," or "of Durham and Sadberge."

To the sheriffs of the following cities, writs and notices are to be addressed as follows:—"To the sheriff of the city of Bristol," "of Canterbury," "of Chester," "of Exeter," "of Gloucester," "of Lincoln," "of Norwich," "of Worcester," "of York."

Writs to be executed in the *city of Oxford* are addressed to the sheriff of the county.

The writ to the sheriff of Lichfield is thus addressed:—"To the sheriff of the city of Lichfield and the county of the same city."

The following is the direction of the writ and notices to towns which are counties of themselves:—"To the sheriff of the town and county of Haverfordwest," "of Kingston-upon-Hull," "of Newcastle-upon-Tyne," "of Nottingham," "of Poole," "of Southampton."

(*a*) The above are taken from "Day's C. L. P. A., 4th ed., p. 549."

the sheriff of Carmarthen writs must be directed "To the iff of the county of the borough of Carmarthen."

the Cinque Ports the writ is directed thus:—"To our table of our castle of Dover, or to his deputy or lieunt."

the *Isle of Ely* the writ is directed "To the sheriff of ibridgeshire."

the borough of *Southwark* the writ is directed "To the iff of Surrey."

Berwick-upon-Tweed writs are directed "To the sheriff he county of the borough and town of Berwick-upon-ed."

the coroners of a county, &c., the writ is directed thus:— the coroners of our county of ——," or "of our city ——."

Berwick, however, the writ is directed "To the coroner of county of the borough and town of Berwick-upon-Tweed."

elisors it is directed thus:—"To A. B. and C. D., elisors ointed by our Court of —— in this behalf."

12.

Bond of Indemnity from Undersheriff's Deputy, where Undersheriff appoints a Deputy.

Know all men by these presents, that I, E. F., am held and ly bound to C. D., undersheriff to A. B., esq., high sheriff he county of G., in the penal sum of —— pounds of good l lawful money of Great Britain, to be paid to the said D., or his certain attorney, executors, administrators or gns, for which payment to be well and faithfully made, I d myself and my heirs, executors and administrators, firmly these presents, sealed with my seal. Dated this —— day —— in the year of our Lord one thousand eight hundred .——.

Whereas the above-named C. D., undersheriff of the county ., hath constituted and appointed the above-named E. F. e his deputy and agent in the said office; and in such apntment it was agreed that the said E. F. should enter into indemnity hereinafter mentioned. Now the condition of above-written obligation is such, that if the said E. F., his , executors and administrators, and every or any of them, and shall, from time to time, and at all times hereafter, save nless and keep indemnified, A. B., esq., sheriff of the said nty of G., and also the said C. D., his undersheriff, and each them, their and each of their heirs, executors and administra-, goods and chattels, lands and tenements, touching and ncerning the return and execution of all process, writs and ndates, of what nature soever they be, as shall or may be ected to the sheriff of the county aforesaid, and shall be

brought and delivered to the said E. F. during the time the said A. B. shall be sheriff of the said county; and of, from and against all and all manner of fines, issues, and amerciaments, actions, suits and prosecutions, costs, charges, damages, and expenses, which the said sheriff, or the said C. D., or either of them, their or either of their executors or administrators, shall or may pay, bear, sustain or be put unto, or which shall or may be brought, commenced, or prosecuted against them, either or any of them, for or by reason of the not returning, wrongfully executing, or misreturning, or detaining in their hands, any writ or writs, process or processes, or mandates whatsoever: And also if he, the said E. F., his executors or administrators, shall and do, in due time, and from time to time, make a true and just account, and due satisfaction and payment of all and singular the sum and sums of money, which shall be received by the said E. F. by virtue of any writ, process, or other mandate, directed to the said sheriff; or for fees, dues, perquisites or emoluments, or otherwise, as such deputy or agent as aforesaid, during the time the said A. B. shall continue sheriff, or the said C. D. undersheriff of the said county: And also if the said E. F. shall and do upon demand, produce and show, or deliver to the said sheriff or undersheriff, a true inventory or account of the different writs and processes in the office of the said sheriff, and what has been done thereon respectively: And also if the said E. F., his heirs, executors or administrators, or any of them, shall and do save harmless, and keep indemnified the said sheriff and undersheriff, and each of them, their and each of their heirs, executors and administrators, goods and chattels, lands and tenements, of, from and against all actions, suits, prosecutions, costs, charges, damages, and expenses, which they or either of them, their or either of their heirs, executors or administrators, shall or may bear, sustain, or be put unto, of or concerning all or any such monies which shall be received by the said E. F., and not paid or accounted for as aforesaid: then the above-written obligation to be void, but otherwise, and on failure of performance of all and every, or any of the said conditions, stipulations, and agreements, the same is to be and remain in full force and virtue.

Signed, sealed, and delivered, by the above-named E. F., in the presence of ——.

13.

Bound-Bailiff's Obligation.

Know all men by these presents, that we —— are held and firmly bound unto —— of —— in the —— of ——, sheriff of the county of —— in the sum of —— of lawful money of Great Britain, to be paid to the said sheriff, or his certain attorney, executors, administrators or assigns, for which payment to be well and truly made, we bind ourselves, jointly and severally, our and each of our heirs, executors and

ministators, and every of them, firmly by these presents. Sealed with our seals. Dated this —— day of —— in the year of our Lord one thousand eight hundred and ——.

Whereas the above-named sheriff hath at the instance and request of the above bounden —— and his sureties, and in consideration of the security hereby given, appointed the said —— to be and act as one of his bailiffs within the said county of ——, and —— to be his assistant bailiff: the condition of the above written obligation therefore is such, that if the above bounden —— and —— his assistant, do and shall well and truly obey and execute all warrants, precepts, processes and commandments to him or them directed, or to be directed from the said sheriff, or his undersheriff, deputy or agent, and shall and do make true and sufficient returns or answers to the same in writing, on or before the return days mentioned in such warrants, precepts or processes respectively, and pay, or cause to be paid, all monies levied or received by him or them, by virtue of any such warrant, precept, or process, to the said sheriff, undersheriff or agent, on or before the return day of such warrants, precepts or processes respectively, and the true consideration or purchase-money mentioned in every assignment or bill of sale executed by the said sheriff, undersheriff or agent, notwithstanding the acknowledgment of the receipt thereof by the said sheriff contained in any such bill of sale or assignment. And if the said bailiff and his assistant do not ask, levy or directly or indirectly receive any fee or fees due to the said sheriff or his undersheriff, or to him the said bailiff, for the executing of any warrant, precept or other process whatever, but such as are warranted by the laws and customs of this kingdom. And if the said bailiff or his assistant do and shall levy and receive all and every sum and sums of money which shall be or become payable for the poundage and other fees for the execution and return of all and every process, warrant, precept and commandment, to him or them to be directed, and do, and shall pay, or cause to be paid the said sheriff, or his undersheriff or agent, all such sum or sums of money, upon demand, with interest thereon from the time or times of such demand. And also if the said bailiff or his assistant shall and do make true return and inventory of all goods and chattels seized in execution, and before removal thereof pay the rent in arrear, not exceeding one year, and all taxes, which by law ought to be paid. And also if the said bailiff do and shall give his personal attendance on the said sheriff, undersheriff or agent, during the continuance of all Courts of assize, oyer and terminer, general and special gaol delivery, County Courts, and Courts of quarter session, and adjourned sessions, and also on the said Courts respectively, during their respective sittings, and do not depart home, or absent himself therefrom, without the leave of such respective Courts. And also if the said bailiff shall be attendant upon the said sheriff, undersheriff and agents or deputies, in conveying the prisoners to and from the common gaol of the said county,

or to or from any other place or prison, and attend the execution of all prisoners sentenced to death. And also if the said bailiff do and shall make true and immediate answer to all rules, orders and letters sent or written to him. And also if the said bailiff or his assistant shall take any distress upon any distringas, warrant or other process whatsoever, then if he or they do and shall make true and lawful returns of the same and safely keep the distress so taken, and give up the same to the said sheriff, his undersheriff or agent, when required. And also if the said bailiff, his executors and administrators, do and shall at all times hereafter, save, defend, keep harmless and indemnified the said sheriff, his undersheriff and agent, and his and their heirs, executors and administrators, of, from, against or concerning the escape or escapes, rescue or rescues, of any prisoner or prisoners, or other person, which shall be in custody of the said bailiff, or his assistant or assistants, upon any warrant, precept or commandment from the said sheriff, his undersheriff or agent, or his or their deputy or deputies. And also if the said bailiff and assistants shall and do observe and keep secret and undisclosed all matters and things concerning the said office of sheriff, which ought to be kept secret and undisclosed, and shall not directly or indirectly give or cause, or permit notice to be given to any defendant or other person against whom any warrant or process shall be directed to him the said bailiff or his assistants, or do or cause, or permit any act to be done, or receive any money, gratuity, gift or promise, to omit or forbear to do any act whereby the execution of such process or warrant shall be in anywise defeated, delayed, or impeded. And also if he the said bailiff and his assistants shall and do conduct safely to the common gaol of the said county all person and persons arrested, attached or taken by him at the expiration of twenty-four hours after he or they shall be so arrested, attached or taken, unless in the meantime a good and sufficient bail bond, or the amount of the debt, and ten pounds sterling to answer costs, be offered. And also if he the said bailiff, or his assistant or assistants, shall not, nor do let any person or persons in his or their lawful custody go at large on writs of execution, or in cases where such person or persons shall not be bailable by law, but do and shall immediately safely conduct all and every person and persons so taken and in custody to the said common gaol. And do and shall in all cases, wherein any person or persons in his or their custody is entitled by law to be bailed, take a bail bond in the usual manner, with two good housekeepers as sureties, fully responsible for the payment of double the sum to be named in any warrant or warrants to be directed to such bailiff or his assistant, and do and shall fully indemnify the said sheriff and his undersheriff and agent from all sums of money, loss or damage whatsoever, in respect of the taking of any such bail bond. And also do and shall send such bail bonds, or the debt and ten pounds to answer costs, as the case may be, into the sheriff's office on or before the day on

which every such warrant, writ or process shall be returnable, and shall and do comply in all things with the provisions of a certain act of Parliament made in the thirty-second year of the reign of King George the Second, commonly called the *Lords' Act* (*a*), and of all other acts of Parliament now in force relating to the conduct and behaviour of bailiffs in the execution of their said office. And also if the said bailiff do and shall upon demand, well and truly pay unto the said sheriff, his undersheriff or agent, all such sum and sums of money for which the said sheriff shall be fixed, or which he or his undersheriff shall pay in any action or suit in which any warrant or precept shall be granted to the said bailiff or his assistant, together with the costs and expenses in respect thereof. And all costs and expenses incurred in defending the said sheriff, or in prosecuting any action or suit upon any bail bond, or indemnity bond, taken by the said sheriff, or given as his security in any case where the said bailiff or his assistant shall have acted or assumed to act. And in prosecuting or opposing any motion in, or application to the Court, touching or concerning any matter wherein the said bailiff or his assistant shall act as or assume to act as bailiff to the said sheriff, together with interest at five pounds *per centum per annum* upon all sums paid from the time or respective times of the payment thereof. And also if the said bailiff and his assistants do and shall in all things well and truly execute the office of bailiff to the said sheriff. And lastly, if the said bailiff and his said sureties, some or one of them, their, some or one of their heirs, executors and administrators, do and shall from time to time, and at all times hereafter, save, defend, keep harmless and indemnified the said sheriff and his undersheriff and agent, and his and their heirs, executors and administrators, of, from and against all manner of actions, suits, attachments, escapes, fines, penalties, amerciaments, and other troubles, costs, charges, damages and expenses whatsoever, which may be commenced, prosecuted, imposed or set upon them or either of them, or which they or either of them may suffer, pay or be liable unto, for or by reason of the executing, not executing, returning or not returning, or improper returning of any writ, warrant, process, mandate or precept, occasioned by the act, information, or default of the said bailiff or assistant, the not taking bail, the taking insufficient bail, the not bringing into Court the body of any defendant arrested by him, or by reason of extortion, escape, or any other cause whatsoever, happening by the act or default of the said bailiff or assistant. Then the above-written obligation to be void and of no effect, but otherwise to be and remain in full force and virtue.

Signed sealed and delivered by ——.

(*a*) C. 28.

14.

Mandate to Bailiff of Liberty.

to wit } —— esq., sheriff of the county of —— to the bailiff of the liberty of —— in the said county, greeting: Whereas I have received a writ of our sovereign lady the Queen, in the words following, that is to say:—Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of —— greeting: We command you that —— and because you claim to have the execution of all writs, and the return thereof, within the liberty aforesaid, in which same liberty the execution of this writ wholly remains to be made, as I am informed, therefore I command and require you on the part of our said lady the Queen, that the tenor of this writ in every thing you execute, as the writ itself requires and commands, and that immediately, or at least before the return of the said writ, you send me a full return thereof.

Herein fail not at your peril. Given under my hand and seal of office, this —— day of —— in the year of our Lord one thousand eight hundred and fifty —. —— esquire, sheriff.

15.

Affidavit of Death of Coroner by Candidate for Office.

In the High Court of Justice, Chancery Division.

A. B., of the parish of C., in the county of D., gentleman, maketh oath and saith that G. T., late one of the coroners of the said county, departed this life [resigned or was removed by the Lord Chancellor, *as the case may be*] on or about the —— day of —— last past. Sworn, &c. A. B.

16.

Petition for a Writ de Coronatore Eligendo.

To the Right Hon. the Lord High Chancellor of Great Britain.

The humble petition of us whose names are hereunto subscribed freeholders of the county of D., on behalf of ourselves and others freeholders of the said county. Sheweth—

That E. F., late one of the coroners for the said county of D., departed this life [*or, &c., as the case may be*] on or about the —— day of —— as by the affidavit hereunto annexed appears. And that it will be for her Majesty's service and general good of the said county to have a proper person elected coroner in the room and stead of the said E. F. deceased:

Your petitioners therefore most humbly pray your lordship's order that a writ *de coronatore eligendo* do issue for the election of a new coroner for the said county of D. in the room and stead of the said E. F. deceased. And your petitioners will ever pray, &c.

17.

Writ de Coronatore Eligendo.

The Queen to the sheriff, &c. Because E. F., one of our coroners in your county is dead, as we have received information, we command you, if it be so, that then in your full county, with the assent of the same county, you cause to be chosen in the place of him the said E. F. one other coroner, according to the form of the statute thereof set forth and provided, who having taken the oath (as the custom is), from thenceforth shall do and keep those things which belong to the office of coroner in the county aforesaid, and cause to be chosen such a person who best may know and be most able to discharge that office, and make known to us his name. Witness, &c.

18.

Notice of the time for Electing a Coroner.

The sheriff of D. will proceed to the election of a coroner for the said county in the room of E. F., esq., deceased, at the County Court to be held at —— by adjournment, on Wednesday, the —— day of —— next, at ten o'clock in the forenoon of the same day, at which time and place the freeholders of the said county are desired to attend.

A. B., esquire, sheriff.

19.

Return to a Writ de Coronatore Eligendo.

By virtue of this writ to me directed, in my full County Court, held (by adjournment) at A., in the county of D., on the —— day of —— in the year within written, by the assent of the same county, I have caused G. H., esq., to be chosen coroner in the place of the within-named E. F., deceased, which said G. H., as the manner is, hath taken his corporal oath to do and keep those things which to the office of coroner in the said county doth belong, as I am within commanded.

The answer of A. B., esquire, sheriff.

20.

Oath of Electors of Coroner.

7 & 8 Vict. c. 92, s. 13.

"I swear [*or being one of the people called Quakers, or entitled by law to make affirmation,* 'solemnly affirm'] that I am a freeholder of the county of ——, and have a freehold estate consisting of —— lying at —— within the said county; and

that such freehold estate has not been granted to me fraudulently or colourably on purpose to qualify me to give my vote at this election; and that the place of my abode is at —— [*and if it be a place consisting of more streets or places than one, specifying what street or place*]; that I am twenty-one years of age, as I believe; and that I have not been before polled at this election [*adding, except in cases of solemn affirmation*]. So help me God."

21.

Proclamation before Election.

All manner of persons who have anything to do at this election of coroner for the county of D., let them draw near and give their attendance.

22.

Proclamation after Election.

If any one can gainsay why G. H., gent., should not be appointed one of the coroners for this county, let him come forth and he shall be heard, otherwise the sheriff of D. will declare the said G. H. duly elected.

23.

Writ of Exigi Facias or Exigent.

Victoria, &c., to the sheriff of —— greeting: We command you that you cause C. D., late of —— in the county of ——, grocer, to be demanded from husting to husting [*if in London; if not, say* "from County Court to County Court"] until according to the law and custom of England he be outlawed if he do not appear: and if he do appear, then that you take him and him safely keep so that you may have his body before the —— Division of our High Court at Westminster on —— to answer to A. B. in an action of contract at the suit of the said A. B., and whereupon you returned to the said Court at Westminster on —— last past that the said C. D. was not found in your bailiwick and that he had nothing in your bailiwick by which he could be distrained, and have there this writ. Witness, &c.

24.

Sheriff's Warrant to Bailiffs on Exigent.

—— sheriff of the county aforesaid, to —— and to wit Job Doe, my bailiffs, greeting: By virtue of a writ of our sovereign lady the Queen to me directed, I command

you, that you or one of you demand —— from County Court to County Court, until, according to the law and custom of England, he be outlawed if he do not appear, and if he do appear, then that you take and safely keep him, so that I may have his body before —— the Queen, on the —— day of —— next, wheresoever, &c., to answer —— in an action ——. And how you shall have executed this my warrant, make known to me.

Hereof fail not. Given under the seal of my office, this —— day of —— in the year of our Lord one thousand eight hundred and ——.

The plaintiff claims £—— for debt, and £—— for costs; and if the amount thereof be paid to the plaintiff or h attorney within four days from the service hereof, further proceedings will be stayed.

25.

Judgment of Outlawry.

Forasmuch as C. D., the defendant named in this writ of *exigent*, hath been duly exacted at five successive County Courts [*or* "hustings"] and hath not appeared, nor been taken, nor rendered his body to the sheriff of this county of B. Therefore we pronounce him outlawed [*or* "waived"].

26.

Return to Exigent.

By virtue of this writ, directed at my County Court at A., in and for the county of B., on the —— day of ——, in the —— year of the reign of our sovereign lady Queen Victoria, the within-named C. D. was a first time demanded, and did not appear: And at my County Court, held at A. aforesaid, in and for the said county of B., on ——, the —— day of ——, in the year aforesaid, the said C. D. was a second time demanded, and did not appear: And at my County Court, held at A. aforesaid, in and for the said county of B., on the —— day of ——, in the year aforesaid, the said C. D. was a third time demanded, and did not appear: And at my County Court, held at A. aforesaid, in and for the said county of B., on the —— day of ——, in the year aforesaid, the said C. D. was a fourth time demanded, and did not appear: And at my County Court, held at A. aforesaid, in and for the said county of B., on the —— day of ——, in the year aforesaid, the said C. D. was a fifth time demanded, and did not appear: Therefore, upon the judgment of E. F., esq., coroner of our sovereign lady the Queen for the county aforesaid, the said C. D., according to the law and custom of England, is outlawed.

The answer of G. H., esquire, sheriff.

27.

Return to Exigent, where there are not five County Courts.

By virtue of this writ to me directed, at my County Court, held at A., in and for the county of B., on the —— day of ——, in the —— year of the reign of our sovereign lady Queen Victoria, the within-named C. D. was a first time demanded.

Answer of G. H., esquire, sheriff.

28.

Return where the Sheriff goes out of Office, and the new Sheriff Returns.

[In addition to the last precedent.]

This writ, as above indorsed, was delivered to me, the under-named present sheriff, by the above-named late sheriff, at his going out of office. At my County Court, held at A. (*as above*).

29.

Return where the Defendant Appears.

By virtue of this writ to me directed, at my County Court, held at A., in and for the said county of B., on the —— day of ——, in the —— year of the reign of our sovereign lady Queen Victoria, the within-named C. D. was a first time demanded, and then and there appeared, and then rendered himself into my custody; whose body I have ready before our lady the Queen, at the day and place within-mentioned, as within I am commanded.

The answer of G. H., esquire, sheriff.

30.

Writ of Allocatur Exigent.

Victoria, &c.: We command you that allowing those —— County Courts [*or* "hustings"] at which C. D. late of —— was demanded and did not appear as you returned to us [*or* "to the justices of our High Court"] at Westminster on —— last past, you cause the said C. D. to be further demanded from County Court to County Court until according to the law and custom of England he be outlawed if he do not appear; and if he do appear then that you take him and him safely keep so that you may have his body before us ["before the justices of our High Court"] at —— on —— to answer A. B. in an action of —— at the suit of the said A. B., and have there this writ. Witness, &c.

31.

Writ of Capias Utlagatum.

Victoria, &c.: We command you that you omit not by reason of any liberty of your bailiwick, but that you enter the same and take C. D. late of —— being outlawed in your said county on, &c., at the suit of A. B. of —— [*if the writ issue into a county different from that in which the defendant was outlawed, say* "as our sheriff of —— returned to us (*or* 'to the justices of our High Court') at —— at a certain day now past"] if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us ["before the justices of our High Court"] at —— on, &c., to do and receive what our said Court shall consider of him in this behalf, and have there this writ. Witness, &c.

32.

Return to Capias Utlagatum.

The execution of this writ appears in a certain inquisition to this writ annexed.

33.

Warrant to Bailiffs.

County of B. } —— esq., sheriff of the county aforesaid, to ——
to wit. } and —— my bailiffs, greeting: By virtue of H. M.'s writ of *ca. utlagatum* to me directed and delivered, I do hereby command you and each of you jointly and severally that you take C. D. wheresoever he may be found in my bailiwick and him safely keep, so that I may have his body before our lady the Queen [*or* "before the justices of our lady the Queen"] at —— on the ——day of —— A. D. 18—, as in the said writ I am commanded; and in what manner you shall have executed this warrant certify to me immediately after the execution thereof. Given under the seal of my office this —— day of ——A. D. 18—.

—— sheriff.

34.

Charge to Jury.

Your charge is to inquire what goods and chattels, lands and tenements, C. D. of —— hath in my bailiwick, and also to inquire and say what is the true value thereof.

35.

Juror's Oath.

You shall well and truly try what goods and chattels, lands and tenements, C. D. of —— has and the value thereof, and a true verdict give according to the evidence. So help you God.

36.

Inquisition.

County of B. (*to wit.*) An inquisition indented, taken at A., in the county of B., the —— day of ——, in the —— year of the reign of our sovereign lady Queen Victoria, before me, G. H., esq., sheriff of the said county of B., by virtue of her said Majesty's writ to me directed in this behalf, and to this inquisition annexed, by the oath of (*here name the jurors who were upon the inquest*) twelve honest and lawful men of the county aforesaid, who say upon their oath that C. D., named in the writ hereunto annexed, on the —— day of —— last past (on which day he was outlawed as in the said writ is mentioned) was possessed of the goods and chattels following: that is to say, (*here describe the goods*) of the value of £——, of his own proper goods and chattels; (*or, if he had no goods, say,* "had no goods nor chattels in my bailiwick to the knowledge of the said jurors"): and the jurors aforesaid, upon their oath aforesaid, do further say, that the said C. D., on —— last past (on which day he was outlawed as aforesaid), was seised in his demesne as of fee of and in ——, with the appurtenances, now in the tenure and occupation of J. K., the same being of the yearly value of £——, in all issues beyond reprize; all and singular which said goods and chattels, lands and tenements, I, the said sheriff, by virtue of the said writ, on the day of the taking of this inquisition, have taken and caused to be seized into the hands of our said lady the Queen, as by the said writ I am commanded. And the jurors aforesaid, upon their oath aforesaid, do further say, that the said C. D., on —— last past (on which day he was outlawed as aforesaid), or at any time afterwards, had not, nor hath he any other or more (goods or chattels, lands or tenements) in my bailiwick, to the knowledge of the said jurors. In witness whereof, as well I, the said sheriff, as the jurors aforesaid, have set our respective seals.

(*Seal of office.*) (*Twelve seals.*)

37.

Writ for a County or Borough at a Parliamentary Election.

Ballot Act, 1872, 2nd Sch.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff [*or* other returning officer] of the county [*or* borough] of —— greeting:

Whereas by the advice of our council we have ordered a Parliament to be holden at Westminster on the —— day of —— next: We command you, that, notice of the time and place of election being first duly given, you do cause election to be made according to law of —— members [*or* a member] to serve in Parliament for the said county [*or* the —— division of

the said county, *or* the borough, *or as the case may be*] of ——, and that you do cause the names of such members [*or* member] when so elected, whether they [*or* he] be present or absent, to be certified to us, in our Chancery, without delay.

Witness ourself at Westminster, the —— day of —— in the —— year of our reign and in the year of our Lord 18—.

38.

Label or direction of Writ.

Ballot Act, 1872, 2nd Sch.

To the [*sheriff or other returning officer*] of ——

A writ of a new election of members [*or* member] for the said county [*or* division of a county *or* borough, *or as the case may be*].

39.

Endorsement.

Ballot Act, 1872, 2nd Sch.

Received the within writ on the —— day of —— 18—.

(Signed) A. B.,

High sheriff [*or* sheriff, *or* mayor, *or as the case may be*].

40.

Certificate endorsed on the Writ.

Ballot Act, 1872, 2nd Sch.

I hereby certify that the members [*or* member] elected for —— in pursuance of the within-written writ are [*or* is] A. B. of —— in the county of —— and C. D. of —— in the county of ——.

(Signed) A. B.,

High sheriff [*or* sheriff, *or* mayor, *or as the case may be*].

Note.—A separate writ will be issued for each county as defined for the purposes of a parliamentary election.

41.

Notice of Parliamentary Election.

Ballot Act, 1872, 2nd Sch.

The returning officer of the —— of —— will on the —— day of —— now next ensuing between the hours of —— and —— proceed to the nomination and if there is no opposition to the election of a member [*or* members] for the said county [*or* division of a county *or* borough] at the ——. [Insert description of place and room.]

Forms of nomination paper may be obtained at —— between the hours of —— and —— on ——.

Every nomination paper must be signed by two registered electors, as proposer and seconder, and by eight other registered electors as assenting to the nomination.

Every nomination paper must be delivered to the returning officer by the candidate proposed, or by his proposer and seconder, between the said hours of —— and —— on the said —— day of —— at the said ——.

Each candidate nominated, and his proposer and seconder, and one other person selected by the candidate, and no other persons, are entitled to be admitted to the room.

In the event of the election being contested the poll will take place on the —— day of ——.

(Signed) G. H., sheriff.
—— day of —— 18—.

Take notice that all persons who are guilty of bribery, treating, undue influence, personation, or other corrupt practices, at the said election, will, on conviction of such offence, be liable to the penalties mentioned in that behalf in "The Corrupt Practices Prevention Act, 1854," and the Ballot Act, 1872, and the acts amending the said acts.

42.

Form of Nomination Paper in Parliamentary Election.

Ballot Act, 1872, 2nd Sch.

We the undersigned A. B. of —— in the —— of —— and C. D. of —— in the —— of —— being electors for the —— of —— do hereby nominate the following person as a proper person to serve as member for the said —— in Parliament:

Surname.	Other Names.	Abode.	Rank, Profession or Occupation.
BROWN	JOHN..	52, George Street, Bristol.	Merchant.
JONES	*or* WILLIAM DAVID ..	High Elms, Wilts.	Esquire.
MERTON	*or* Hon. GEORGE TRAVIS commonly called Viscount.	Swanworth, Berks.	Viscount.
SMITH	*or* HENRY SYDNEY ..	72, High St., Bath.	Attorney.

(Signed) A. B.
C. D.

We, the undersigned, being registered electors of the said

——, do hereby assent to the nomination of the abovementioned *John Brown* as a proper person to serve as member for the said —— in Parliament.

(Signed) E. F. of
G. H. of
I. J. of
K. L. of
M. N. of
O. P. of
Q. R. of
S. T. of

Note.—Where a candidate is an Irish peer, or is commonly known by some title, he may be described by his title as if it were his surname.

43

Form of Ballot Paper.

Ballot Act, 1872, 2nd Sch.

Form of Front of Ballot Paper.

Counterfoil No.

Note: *The counterfoil is to have a number to correspond with that on the back of the Ballot Paper.*

1	BROWN (John Brown, of 52, George St., Bristol, merchant.)	
2	JONES (William David Jones, of High Elms, Wilts, Esq.)	
3	MERTON (Hon. George Travis, commonly called Viscount Merton, of Swanworth, Berks.)	
4	SMITH (Henry Sydney Smith, of 72, High Street, Bath, attorney.)	

Form of Back of Ballot Paper.

No.

Election for ——. 18—.

Note.—The number on the ballot paper is to correspond with that in the counterfoil.

Directions as to printing Ballot Papers.

Nothing is to be printed on the ballot paper except in accordance with this form.

The surname of each candidate, and if there are two or more candidates of the same surname, also the other names of

such candidates, shall be printed in large characters, as shown in the form, and the names, addresses, and descriptions, and the number on the back of the paper, shall be printed in small characters.

44.

Form of Directions for the Guidance of the Voter in voting, which shall be printed in conspicuous Characters, and placarded outside every Polling Station and in every Compartment of every Polling Station.

Ballot Act, 1872, 2nd Sch.

The voter may vote for —— candidate .

The voter will go into one of the compartments, and, with the pencil provided in the compartment, place a cross on the right-hand side, opposite the name of each candidate for whom he votes, thus, X.

The voter will then fold up the ballot paper so as to show the official mark on the back, and leaving the compartment will, without showing the front of the paper to any person, show the official mark on the back to the presiding officer, and then, in the presence of the presiding officer, put the paper into the ballot box, and forthwith quit the polling station.

If the voter inadvertently spoils a ballot paper, he can return it to the officer, who will, if satisfied of such inadvertence, give him another paper.

If the voter votes for more than —— candidate , or places any mark on the paper by which he may be afterwards identified, his ballot paper will be void, and will not be counted.

If the voter takes a ballot paper out of the polling station, or deposits in the ballot box any other paper than the one given him by the officer, he will be guilty of a misdemeanor, and be subject to imprisonment for any term not exceeding six months, with or without hard labour.

Note.—These directions shall be illustrated by examples of the ballot paper.

45.

Form of Statutory Declaration of Secrecy.

Ballot Act, 1872, 2nd Sch.

I solemnly promise and declare, that I will not at this election for —— do anything forbidden by section four of the Ballot Act, 1872, which has been read to me.

Note.—The section must be read to the declarant by the person taking the declaration.

46.

Form of Declaration of inability to Read.

Ballot Act, 1872, 2nd Sch.

I, A. B., of ——, being numbered —— on the register of voters for the —— of ——, do hereby declare that I am unable to read.

A. B., —— his mark.

—— day of ——

I, the undersigned, being the presiding officer for the —— polling station for the —— of ——, do hereby certify, that the above declaration, having been first read to the above-named A. B., was signed by him in my presence with his mark.

(Signed) C. D.,
Presiding officer for —— polling station
for the county of ——.

—— day of ——.

47.

Questions to Voter.

6 & 7 Vict. c. 18, s. 81.

[Re-enacted by the 43 Vict. c. 18, s. 3.]

1. Are you the same person whose name appears as A. B. on the register of voters now in force for the county of —— (*or* "for the —— riding, parts or division of the county of ——," *or* "for the city" *or* "borough of ——," *as the case may be*) ?

2. Have you already voted either here or elsewhere at this election for the county of —— (*or* "for the —— riding, parts or division of the county of ——," *or* "for the city" *or* "borough of ——," *as the case may be*) ?

48.

Oath of Identity.

You do swear [*or* "affirm," *as the case may be*] that you are the same person whose name appears as A. B. on the register of voters now in force for the county of —— [*or* "for the —— riding" *or* "—— division of the county of ——," *as the case may be*] and that you have not before voted either here or elsewhere at the present election for the county of [*or* "for the —— riding," &c.] So help you God.

42.

Proclamation under Riot Act.

57 Geo. 3, c. 18.

Our sovereign lady the Queen chargeth and commandeth all persons here assembled immediately to disperse themselves and peaceably depart to their habitations or to their lawful business upon pain of death. God save the Queen.

50.

Writ of Inquiry.

18—. —. No—.

In the High Court of Justice,
—— Division.

Between A. B., plaintiff,
and
C. D., defendant.

Victoria, &c.: Whereas E. F., lately in our Court before us [*or* "before the justices of our High Court"] at Westminster, by his attorney sued J. K. for [*as in statement of claim*]. And such proceedings were thereupon had in our said Court that the said E. F. ought to recover against the said J. K. his claims on occasion of the premises. But because it is unknown to our said Court what claims the said E. F. hath by means of the premises aforesaid; therefore we command you that by the oath of twelve good and lawful men of your bailiwick you inquire what claim the said E. F. hath, as well by means of the premises aforesaid as for his costs and charges by him about his suit in this behalf expended, and that you send to us [*or* "to the justices of our High Court"] at W., &c., on the inquisition which you shall thereupon take, under your seal, and the seals of those by whose oath you shall take that inquisition, together with this writ. Witness, &c.

51.

The like in Detinue.

18—. —. No. —.

In the High Court of Justice,
—— Division.

Between A. B., plaintiff,
and
C. D., defendant.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of —— greeting: Whereas A. B., lately in the —— Division of our High Court of Justice in a certain action

ere pending, wherein A. B. is plaintiff and C. D. is defen-nt, and wherein the plaintiff's claim is for a return of [house-old furniture, *or as in writ*], or their value, and damages for eir detention; by a judgment of our said Court bearing date e —— day of ——, 18—, it was adjudged that the said A. . should recover against the said C. D. the said [household rniture] or their value, and also damages for the detention ereof. But because it is unknown to our said Court what is e value of the said [household furniture], and what damage e said A. B. hath sustained by reason of the detention thereof, erefore we command you that by the oath of twelve good d lawful men of your bailiwick you diligently inquire what the value of the said [household furniture], and what dam-ge the said A. B. hath sustained by reason of the detention ereof, and that you send to us in the —— Division of our igh Court of Justice, on the —— day of —— next ensuing, e inquisition which you shall thereupon take under your al, and the seal of those by whose oath you shall take that quisition, together with this writ.

Witness [*name of Lord Chancellor*],
Lord High Chancellor of Great Britain,
at Westminster, the —— day of ——,
in the year of our Lord 18—.

52.

Deputation to take an Inquisition.

County of B. (*to wit.*) G. H., esquire, sheriff of the county foresaid, to C. D., gentleman, greeting: By virtue of a writ f inquiry issued out of the —— Division of her Majesty's High ourt of Justice, at Westminster, to me directed, I do hereby uthorize and empower you to summon a jury, and take an quisition in my name, in a cause wherein E. F. is plaintiff, nd J. K., widow, is the defendant; and render me an ccount of what you shall do therein, so that I may certify the ame to the said Court at Westminster on the —— day of —— next coming; hereof fail not. Given under the seal of ny office the —— day of ——, 18—.

(*Seal of office.*) By the sheriff.

53.

Return to Writ of Inquiry.

(See Chapter IX. p. 101.)

The execution of this writ appears in the inquisition hereunto annexed. The answer of G. H., esquire, sheriff.

54.

Order to have the Inquiry executed before a Judge at the Assizes.

B. } Upon hearing the affidavit of the plaintiff and X. Y.,
v. } and upon hearing the solicitors [*or agents or counsel*] for
D. } the plaintiff and defendant, I do order that the writ of inquiry of damages in this action be executed before the sheriff of —— at the next assizes to be holden for that county, in the presence of one of her Majesty's justices to be assigned to take the assizes in and for the said county [*or in a town cause*, "at the next sittings of *nisi prius* to be holden for Middlesex (or London) after this present sittings, in the presence of the Lord Chief Justice, or one other of the justices of this Court."]

55.

Summons to obtain Order to have the Inquiry executed before a good Jury.

[*Formal parts as usual*] to show cause why the writ of inquiry in this action should not be executed by a good jury, to be taken from the special jury book, and empanelled, returned, and sworn by the sheriff of ——.

56.

Summons to Jurors on Writ of Inquiry.

County of B. } —— *v.* —— : By virtue of a writ of —— issued
to wit. } out of the —— Division of the High Court of Justice at Westminster, I hereby summon and require you to attend at —— at —— in the county of —— on —— the —— day of —— at —— of the clock in the —— precisely, then and there to serve as a juror in the above action.

Given under my hand and seal of office, this —— day of —— one thousand eight hundred and ——.

57.

Oath to Jury.

You shall well and truly try all such matters and things *as shall be given you in charge* touching this writ of inquiry, and a true verdict give, according to the evidence.

So help you God.

(*From the nature of the oath, it is necessary that the sheriff should give a short charge to the jury, which need be little more than reading the writ*).

58.

Oath to Witnesses.

The evidence you shall give to this Court and jury, touching the matters in question in the cause wherein E. F. is plaintiff and J. K. defendant, shall be the truth, the whole truth, and nothing but the truth.

So help you God.

59.

Notice of Inquiry in London.

18—. —. No. —.

In the High Court of Justice,
—— Division.

Between A. B., plaintiff,
and
C. D., defendant.

Take notice that a writ of inquiry of damages in this action will be executed on the —— day of —— instant [*or* "next"] between the hours of eleven of the clock in the forenoon and one of the clock in the afternoon of the same day at the secondary's office (No. 19, Gresham Street), in the City of London [*and if the plaintiff means to attend by counsel, add* "when and where counsel will attend on behalf of the said plaintiff."]

Dated ——.

Yours, &c.,
X. Y., plaintiff's solicitor [*or* "agent"].

To Mr. C. D., the above-named defendant [*or, if he has appeared by solicitor,* "to Mr. E. F., defendant's solicitor" (*or* "agent")].

60.

The like, in Middlesex.

[*Same as in the preceding form, except substituting, where necessary, the words* "between the hours of eleven of the clock in the forenoon, and one of the clock in the afternoon of the same day at the sheriff's office (in Red Lion Square, near Holborn) in the county of Middlesex].

61.

The like, in the Country.

[*Same as in No. 59, except stating that the inquiry is to be* "at the house of —— commonly called or known by the sign of (the Blue Boar) in —— Street, at —— in the county of ——"].

62.

The like, at Nisi Prius.

[*Same as in No.* 59, *except stating that the inquiry will be* "at the sittings after this present —— term, to be holden at the Guildhall of the City of London" (*or in Middlesex*, "at Westminster Hall, in the County of Middlesex.")]

63.

The like, at the Assizes.

[*Same as No.* 59, *but state* "that a writ of inquiry of damages will be executed in this action, at the next assizes to be holden at ——, in and for the county of ——, in the presence of one of her Majesty's justices of assize."]

64.

Notice of Continuance.

[*Title, &c., as in Form No.* 59.]

I do hereby continue the notice of executing the writ of inquiry given you in this action, to the —— day of —— next, when the same will be executed between the hours of —— and ——, at ——.

Dated ——.

Yours, &c.,

X. Y., plaintiff's solicitor [*or* "agent"].

To Mr. C. D., the above-named defendant [*or, if the defendant has appeared by solicitor,* "to Mr. E. F., defendant's solicitor" (*or* "agent")].

65.

Notice of Countermand.

[*Title, &c., as in Form No.* 59.]

I do hereby countermand the notice of executing the writ of inquiry given you in this action.

Dated ——.

Yours, &c.,

X. Y., plaintiff's solicitor [*or* "agent"].

To Mr. C. D., the above-named defendant [*or* "Mr. E. F., the defendant's solicitor" (*or* "agent")].

66.

Notice of attending by Counsel.

[*Title, &c., as in Form No.* 59.]

Take notice that the plaintiff [*or* "defendant"] will attend by counsel on the execution of the writ of inquiry in this action.

Dated [*&c., as in preceding form*].

67.

Præcipe for Subpœna on Writ of Inquiry.

—— to wit. Subpœna to testify, on inquiry between A. B., plaintiff, and C. D., defendant, on the part of the plaintiff [*or* "defendant"].

X. Y., plaintiff's solicitor [*or* "agent"].

—— 18 ——.

68.

Subpœna.

18—. —. No. —.

In the High Court of Justice,
—— Division.

Between A. B., plaintiff,
and
C. D., defendant.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to A. B., &c. [*insert the names of the witnesses*], greeting: We command you, and every of you, that laying aside all and singular businesses and excuses whatsoever, you and every of you, be and appear in your proper persons, before our sheriff [*or* "sheriffs"] of ——, on ——, at —— [*as in the notice of inquiry*], then and there to testify the truth, according to your knowledge, in a certain action now pending in the Queen's Bench Division of our High Court of Justice, between A. B., plaintiff, and C. D., defendant, on the part of the plaintiff [*or* "defendant"], in which action a writ of inquiry of damages will then and there be executed; and this you or any of you shall in nowise omit, under the penalty of £100.

Witness [*name of Lord Chancellor*],
Lord High Chancellor of Great Britain,
at Westminster, the —— day of ——,
in the year of our Lord ——.

69.

Inquisition on a Writ of Inquiry.

County of B. (*to wit*). An inquisition indented, taken at —— in the county aforesaid, the —— day of ——, between the hours of —— and —— in the forenoon of the same day, in the —— year of the reign of our sovereign lady Queen Victoria, before me, G. H., esquire, sheriff of the said county, by virtue of her Majesty's writ to me directed, and to this inquisition annexed, upon the oaths of (*here name the twelve jurors*) good and lawful men of the said county of B., who being chosen, tried and sworn, upon their oaths say, that E. F., in the said writ named, hath sustained damages by reason of not performing the *promises and undertakings* (*or as the case may be*) of J. K., in the said writ also named, to the value of £——, and also forty shillings for his costs and charges by him in his suit in this behalf occasioned. In witness whereof, as well the said sheriff as the jurors aforesaid to this inquisition have severally put their seals the day and year aforesaid.

(*Seal of office.*) G. H., esquire, sheriff.
C. D. (*Seal.*)
L. M. (*Seal.*)

(*And so the remainder of the twelve jurors.*)

70.

Undersheriff's Certificate to be indorsed on Writ of Inquiry, that Judgment ought to be stayed, &c.

I certify that in my opinion judgment ought not to be signed upon this writ until the within-named defendant shall have had an opportunity to apply to the —— to set aside the execution thereof.

Dated ——.

(Signature of the undersheriff).

71.

The like, where Judgment is stayed for a certain number of days only, to give the Defendant an opportunity to apply to a Judge.

I certify that in my opinion judgment ought not to be signed upon this writ until the expiration of —— days from the —— day of ——, 18—, that the defendant may have an opportunity, in the meantime, of applying to a judge for an order to stay the judgment thereupon, until such day as the judge shall think fit.

(Signature of undersheriff).

72.

Summons for staying Judgment on Writ of Inquiry executed in Vacation.

[*Formal parts of summons as usual*] to show cause why the judgment on the writ of inquiry executed in this action should not be stayed until the —— day of next ——, or until such day as may be ordered on the hearing of this summons.

73.

Entry of the Proceedings to the Award of the Inquiry inclusive, when the Defendant makes Default in Appearance, and the Breaches are assigned after Judgment.

[*Title, &c., as usual*].

——, 18—.

The defendant not having appeared to the writ of summons herein, wherefore the plaintiff ought to recover against the defendant his debt and also his damages which he hath sustained, [as well] on occasion of the detaining thereof [as for his costs of suit in this behalf]: And hereupon the plaintiff, according to the statute in that behalf, suggests and gives the Court here to understand and be informed, that the bond in the indorsement on the writ herein referred to, was and is subject to a condition thereunder written, whereby, after reciting that [&c., *state the recitals in the past tense*], it was declared that the condition of the said bond was such that if [&c., *state the condition in the past tense; then state the breaches, thus*]: Nevertheless for a breach of the said condition the plaintiff, according to the statute in that behalf, suggests and gives the Court here to understand and be informed that the defendant did not, nor would [&c., *state the breach, and if there be two or more breaches, state them thus*]: And the plaintiff, for assigning a further breach of the said condition, according to the said statute, further suggests and gives the Court here to understand and be informed, that [&c., *state the further breach*]: But because it is convenient and necessary that final judgment of and upon the premises aforesaid should not be given until such time as the truth of the said breaches above suggested shall have been inquired into, and the damages by the plaintiff sustained by reason of the said breaches shall have been assessed by a jury of the country in that behalf, according to the statute in that behalf, let the giving of judgment hereupon be stayed until such time accordingly. And the plaintiff having prayed the writ of our said lady the Queen to be directed to the sheriff of ——, and to the Right Honourable John Duke, Baron Coleridge, the Lord Chief Justice of England [*or as the case may be*], [*or at the assizes*, "to Her Majesty's Justices assigned to take the assizes in the said county of ——"], to inquire of the truth of the aforesaid breach [*or* "breaches"], and to assess the damages which

the plaintiff hath sustained thereby; therefore, according to the said statute, the sheriff is commanded that he summon twelve good and lawful men of his bailiwick to appear before the said chief justice [*or* "justices of assize"] on the —— day of ——, A.D. 18 —, at ——, in the said county, to inquire diligently on their oath of the truth of the said breach [*or* "breaches"], and to assess the damages which the plaintiff hath sustained by reason thereof; and that the said sheriff have on that day, before the said chief justice [*or* "justices of assize"], the writ of our said lady the Queen to him in that behalf directed: It is likewise commanded to the said chief justice [*or* "justices of assize"] that he [*or* "they"] certify the inquisition, before him [*or* "them"] taken, to our said lady the Queen in the Queen's Bench Division of the High Court of Justice, on the —— day of ——, with the names of those by whose oath such inquisition shall be taken; and that the said chief justice [*or* "justices of assize"] also have there then the writ; the same day is given to the plaintiff at the same place.

74.

The like, where the Inquiry is to be executed before the Sheriff.

[*Proceed to the suggestion of the breaches, inclusive, as in the preceding form, and then thus*]: But because it is convenient and necessary that judgment hereupon should not be given until the truth of the aforesaid breach [*or* "breaches"] of the said condition above suggested shall have been inquired into, and the damages which the plaintiff hath sustained thereby shall have been assessed by a jury of the country in that behalf, according to the statute in that behalf; therefore let the giving of the said judgment be in the meantime stayed, &c.: And the said plaintiff having prayed the writ of our said lady the Queen, to be directed to the sheriff of ——, to inquire by a jury of the said county of the truth of the aforesaid breach [*or* "breaches"], and to assess the damages which the plaintiff hath sustained thereby; therefore, according to the said statute, the sheriff is commanded that by twelve free and lawful men of his county duly qualified according to law, who are in nowise akin to the plaintiff or to the defendant, he do inquire diligently on their oath of the truth of the aforesaid breach [*or* "breaches"], and to assess the damages which the plaintiff hath sustained thereby; and that the said sheriff do send the inquisition which he shall thereupon take to our said lady the Queen in the Queen's Bench Division of the High Court of Justice at Westminster, on the —— day of —— instant [*or* "next"], under his seal and the seals of those by whose oath he shall take that inquisition, together with the writ of our said lady the Queen to him thereupon directed; the same day is given to the plaintiff, &c.

75.

Writ of Inquiry to be executed before the Chief Justice or Justices of Assize when the Defendant makes default in Appearance, and Breaches are suggested after Judgment.

[*Title, &c., as usual.*]

Victoria [&c., *as usual*], To the sheriff of ——, and to the Right Honourable John Duke, Baron Coleridge, Lord Chief Justice of England [*or as the case may be, or, if the writ is to be executed at the assizes,* "To our justices assigned to take the assizes in and for your county"], greeting: Whereas lately before us in the Queen's Bench Division of our High Court of Justice in an action there depending, wherein A. B. was plaintiff and C. D. defendant, the said A. B. claimed —— [*set out the claim as in the indorsement on the writ*],* and such proceedings were thereupon had in our said Court, that the said A. B. ought to recover against the said C. D. his debt aforesaid, together with his damages which he hath sustained on occasion of the detention thereof. And thereupon the said A. B., according to the statute in that behalf, suggested upon the roll whereon the said judgment so recovered against the said C. D. as aforesaid is entered, to the effect following, that is to say, that the said bond whereon the said judgment was so recovered against the said C. D. as aforesaid, was made and given by him the said C. D. under and subject to a condition thereto subscribed, whereby after reciting [&c., *state the recital in the condition of the bond*], it was declared, that if [&c., *state the condition*]: And the said A. B. further suggested, on the said roll whereon the said judgment so recovered against the said C. D. was and is so entered as aforesaid, that [&c., *state the suggestion of breaches, &c., as supra, No.* 73, *to the prayer of the writ of inquiry, and then proceed thus*]: as we have received information from the said A. B. in our said Court: And the said A. B. having prayed our writ to inquire of the truth of the aforesaid breach [*or* "breaches"] of the said condition of the said bond suggested as aforesaid, and to assess the damages which the said A. B. hath sustained thereby;* therefore, according to the statute in that behalf, we command you, the said sheriff, that you summon twelve good and lawful men of your bailiwick to appear before our said chief justice [*or as the case may be, or, at the assizes,* "before our said justices of assize"], on the —— day of —— next, at the Guildhall of the city of London, [*or* "at Westminster Hall in the county of Middlesex," *or, if at the assizes,* "at ——, in the county of ——"], to inquire diligently, on their oath, of the truth of the aforesaid breach [*or* "breaches"], and to assess the damages which the said A. B. hath sustained thereby; and that you have on that day before our said chief justice [*or* "justices of assize"] this writ: We likewise command our said chief justice [*or* "justices of assize"], that he [*or* "they"] certify the inquisition before him [*or* "them"] taken, to us in the Queen's Bench Division of our High Court of Justice at Westminster, on the —— day of ——

next, together with the names of those by whose oath such inquisition shall be taken; and that he [*or* "they"] also have there then this writ.

Witness [*name of Lord Chancellor*],
Lord High Chancellor of Great Britain,
at Westminster, the —— day of ——,
in the year of our Lord ——.

76.

Writ of Inquiry to be executed before the Sheriff on a Judgment by Default of Appearance, when the Breaches have been suggested after Judgment.

Victoria [&c., *as usual*], To the sheriff of ——, greeting: Whereas A. B., lately in our Court [&c., *proceed as in No. 75 to the asterisk, and then thus*]: And such proceedings were thereupon had in our said Court, and the said A. B. ought to recover against the said C. D. his debt aforesaid, together with his damages which he had sustained on occasion of the detention thereof: And thereupon the said A. B., according to the statute in such case made and provided, suggested upon the roll whereon the said judgment so recovered against the said C. D. as aforesaid is entered, to the effect following, to wit, that the said bond, whereon the said judgment was so recovered against the said C. D. as aforesaid, was made subject to a condition thereunder written, whereby, after reciting [&c., *state the recital, if any*], it was declared that if [&c., *state the condition in the past tense*]: And the said A. B. further suggested on the said roll whereon the said judgment so recovered against the said C. D. was and is so entered as aforesaid, that [&c., *state the suggestion of breaches, &c., as in the entry, ante, No. 73, to the prayer of the writ of inquiry, and then proceed thus*]: as we have received information from the said A. B. in our said Court: And the said A. B. having prayed our writ to inquire of the truth of the aforesaid breaches and to assess the damages which he the said A. B. has sustained thereby: therefore, according to the statutes in such case made and provided, we command you, the said sheriff, by the oath of twelve good and lawful men of your bailiwick duly summoned to appear before you, you diligently inquire of the truth of the said breach [*or* "breaches"], and assess the damages which the said A. B. hath sustained by reason of the same: and that you send to us in the Queen's Bench Division of our High Court of Justice at Westminster, on ——, the inquisition which you shall thereupon take, under your seal and the seals of those by whose oath you shall take that inquisition, together with this writ. Witness, [&c., *conclude as in No. 75, supra.*]

77.

Judgment and Writ of Inquiry when the Defendant makes default in delivering a Statement of Defence, and Breaches are assigned in the Statement of Claim.

[*The above forms may be adapted to this case in the following*

manner. Instead of suggesting the breaches, say]: And the plaintiff having in his statement of claim, delivered herein on the ——, stated that the bond in the indorsement on the writ herein mentioned was, and is, subject to a condition thereunder written, whereby after reciting that [&c., *state the recitals in the past tense*], it was declared that [&c., *state the condition in the past tense, and then the breaches, thus*]: But nevertheless the plaintiff states and assigns for a breach of the said condition that the defendant did not nor would [&c., *stating the breaches as supra, form No.* 73]. [*The rest of the form will be the same, except that the breaches must be referred to as* "breaches above assigned," *not* "suggested," *and the judgment will run*, "The defendant not having delivered any statement of defence."]

78.

Order to have the Inquiry executed before the Chief Justice, or a Judge at the Assizes.

[*Title, &c., as usual*].

B } Upon reading the affidavit of the plaintiff and X. Y.
v. } [*or* "and upon hearing Mr. —— of counsel for the
D } plaintiff, and Mr. —— of counsel for the defendant" (*or* "and no one appearing for the defendant, although he was served with notice of motion, as appears by the affidavit of X. Y., dated ——"),] it is ordered that the writ of inquiry of damages in this action be executed before the sheriff of ——, at the next assizes to be holden for that county, in the presence of one of her Majesty's justices to be assigned to take the assizes in and for the said county [*or in a town cause*, "at the sittings of *nisi prius* to be holden for Middlesex (*or* "London") after this present sittings, in the presence of the Lord Chief Justice or one other of the judges"].

By the Court.

79.

Notice of Inquiry.

18—. —. No.—.

In the High Court of Justice,
—— Division.

Between A. B., plaintiff.
and
C. D., defendant.

Take notice that the writ of inquiry to inquire of the truth of the breaches assigned [*or* "suggested"] by the plaintiff of the condition of the bond mentioned in the indorsement in the writ of summons [*or* "in the statement of claim"] in this action, and to assess the damages which he has sustained there-

by, will be executed on —— the —— day of ——, instant [*or* "next"], between the hours of —— and —— in the [forenoon], at —— [*state the place, and conclude as in the forms ante, Nos.* 59 *to* 63].

80.

The Inquisition and Return where the Inquiry was executed before the Sheriff.

—— to wit. An inquisition indented, taken at the secondary's office, &c. [*or* "at the house of ——, called or known by the name or sign of ——, in the said county of ——," *as in the notice of inquiry*], on the —— day of —— in the year of our Lord ——, before A. B., sheriff of the county aforesaid, by virtue of the writ of our said lady the Queen to this inquisition annexed, to inquire of the truth of the within-mentioned breach [*or* "breaches"] of the condition of the within-mentioned bond, and to assess the damages which the within-named C. D. hath sustained thereby, by the oath of E. F., &c. [*here name the jurors who sat on the inquest*], good and lawful men of the said county, who being charged and sworn upon their oath say, that the said breach [*or* "breaches"] of the said condition is [*or* "are"] true, and that the said A. B. hath sustained damages by the aforesaid breach [*or* "breaches"] to £——. In witness whereof as well I the said sheriff as the said jurors have set our seals to this inquisition the day and year above written.

(Signatures and seals of the sheriff and jurors.)

81.

Sheriff's Return to be indorsed on the Writ of Inquiry.

The execution of this writ appears in the inquisition hereunto annexed.

The answer of A. B., sheriff.

82.

Judgment where the Inquisition is before the Sheriff.

[*Proceed as in the forms* 73 *and* 74 *to the end of the award of the writ of inquiry, and then thus*]: At which day comes the said A. B. by his solicitor aforesaid, and the sheriff, to wit, E. F., esquire, sheriff of —— aforesaid, now here returns a certain inquisition, indented, annexed to the said writ, taken before him at ——, in the county aforesaid, on the —— day of ——, A.D. ——, by the oath of twelve good and lawful men of his county; by which it is found that [*state the finding*], and that the plaintiff hath sustained damages by reason thereof to £——; therefore it is adjudged [*state the judgment*].

83.

Writ of Inquiry to ascertain Arrears of Rent-charge.

18—. —. No. —.

In the High Court of Justice,
Queen's Bench Division.

In the matter of A. B.'s Charity.

Victoria [*&c., as usual*], to the sheriff of Dorsetshire, greeting: Whereas by virtue of an order of ——, knight, one of the justices of our High Court of Justice, bearing date the —— day of ——, 18 —, in the matter of A. B.'s charity, in pursuance of an act made and passed in the Session of Parliament held in the 6th and 7th years of his late Majesty King William the Fourth, chapter 71, we command you that you summon a jury to assess the arrears of rent-charge and apportionment remaining unpaid on ——, and due to E. F. and G. H., the trustees of the charity estates of the late A. B., the impropriators of the parish of K. in your bailiwick, from L. M. of K. aforesaid, yeoman, on and for lands belonging to him and in his occupation, number respectively —— and —— in the plan of the said parish annexed or referred to by the said award of the commissioners under the said statute, bearing date ——, and duly confirmed, the said trustees being the owners of the said rent-charge, and that you return to us in the Queen's Bench Division of our High Court of Justice, on —— now next, the inquisition which you shall thereupon take, under your seal and the seals of those by whose oath you shall take that inquisition, together with this writ.

Witness [*name of Lord Chancellor*],
Lord High Chancellor of Great Britain,
at Westminster, the —— day of ——,
in the year of our Lord ——.

84.

Warrant to Sheriff in Compensation Cases.

(See Chapter X. p. 110.)

County of B. } Whereas we the promoters &c. on the —— day
to wit. } of —— A.D. 18— pursuant to the statute in such case made and provided, did cause to be served a certain notice in writing under our common seal personally upon —— which said notice was and is in the words and figures following [*notice*]. And whereas the said —— hath not accepted the offer therein contained or any part thereof, and the question of value and compensation still remains disputed between us: We do hereby require and command you upon the receipt of this our warrant to summon a jury to determine the said differences and disputes in the premises; and herein fail not. Given under our common seal this &c.

85.

Notice of Inquiry by Promoters.

Take notice that a jury of the county of —— has been summoned and that an inquest will be held upon the value of your interest of and in —— and the compensation you may be entitled to from us in respect of the public works of the —— Co. and that the same will be tried on —— at —— o'clock A.M. before the undersheriff of the said county at the house of —— commonly called the —— at —— in the said county [*where counsel will attend*]. Given under our common seal this &c.

To ——

86.

Sheriff's Notice to Promoters.

Take notice that I shall hold an inquest and proceed to inquire into the value of &c. [*as above*] on —— the —— day of —— next at ten o'clock A.M. at A. in the county of W. at the house commonly called —— when and where you are requested, or some one on your behalf, to attend. Dated &c.

To ——. G. H., high sheriff.

87.

Request to summon Witness.

We hereby request you to summon on the inquest to be held at —— on —— respecting certain matters in difference between us and —— one —— who is a material witness touching the matters in question. Dated &c.

To G. H., sheriff of ——.

88.

Request to View.

We hereby request you to order the jury or any six or more of the jury summoned for the inquest to be held at &c. [*as above*] to view the place in controversy. Dated &c.

To G. H., sheriff of ——.

89.

Inquisition.

County of B. to wit. } An inquisition indented taken at —— on —— before —— sheriff of the county aforesaid by virtue of a certain warrant to the said sheriff directed under the common seal of the —— Co. and to this inquisition annexed, to inquire of certain matters in the said warrant specified by

the oath of —— [*names of jurymen*] honest and lawful men of the said county, who being charged and sworn upon their oath say that C. D. hath sustained damages to the amount of £——; and the jurors aforesaid upon their oath aforesaid further say that the value of the interest of the said C. D. of and in &c. amounts to £——. In witness whereof as well I the said sheriff as the said jurors have set our hands and seals to this inquisition the day and year above written.

G. H., high sheriff.
E. F.,
J. K., &c.

90.

Judgment on Inquisition.

Therefore it is considered that the said C. D. do recover against the said company the said several sums of £—— and £——; and the defendant in mercy &c.

G. H., high sheriff.

91.

General Precept for the Assizes.

(See Chapter XII. p. 127.)

County of B. } —— sheriff of the county aforesaid, to —— to wit. } my bailiff, greeting:—

By virtue of a precept to me directed of the justices of our sovereign lady the Queen assigned to hold the assizes in and for my county aforesaid, and to take all jurats, certificates, &c., therein, I command you that you omit not by reason of any liberty within my bailiwick, but that you cause to come before the said justices at —— in my county aforesaid, on —— the —— day of —— next coming, all writs of assizes, jurats, and certificates, before whatsoever justices taken, &c. That you cause to come before them at the time and place aforesaid the bodies of the several grand jurors, whose names are hereunto written or hereto annexed, to do those things which on the part of our said lady the Queen shall be then and there enjoined them; that you make public proclamation in and through your district, that all those who will prosecute against any prisoner, in any prison or gaol in my county aforesaid, that they be then and there present to prosecute against them, as shall be just. That you give notice to all justices of the peace, coroners, chief constables, stewards and bailiffs of liberties, within your district; that they then and there with their rolls, records, indictments and other memorandum, do those things which in this behalf shall belong unto them to be done. That you have before the said justices, at the time and place aforesaid, the bodies of the several special jurors whose names are hereunder written or hereto annexed, to serve upon juries to try the special jury causes which may

come on for trial before the said justices. That you have before the said justices, at the time and place aforesaid, the bodies of the several common jurors whose names are hereunder written or hereto annexed, to serve upon juries for the trial of all issues, whether civil or criminal, which may come on for trial before the said justices. And when you have summoned the said *grand*, *special*, and *common jurors*, you make return thereof to me that I may have their names before the said justices, at the time and place aforesaid, and that I may have printed panels of the special and common jurors made and kept at my office for inspection seven days at the least before the time aforesaid, and to be delivered to any party requiring the same. And that yourself be there in your own person to attend, do, and perform all those things which belong to your office; and that you have then and there the names of the said justices of the peace, chief constables, coroners, stewards and bailiffs of liberties. And hereof fail not at your peril.

Given under the seal of my office, the —— day of —— one thousand eight hundred and ——.

92.

Sheriff's Precept to Bailiff to Summon Special Jurors to the Assizes.

County of B. to wit. } —— sheriff of the county aforesaid, to —— my bailiff, greeting: These are to will and require you immediately upon sight hereof, that you warn the several persons hereunder named, so that they be and appear before the Queen's justices assigned to hold the assizes at —— in and for the county aforesaid, on the —— day of —— one thousand eight hundred and —— at —— o'clock in the forenoon precisely, to serve as special jurors to try the special jury causes which may come on for trial at the said assizes.

And hereof fail not at your peril. Given under the seal of my office, this —— day of —— in the year of our Lord one thousand eight hundred and ——.

93.

Sheriff's Precept to Bailiff to Summon Special Jurors to the Assizes (Another Form).

County of B. to wit. } —— sheriff of the county aforesaid, to —— my bailiffs, greeting: These are to will and require you immediately upon sight hereof, that you warn the several persons hereunder named, so that they be and appear before her Majesty's justices of assize at —— on the —— day of ——, and then and there to serve as special jurors in the trial of causes.

And hereof fail not at your peril. Given under the seal of my office, this —— day of —— in the year of our Lord one thousand eight hundred and ——.

By the same sheriff.

94.

Bailiff's Summons to Grand Juror to the Assizes.

County of B. } By virtue of a precept of the high sheriff of
to wit. } the county aforesaid, to me the undersigned officer of the said sheriff directed, I do hereby summon you to be and appear personally before the Queen's justices assigned to hold the assizes at —— in and for the county aforesaid, on —— the —— day of —— one thousand eight hundred and —— by —— of the clock in the forenoon, to serve as a grand juror at the said assizes, and to do those things which on the part of the Queen shall then and there be required of you; And take notice that in case you do not attend you will, under the Act of 6th Geo. IV., chap. 50, sec. 38, be subject to a fine in the discretion of the Court, unless some reasonable excuse be proved by oath or *affidavit*.

Dated this —— day of —— one thousand eight hundred and ——.

—— officer to the said sheriff.

95.

Bailiff's Summons to Jurors to the Assizes.

County of B. } By virtue of a precept of the high sheriff of
to wit. } the county aforesaid, to me the undersigned officer of the said sheriff directed, I do hereby summon you to be and appear personally before the justices of our sovereign lady the Queen, assigned to hold the assizes at —— in and for the county aforesaid, on —— the —— day of —— one thousand eight hundred and —— by —— of the clock in the forenoon, to serve as a —— juror at the said assizes; And take notice that in case you make default, you will, under the Act of 6th Geo. IV., chap. 50, sec. 38, be subject to a fine for non-attendance.

Dated this —— day of —— one thousand eight hundred and ——.

—— officer to the said sheriff.

96.

Bailiff's Summons to Special Jurors to the Assizes.

County of B. } By virtue of a precept of the high sheriff of
to wit. } the county aforesaid, to me the undersigned officer of the said sheriff directed, I do hereby summon you to be and appear personally before the Queen's justices assigned to hold the assizes at —— in and for the county aforesaid, on —— the —— day of —— one thousand eight hundred and —— by —— of the clock in the forenoon to serve as a special juror to try the special causes which may come on for trial at the

said assizes and to do those things which on the part of the Queen shall then and there be required of you: And take notice that in case you do not attend you will under the Act of 6th Geo. IV., chap. 50, sec. 38, be subject to a fine in the discretion of the Court, unless some reasonable excuse be proved by oath or *affidavit*.

Dated this —— day of —— one thousand eight hundred and ——.

—— officer to the said sheriff.

97.

Bailiff's Summons to Common Juror to the Assizes.

County of B. } By virtue of a precept of the high sheriff of
to wit. } the county aforesaid, to me the undersigned officer of the said sheriff directed, I do hereby summon you to be and appear personally before the Queen's justices assigned to hold the assizes at —— in and for the county aforesaid, on —— the —— day of —— one thousand eight hundred and —— by —— of the clock in the forenoon, to serve as a common juror for the trial of all issues, whether civil or criminal, which may come on for trial at the said assizes, and to do those things which on the part of the Queen shall then and there be required of you; And take notice that in case you do not attend, you will, under the Act of 6th Geo. IV., chap. 50, sec. 38, be subject to a fine in the discretion of the Court, unless some reasonable excuse be proved by oath or *affidavit*.

Dated this —— day of —— one thousand eight hundred and ——.

—— officer to the said sheriff.

98.

Warrant to Bailiffs to Summon Jury to View.

County of B. } I, G. H., sheriff of the said county, to E. F.,
to wit. } my bailiff, greeting: You are hereby required to warn and summon the several persons hereunder named personally to be and appear at the next assizes to be held for this county on —— at —— to try certain issues joined in a cause now pending between A. B. plaintiff and C. D. defendant. And the said persons are desired and requested to be and appear at the house known by the sign of —— at —— o'clock in the —— noon of the same day, where they will be attended by —— and —— persons appointed by the Court to show them the premises in question. And hereof fail not at your peril. Given, &c.

G. H., high sheriff.

99.

Certificate of View.

I do hereby certify that I have caused the place in question to be shown to —— [*jurors that attend*] in the panel hereunto annexed, as within commanded and required by the said order. G. H., sheriff.

100.

Return to Assize Precept with Panels.

(See p. 128.)

I have caused to be publicly proclaimed throughout my whole bailiwick, that all who shall prosecute against those prisoners be then and there to prosecute against them, as shall be just. I have also given notice to all justices of the peace, mayors, coroners, escheators, stewards, and also to all chief constables and bailiffs of every hundred and liberty within my county, that they be then and there, in their own person, with their rolls, records, indictments, and other remembrances, to do those things which to their offices in this behalf appertain to be done, as is within commanded me. The residue of the execution of this precept appears in certain schedules to the same annexed.

G. H., esquire, sheriff.

First Panel.

Names of the grand jury to inquire for our lady the Queen for the body of the said county.

1. The Right Honourable Lord Viscount R.
2. H. B., of A., esquire.

&c. G. H., esquire, sheriff.

Second Panel.

County of B. (*to wit.*) Names of the jury to try traverses, and the prisoners at the bar.

1. A. B., of ——.
2. C. D., of ——. } Summoning officer, S. S.

Each of the said jurors is by himself separately attached by pledges.—John Doe and Richard Roe.

G. H., esquire, sheriff.

Third Panel.

County of B. (*to wit.*) Names of the jury to try the issues joined, &c., &c.

1. A. B., of ——.
2. C. D., of ——. } G. H., esquire, sheriff.

Fourth Panel.

County of B. (*to wit.*) A calendar of the justices of the peace of our lady the Queen, mayors, coroners, bailiffs of liberties and hundreds, and constables of hundreds, in the county of N., summoned to be at the assizes and General Session of oyer and terminer and gaol delivery, to be holden at ——, in the said county, the —— day of —— in the —— year of the reign, &c.

The names of the justices.

A. B., of, &c.
C. D., of, &c.

Names of the mayors.

R. J., mayor of, &c.

Names of the coroners.

C. D., of, &c. gent.
E. F., of, &c. gent.

Names of bailiffs of liberties.

C. D., high bailiff of D.

Names of the constables of hundreds.

Hundred of H. C. D., of, &c.
Hundred of O. E. F., of, &c.

Names of the officers.

Hundred of H. J. K., of, &c.
Hundred of O. L. M., of, &c.
G. H., esquire, sheriff.

101.

Precept for Quarter Sessions.

(See Chapter XII. p. 127.)

County of B. to wit. } —— sheriff of the county aforesaid, —— greeting: By virtue of a precept to me directed, These are in her Majesty's name to will and require you, that you forthwith make known by open proclamation in every market town, and all other places convenient within your said —— that the next General and Quarter Sessions of the peace of and for the county aforesaid, is to be holden and kept at —— in the county aforesaid, on —— being the —— day of —— next coming, by —— of the clock in the forenoon of the same day: And that you give notice to all justices of the peace, coroners, stewards and chief constables of your —— that they be then and there present, to do and perform that which to the several offices doth appertain: And that all those that ought to

prosecute any prisoner or prisoners in the gaol of the said county, or are bound over then to appear and answer, be then and there present to prosecute against them according to law: And also that you summon and warn the persons whose names are under-written, that they be then and there present to serve on the grand jury, and to inquire on her Majesty's behalf for the body of the county aforesaid of all such matters and things as shall be then and there given them in charge: And also that you summon and warn the persons under-written, being good and lawful men of your —— that they be then and there present to serve on the petty jury, for her Majesty's service: And that you yourself be then and there present to make return hereof. And herein neither you nor they may fail, at your and their perils.

Given under the seal of my office, the —— day of —— in the year of our Lord one thousand eight hundred and ——.

102.

Bailiff's Summons to Grand Juror to the Quarter Sessions.

County of B. to wit. } By virtue of a precept of the high sheriff of the county aforesaid, to me the undersigned officer of the said sheriff directed, I do hereby summon you to attend personally before the justices of the peace assembled at the next —— General Quarter Sessions of the peace to be holden at —— in and for the county aforesaid, on —— the —— day of —— one thousand eight hundred and —— by —— of the clock in the forenoon, to serve as a grand juror at the said Sessions, and to do those things which on the part of the Queen shall then and there be required of you; And take notice, that in case you do not attend, you will, under the Act of 6th George IV., chap. 50, sec. 38, be subject to a fine in the discretion of the Court, unless some reasonable excuse be proved by oath or *affidavit*.

Dated this —— day of —— one thousand eight hundred and ——.

—— officer to the said sheriff.

103.

Bailiff's Summons to Common Juror to the Quarter Sessions.

County of B. to wit. } By virtue of a precept of the high sheriff of the county aforesaid, to me the undersigned officer of the said sheriff directed, I do hereby summon you to be and appear personally before the justices of the peace assembled at the next —— General Quarter Sessions of the peace to be holden at —— in and for the county aforesaid, on

—— the —— day of —— one thousand eight hundred and —— by —— of the clock in the forenoon, to serve as a common juror in the said sessions; And take notice that in case you do not attend you will, under the Act of 6th George IV., chap. 50, sec. 31, be subject to a fine in the discretion of the Court, unless some reasonable excuse be proved by oath or *affidavit*.

Dated this —— day of —— one thousand eight hundred and ——.

—— officer to the said sheriff.

104.

Declaration of Sheriff at Execution of Criminals.

(See Chapter XIII. p. 151.)

We the undersigned hereby declare that judgment of death was this day executed on C. D. in the [*describe prison*] in our presence.

Dated this —— day of ——.

Signed G. H., sheriff of ——.
E. F., justice of the peace for ——.
J. K., gaoler of ——.
L. M., chaplain of ——.
&c. &c.

105.

Hangman's Authority.

I, G. H., of —— sheriff of the county of B., do hereby authorize you to hang C. D. who now lies under sentence of death in the gaol at A. Dated, &c. G. H.

106.

Feigned Issue in Interpleader Form given by 8 & 9 Vict. c. 109, 2nd Sch.

(See Chapter XIV. p. 156.)

In the Queen's Bench Division (as the case may be) of the High Court of Justice.

Middlesex to wit [*or such other county as may be directed*]. Whereas A. B. affirms and C. D. denies [*here state fully the fact or facts in issue*] and the Lord Chancellor [*or such other Court, &c.*] is desirous of ascertaining the truth by the verdict of a jury, and both parties pray that the same may be inquired of by the country. Now let a jury, &c.

Or,

That the goods and chattels seized by the sheriff of B. under a certain writ of *fieri facias* against the goods of E. F. were at the time of the delivering of the said writ to the sheriff the goods and chattels of the said A. B. as against the said C. D.

107.

Affidavit of Interpleader.

18—. —. No. —.

In the High Court of Justice,
—— Division.

Between plaintiff,
and
defendant.

I ——, of ——, the defendant in the above action, make oath and say as follows:—

1. The writ of summons herein was issued on the —— day of —— 18—, and was served on me on the —— day of —— 18—. I have not yet delivered a Statement of Defence herein.

2. The action is brought to recover ——. The said —— in my possession, but I claim no interest therein.

3. The right to the said subject-matter of this action has been and is claimed by one ——, who ——.

4. I do not in any manner collude with the said —— or with the above-named plaintiff, but I am ready to bring into Court or to pay or dispose of the said —— in such manner as the Court may order or direct.

Sworn at —— the —— day of ——, 18—,
Before me, ——.
This affidavit is filed on behalf of the ——.

108.

Affidavit of Interpleader by Sheriff's Officer.

18—. —. No. —.

In the High Court of Justice,
—— Division.

Between plaintiff,
and
defendant.

I ——, of ——, officer to the sheriff of ——, make oath and say as follows:—

1. Under and by virtue of a writ of *fi. fa.*, regularly issued out of this division in the above action, directed to the said sheriff, commanding him that he should cause to be levied of the goods and chattels of the above-named defendant £——, which the above-named plaintiff lately recovered against the said defendant in this division, and indorsed to levy £——, besides sheriff's poundage, officer's fees, and other incidental expenses, and also by virtue of a warrant of the said sheriff, granted on the said writ and to me directed, I did on the —— day of —— take possession of certain goods and chattels in the dwelling-house [*or shop*] of the above-named defendant,

street at ——, in the same county, and the said goods and chattels still remain in my possession as officer of the said sheriff.

2. On or about the —— day of ——, I was served with the notice now produced and shown to me, marked "A."

3. This application is made solely on my behalf as officer to the said sheriff, at my own expense, and for my indemnity only, and I do not, nor does the said sheriff, collude with the said "claimant," or with the above-named plaintiff.

Sworn at ——, the —— day of ——, 18—.

Before me, ——, a commissioner to administer oaths in the Supreme Court of Judicature in England.

Signed on behalf of ——.

109.

Sheriff's Interpleader Summons.

18—. —. No.—.

In the High Court of Chancery.
—— Division.

Between plaintiff,
and
defendant.
——, claimant.

Let all parties concerned attend the Master [*or Judge*] in chambers at the Royal Courts of Justice, on —day, the —— day of ——, 18—, at —— o'clock in the —noon, on the hearing of an application on the part of the sheriff of ——, that the plaintiff and the claimant appear and state the nature and particulars of their respective claims to the goods and chattels seized by the said sheriff, under the writ of *fieri facias* issued in this action, and maintain or relinquish the same, and abide by such order as may be made herein; and that, in the meantime, all further proceedings be stayed.

Dated the —— day of ——, 18—.

This summons was taken out by ——, of ——, solicitor for ——.

To ——.

110.

Affidavit of Claimant.

18—. —. No.—.

In the High Court of Justice,
—— Division.

Between plaintiff,
and
defendant.

I ——, of ——, make oath and say:—

1. The goods and chattels [*or part thereof, specifying what part*] seized by the sheriff of —— under the writ of *fi. fa.* in

this action, and referred to in the summons herein, were on the —— day of ——, 18—, by deed bearing that date, sold, transferred and assigned to me by the above-named —— for and in consideration of [*state consideration*].

2. I claim the said goods and chattels so sold, transferred and assigned to me as aforesaid, as my property, under and by virtue of the said deed, and I verily believe them to be mine.

Sworn at —— the —— day of ——, 18—.

Before me ——, a Commissioner to administer Oaths in the Supreme Court of Judicature in England.

Filed on behalf of ——.

111.

Interpleader Order, No. 1.

(R. S. C. (schedule), April, 1880.)

18—. —. No. —.

In the High Court of Justice,
—— Division.
Master in Chambers.

Between plaintiff,
and
defendant.
And between —— claimant, and —— respondent.

Upon hearing —— and upon reading the affidavit of ——, filed the —— day of ——, 18—, and ——.

It is ordered that the claimant be barred, that no action be brought against the above-named [sheriff] ——, and that the costs of the application be ——.

Dated the —— day of —— 18—.

112.

Interpleader Order, No. 2.

(R. S. C. (schedule), April, 1880.)

18—. —. No. —

In the High Court of Justice,
—— Division.
Master in Chambers.

Between plaintiff,
and
defendant.
Claimant.

Upon hearing ——, and upon reading the affidavit of ——, filed the —— day of ——, 18—, and ——.

It is ordered that the above-named claimant be substituted as defendant in this action in lieu of the present defendant, and that the costs of this application be ——.

Dated the —— day of ——, 18—.

113.

Interpleader Order, No. 3.

(R. S. C. (schedule), April, 1880.)

18—. —. No. —.

In the High Court of Justice,
—— Division.
Master in Chambers.

Between plaintiff,
and
defendant.

And between —— claimant, and the —said —— execution creditor, and —— the —sheriff of —— respondents.

Upon hearing ——, and upon reading the affidavit of —, filed the —— day of —— 18 —, and ——.

It is ordered that the said sheriff proceed to sell the goods seized by him under the writ of *fi. fa.* issued herein, and pay the net proceeds of the sale, after deducting the expenses thereof, into Court in this cause, to abide further order herein.

And it is further ordered that the parties proceed to the trial of an issue in the High Court of Justice, in which the said claimant shall be the plaintiff and the said execution creditor shall be the defendant, and that the question to be tried shall be whether at the time of the seizure by the sheriff the goods seized were the property of the claimant as against the execution creditor.

And it is further ordered that this issue be prepared and delivered by the plaintiff therein within —— from this date, and be returned by the defendant therein within —— days, and be tried at ——.

And it is further ordered that the question of costs and all further questions be reserved until after the trial of the said issue, and that no action shall be brought against the said sheriff for the seizure of the said goods.

Dated the —— day of ——, 18—.

———

114.

Interpleader Order, No. 4.

(R. S. C. (schedule), April, 1880.)

18—. —. No. —.

In the High Court of Justice,
—— Division.
Master in Chambers.

Between plaintiff,
and
defendant.

And between ——, claimant, and the said ——, execution creditor, and ——, the sheriff of ——, respondents.

Upon hearing ——, and upon reading the affidavit of ——, filed the —— day of ——, 18—, and ——.

It is ordered that upon payment of the sum of £—— into Court by the said claimant within —— from this date, or upon his giving within the same time security to the satisfaction of one of the masters of the Supreme Court for the payment of the same amount by the said claimant according to the directions of any order to be made herein, and upon payment to the above-named sheriff of the possession money from this date, the said sheriff do withdraw from the possession of the goods seized by him under the writ of *fieri facias* herein.

And it is further ordered that unless such payment be made or security given within the time aforesaid, the said sheriff proceed to sell the said goods, and pay the proceeds of the sale, after deducting the expenses thereof, and the possession money from this date, into Court in the cause, to abide further order therein.

And it is further ordered that the parties proceed to the trial of an issue in the High Court of Justice, in which the claimant shall be plaintiff and the execution creditor shall be defendant, and that the question to be tried shall be whether at the issue of the seizure by the sheriff the goods seized were the property of the claimant as against the execution creditor.

And it is further ordered that this issue be prepared and delivered by the plaintiff therein within —— from this date, and be returned by the defendant within —— days, and be tried at ——.

And it is further ordered that the question of costs and all further questions be reserved until after the trial of the said issue, and that no action shall be brought against the sheriff for the seizure of the said goods.

Dated the —— day of ——, 18—.

115.

Interpleader Order, No. 5.

(R. S. C. (schedule), April, 1880.)

18—. —. No. —.

In the High Court of Justice,
—— Division.
Master in Chambers.

Between plaintiff,
and
defendant.

And between —— claimant, and the —said —— execution creditor, and —— the —sheriff of —— respondents.

Upon hearing ——, and upon reading the affidavit of ——, filed the —— day of ——, 18—, and ——.

It is ordered that upon payment of the sum of £—— into

Court by the said claimant, or upon giving security to the satisfaction of one of the Masters of the Supreme Court for the payment of the same amount by the claimant according to the directions of any order to be made herein, the above-named sheriff withdraw from the possession of the goods seized by him under the writ of *fieri facias* issued herein.

And it is further ordered that in the meantime, and until such payment be made or security given, the sheriff continue in possession of the goods, and the claimant pay possession money for the time he so continues, unless the claimant desire the goods to be sold by the sheriff, in which case the sheriff is to sell them and pay the proceeds of the sale, after deducting the expenses thereof and the possession money from this date, into Court in the cause, to abide further order herein.

And it is further ordered that the parties proceed to the trial of an issue in the High Court of Justice, in which the claimant shall be plaintiff and the execution creditor shall be defendant, and that the question to be tried shall be whether at the time of the seizure by the sheriff the goods seized were the property of the claimant as against the execution creditor.

And it is further ordered that this issue be prepared and delivered by the plaintiff therein within —— from this date, and be returned by the defendant therein within —— days, and be tried at ——.

And it is further ordered that the question of costs and all further questions be reserved until after the trial of the said issue, and that no action shall be brought against the sheriff for the seizure of the said goods.

Dated the —— day of ——, 18—.

116.

Interpleader Order, No. 6.

(R. S. C. (schedule), April, 1880.)

18—. —. No. —.

In the High Court of Justice,
—— Division.
Master in Chambers.

Between plaintiff,
and
defendant.

And between ——, claimant, and the —said ——, execution creditor, and —— the sheriff of ——, respondents.

The claimant and the execution creditor having requested and consented that the merits of the claim made by the claimant be disposed of and determined in a summary manner, now upon hearing ——, and upon hearing the *affidavit* of ——, filed the —— day of ——, 48—, and ——.

It is ordered that ——.

And that the costs of this application be ——.

Dated the —— day of ——, 18—.

117.

Interpleader Order, No. 7.

(R. S. C. (schedule), April, 1880.)

18—. —. No. —.

In the High Court of Justice,
—— Division.
Master in Chambers.

Between plaintiff,
and
defendant,

And between —— claimant, and the —said —— execution creditor, and —— the —sheriff of ——, respondents.

Upon hearing ——, and upon reading the *affidavit* of ——, filed the —— day of ——, 18 —, and ——.

It is ordered that the above-named sheriff proceed to sell enough of the goods seized under the writ of *fieri facias* issued in this action to satisfy the expenses of the said sale, the rent (if any) due, the claim of the claimant, and this execution.

And it is further ordered that out of the proceeds of the said sale (after deducting the expenses thereof, and rent, if any), the said sheriff pay to the claimant the amount of his said claim, and to the execution creditor the amount of his execution, and the residue (if any) to the defendant.

And it is further ordered that no action be brought against the said sheriff, and that the cost of this application ——.

Dated the —— day of ——, 18—.

118.

Interpleader Issue.

18—. —. No. —.

In the High Court of Justice,
—— Division.

Between A. B., plaintiff,
and
C. D., defendant.

Interpleader Issue.

Delivered the —— day of ——, by ——, solicitor for the plaintiff, pursuant to an order of ——, dated the —— day of ——, 18—.

The plaintiff affirms and the defendant denies that certain goods and chattels, that is to say, ——, in and about certain premises in the occupation of ——, situate and being at ——, seized and taken in execution by the sheriff of ——, under a writ of *fieri facias* tested the —— day of ——, and issued out of the —— Division of Her Majesty's High Court of Justice, directed to the said sheriff, for the having of execution of a

judgment of that Court, recovered by the said —— in an action at his suit against —— were or some part thereof was at the time of the said seizure the property of the said —— as against the said ——. And it has been ordered by —— pursuant to the statutes in that behalf, that the truth of the matters aforesaid shall be tried by a jury, and that the said matter should be tried at ——. Therefore let a jury come, &c.

———.

119.

INTERPLEADER IN THE LORD MAYOR'S COURT.

Mayor's Court of London Procedure Act, 1857.

(20 & 21 Vic. c. 157.)

Sec. 32. Upon application made by or on behalf of any defendant in any action of the Court, such application being made after declaration and before plea, by *affidavit* or otherwise, showing that such defendant does not claim any interest in the subject-matter of the suit, but that the right thereto is claimed or supposed to belong to some third party who has sued or is expected to sue for the same, and that such defendant does not in any manner collude with any such third party, but is ready to bring into Court or to pay or dispose of the subject matter of the action in such a manner as the Court may order or direct, it shall be lawful for the Registrar to issue a summons calling upon such third party to appear in Court, and to state the nature and particulars of his claim, and to maintain or relinquish his claim, which summons may be served upon such third party in any part of England or Wales; and upon such summons the Court may hear the allegations as well of such third party as of the plaintiff, and in the meantime stay the proceedings in such action, and finally order such third party to make himself defendant in the same or some other action, or to proceed to trial on one or more issue or issues, and also direct which of the parties shall be plaintiff or defendant on such trial, or, with the consent of the plaintiff and such third party, their counsel or attornies, dispose of the merits of their claims, and determine the same in a summary manner, and make such rules and orders therein as to costs and all other matters as may appear to be just and reasonable.

Sec. 33. The judgment in any such action or issue as may be decreed by the Court, and the decision of the Court in a summary manner shall be final and conclusive against the parties, and all parties claiming by, from, or under them.

Sec. 34. If such third party shall not appear upon such summons to maintain or relinquish the claim, being duly served therewith, or shall neglect or refuse to comply with any rule or order to be made after appearance, it shall be lawful for the Court to declare such third party, and all persons claiming by, from, or under him, to be for ever barred from prosecuting his claim against the original defendant, his executors

or administrators, saving nevertheless the right or claim of such third party against the plaintiff, and thereupon to make such order between such defendant and the plaintiff as to costs and other matters as may appear just and reasonable.

Sect. 35. When any claim shall be made to or in respect of any goods or chattels taken or intended to be taken in execution under the process of the Court, to or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such process has issued, it shall be lawful to and for the Registrar, upon application of the Serjeant-at-mace, or any of his officers, made before or after the return of such process, and as well before as after any action brought against such Serjeant-at-mace or any of his officers, to issue a summons calling before the Court as well the party issuing such process as the party making such claim, and thereupon any action which shall have been brought in any of the superior Courts, or in any local or inferior Court of record, in respect of such claim, shall be stayed; and the Court in which such action shall have been brought, or any judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons; and the said Court shall thereupon exercise, for the adjustments of such claim, and the relief and protection of the said Serjeant-at-mace or any of his officers, all or any of the powers and authorities hereinbefore contained, and make such rules and decisions as shall appear to be just, according to the circumstances of the case; and the costs of all such proceedings shall be in the discretion of the Court.

120.

Interpleader Summons, under Sec. 32.

In the Mayor's Court, London.

plaintiff,
defendant.

Whereas the defendant herein has stated to the Court that he does not claim any interest in the subject-matter of this suit, but that the right thereto is claimed or is supposed to belong to you: Take Notice, therefore, you are hereby summoned and required to attend at the sitting of this Court, at the Guildhall of the City of London, on —— the —— day of —— at —— o'clock in the —— noon, to state the nature and particulars of your claim, and to maintain or relinquish the same.

And further take notice, that if you do not appear hereto, you, and all persons claiming by, from, or under you, will be for ever barred from prosecuting your claim against the said defendant or his executors or administrators.

Dated this —— day of ——, 18—.

To Mr. ——.

121.

Interpleader Affidavit by Bailiff.

In the ——.

Between —— plaintiff,
and
—— defendant.

I, —— of ——, in the c—— of ——, bailiff to the sheriff of ——, make oath and say—

1. That on or about the —— day of —— a writ of *fieri facias* in this cause was delivered to the said sheriff for execution indorsed to levy the sum of —— besides, &c., returnable immediately after the execution thereof, and a warrant thereon was granted by the said sheriff to me as bailiff to the said sheriff.

2. And I further say that on or about the —— day of —— I did seize and take in the bailiwick of the said sheriff divers goods and chattels as the property of the said defendant, which said goods and chattels are still in my custody and keeping as bailiff to the said sheriff.

3. And I further say that on or about the —— day of —— I was served with a notice signed by ——, claiming the said goods and chattels as the property of one ——.

4. And I further say that this application is made at my own expense and for my own indemnity, and without collusion with the defendant or any other person or persons whomsoever.

5. And I further say that I am not, nor is the said sheriff, to my knowledge or belief, indemnified by any person or persons whomsoever.

Sworn at —— this —— day of —— one thousand eight hundred and ——.

Before me ——.

122.

Interpleader Bond.

Know all men by these presents that we, —— of —— in the —— of ——, and —— of —— in the —— of ——, are jointly and severally held and firmly bound unto —— of —— in the —— of —— in the sum of —— of lawful money of Great Britain, to be paid to the said —— or his certain attorney, executors, or administrators, for which payment to be well and faithfully made we bind ourselves and each of us jointly and severally our and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals.

Dated this —— day of —— in the year of our Lord one thousand eight hundred and ——.

Whereas a certain action was lately pending in the —— Divi-

sion of the High Court of Justice at Westminster wherein the said —— was plaintiff and —— defendant, in which said action the said —— obtained a judgment for ——.

And whereas a writ of *fieri facias* was duly issued upon the said judgment in the said action directed to the sheriff of —— by virtue whereof the said sheriff seized and took possession of certain goods, chattels and effects, and which goods are alleged to be the property of —— under an alleged ——.

And whereas by an order of —— made in the said action on the application of the said sheriff in pursuance of the statutes in that behalf, which order is dated the —— day of —— one thousand eight hundred and ——, it was ordered that the claimant give security for the value of the goods seized within —— days to the satisfaction of the master, and that in default thereof the same be sold and the proceeds brought into Court in the action, to abide further order therein after the trial of the issue therein mentioned and directed to be tried. And whereas the said goods have been valued at ——. And whereas the above bounden —— together with the above bounden —— have been approved by —— esquire, one of the masters of the —— Division of the High Court of Justice at Westminster, as sufficient security for the value of the said goods.

Now the condition of the above written obligation is such that if upon the trial or determination of the said issue so directed as aforesaid the verdict or other determination of the said issue shall be in favour of the said ——, the said —— and —— their heirs, executors, or administrators, or any or either of them, shall pay or cause to be paid unto the said —— the said sum of —— the amount of the said valuation, together with the sheriff's poundage and officers' fees of making the said levy under the said writ of *fieri facias* ——, or if upon the said trial or other determination of the said issue the verdict or other determination of the said issue shall be in favour of the said —— then this obligation to be void and of no effect, otherwise to be and remain in full force and virtue.

Signed, sealed and delivered by the above named parties in the presence of ——.

123.

Rule 12, Order 42, of the Judicature Act, 1875, is as follows:—

"Every writ of execution shall bear date of the day on which it is issued. The forms in Appendix (F) hereto may be used, with such variations as circumstances may require."

Writ of Fieri Facias.

(See Chapters XVI. and XVII. pp. 208—264.)

Judicature Act, 1875, *Appendix* (*F.*), *No.* 1.

187—. B. No. —

In the High Court of Justice.
—— Division.

Between A. B. plaintiff,
and
C. D. and others, defendants.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To the sheriff of —— greeting: We command you that of the goods and chattels of C. D. in your bailiwick you cause to be made the sum of £——, and also interest thereon at the rate of £—— *per centum per annum* from the —— day of ——, which said sum of money and interest were lately before us in our High Court of Justice in a certain action [*or* actions] wherein A. B. is plaintiff and C. D. and others are defendants [*or* in a certain matter there depending intituled "In the matter of E. F.," *as the case may be*] by judgment [*or* order, *as the case may be*] of our said Court, bearing date the —— day of ——, adjudged [*or* ordered, *as the case may be*] to be paid by the said C. D. to A. B., together with certain costs in the said judgment [*or* order, *as the case may be*] mentioned, and which costs have been taxed and allowed by one of the taxing masters of our said Court at the sum of £—— as appears by the certificate of the said taxing master dated the —— day of ——. And that of the goods and chattels of the said C. D. in your bailiwick you further cause to be made the sum of £—— [*costs*], together with interest thereon at the rate of £1 *per centum per annum* from the —— day of ——, and that you have that money and interest before us in our said Court immediately after the execution hereof to be paid to the said A. B. in pursuance of the said judgment [*or* order, *as the case may be*]. And in what manner you shall have executed this our writ make appear to us in our said Court immediately after the execution thereof. And have there then this writ.

Witness, &c.

124.

Writ of Fieri Facias on a Judgment for Plaintiff.

Reg. Gen. Hil. Term, 1853.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith; to the sheriff of —— greeting: We command you that of the goods and chattels of C. D. in your bailiwick you cause to be made £—— [*the amount of all the moneys recovered by the*

judgment] which A. B. lately in the Queen's Bench Division of our High Court of Justice recovered against him, whereof the said C. D. is convicted, together with interest upon the said sum at the rate of four pounds per centum per annum from the —— day of —— in the year of our Lord ——, on which day the judgment aforesaid was entered up, and have that money, with such interest as aforesaid, before us at Westminster immediately after the execution hereof, to be rendered to the said A. B.; and that you do all such things as by the statute passed in the second year of our reign you are authorised and required to do in this behalf. And in what manner you shall have executed this our writ make appear to us at Westminster immediately after execution hereof, and have you there then this writ.

Witness, —— at Westminster, the —— day of —— in the year of our Lord ——.

125.

Writ of Fieri Facias on a Judgment for Defendant.

Reg. Gen. Hil. Term, 1853.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith; to the sheriff of —— greeting: We command you, that you cause to be made of the goods and chattels in your bailiwick of A. B. £——, which lately in the Queen's Bench Division of our High Court of Justice, were awarded to C. D., for his costs of defence in an action lately prosecuted in our said Court by the said A. B. against the said C. D., whereof the said A. B. is convicted, together with interest on the said sum at the rate of four pounds per centum per annum from the —— day of —— in the year of our Lord ——, on which day the judgment aforesaid was entered up, and have you that money before us, at Westminster, immediately after the execution hereof, to be rendered to the said C. D.; and that you do all such things as by the statute passed in the second year of our reign you are authorised and required to do in this behalf. And in what manner you shall have executed this our writ make appear to us, at Westminster, immediately after the execution hereof, and have you there then this writ.

Witness, —— at Westminster, the —— day of —— in the year of our Lord ——.

126.

Writ of Fieri Facias on a Rule for Payment of Money.

Reg. Gen. Hil. Term, 1853.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith; to

the Sheriff of —— greeting: We command you, that of the goods and chattels of C. D. in your bailiwick you cause to be made £ —— which lately in the Queen's Bench Division of our High Court of Justice, by a rule of our said Court dated the —— day of —— A.D. —— were ordered to be paid by the said C. D. in your bailiwick, and that you further cause to be made interest upon the said sum at the rate of four pounds per centum per annum from the —— day of —— in the year of our Lord ——, on which day the said rule was made, and have that money together with such interest as aforesaid, before us at Westminster, immediately after the execution hereof, to be rendered to the said A.B.; and that you do all such things as by the statute passed in the second year of our reign you are authorised and required to do in this behalf. And in what manner you shall have executed this our writ make appear to us at Westminster, immediately after the execution hereof, and have you there then this writ.

Witness, —— at Westminster, the —— day of —— in the year of our Lord ——.

127.

Writ of Fieri Facias on a Rule for Payment of Money and Costs.

Reg. Gen. Hil. Term, 1853.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith; to the sheriff of —— greeting: We command you that of the goods and chattels of C. D. in your bailiwick you cause to be made £——, which lately in the Queen's Bench Division of our High Court of Justice, by a rule of our Court dated the —— day of —— in the year of our Lord ——, were ordered to be paid by the said C. D. to A. B. together with certain costs in the said rule mentioned, which said costs have been taxed and allowed by our said Court at £——; and that of the said goods and chattels of the said C. D. in your bailiwick you further cause to be made interest upon the said two several sums at the rate of four pounds per centum per annum from the —— day of —— in the year of our Lord ——, and have those monies, together with such interest as aforesaid, before us, at Westminster, immediately after the execution hereof, to be rendered to the said A. B.; and that you do all such things as by the statute passed in the second year of our reign you are authorised and required to do in this behalf. And in what manner you shall have executed this our writ make appear to us at Westminster immediately after the execution hereof, and have you there then this writ.

Witness, —— at Westminster, the —— day of —— in the year of our Lord ——.

128.

Writ of Fieri Facias on a Rule for Payment of Costs only.

Reg. Gen. Hil. Term, 1853.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith; to the sheriff of —— greeting: We command you, that of the goods and chattels of C. D. in your bailiwick you cause to be made £—— for certain costs which by a rule of the Queen's Bench Division of our High Court of Justice, dated the —— day of —— in the year of our Lord —— were ordered to be paid by the said C. D. to A. B., which said costs have been taxed and allowed by our said Court at the said sum, and that of the said goods and chattels of the said C. D. in your bailiwick your further cause to be made interest upon the said sum at the rate of four pounds per centum per annum from the —— day of —— in the year of our Lord —— and have that money, together with such interest as aforesaid, before us at Westminster, immediately after the execution hereof, to be rendered to the said A. B.; and that you do all such things as by the statute passed in the second year of our reign you are authorised and required to do in this behalf. And in what manner you shall have executed this our writ make appear to us at Westminster immediately after the execution hereof, and have you there then this writ.

Witness, —— at Westminster, the —— day of —— in the year of our Lord ——.

129.

Writ of Fieri Facias on a Judgment of an Inferior Court removed into one of the Superior Courts.

Reg. Gen. Hil. Term, 1853.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith; to the sheriff of —— greeting: We command you, that of the goods and chattels of C. D. in your bailiwick you cause to be made £——, which A. B. lately in —— [*insert the style of the Court*], by the judgment of the said Court, recovered against the said C. D., whereof the said C. D. is convicted, and which judgment was afterwards, on the —— day of —— in the year of our Lord —— removed into the Queen's Bench Division of our High Court of Justice by virtue of an order to that effect of our said Court in pursuance of the statute in such case made and provided, and the costs attendant upon the application for the said order and upon the said removal were, on the —— day of —— in the year of our Lord ——, taxed and allowed by the Queen's Bench Division of our High Court of Justice at £——; and we further command you, that of the said goods and chattels of the said C. D. in your bailiwick you further cause

to be made the said £——, together with interest on the said two several sums at the rate af four pounds per centum per annum from the said —— day of —— in the —— year of our Lord ——; and that you have that money, with such interest as aforesaid, before us, at Westminster immediately after the execution hereof, to be rendered to the said A. B.; and that you do all such things as by the statute passed in the second year of our reign you are authorised and required to do in this behalf. And in what manner you shall have executed this our writ make appear to us at Westminster immediately after the execution hereof, and have you there then this writ.

Witness, —— at Westminster, the —— day of —— in the year of our Lord ——.

130.

Writ of Fieri Facias on a Rule or Order for Payment of Money made in an Inferior Court, and removed into one of the Superior Courts.

Reg. Gen. Hil. Term, 1853.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: We command you that of the goods and chattels of C. D. in your bailiwick you cause to be made £——, which lately in —— [*insert the style of the Court*], by a rule [*or* "order"] of the said Court, entitled —— [*as the case may be*], were by the said Court ordered to be paid by the said C. D. to A. B.; and which rule [*or* "order"] was afterwards, on the —— day of —— in the year of our Lord ——, removed into the Queen's Bench Division of our High Court of Justice, by virtue of an order of our said Court, in the pursuance of the statute in that case made and provided, and the costs and charges attendant upon the application for the said last-mentioned order and upon the said removal were, on the —— day of —— in the year of our Lord ——, taxed and allowed by our said Queen's Bench Division of our Court of Justice, at £— —; and we further command you, that of the said goods and chattels of the said C. D. in your bailiwick you further cause to be made the said £—, together with interest on the said two several sums at the rate of four pounds per centum per annum from the said —— day of ——, and that you have those monies, with such interest as aforesaid, before us at Westminster immediately after the execution hereof, to be rendered to the said A. B.; and that you do all such things as by the statute passed in the second year of our reign you are authorised and required to do in this behalf. And in what manner you shall have executed this our writ make appear to us at Westminster immediately after the execution hereof, and have you there then this writ.

Witness, —— at Westminster, the —— day of —— in the year of our Lord ——.

131.

Writ of Fieri Facias on a Rule or Order for Payment of Money and Costs made in an Inferior Court, and removed into one of the Superior Courts.

Reg. Gen. Hil. Term, 1853.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith; to the sheriff of —— greeting: We command you, that of the goods and chattels of C. D. in your bailiwick you cause to be made £——, which lately in —— [*insert the style of the Court*], by a rule [*or* "order"] of the said Court, entitled, —— [*as the case may be*], were by the said Court ordered to be paid by the said C. D. to A. B., and also £—— for the costs of the said rule [*or* "order"] by the said Court also ordered to be paid by the said C. D. to the said A. B.; which said rule [*or* "order" was afterwards, on the —— day of —— in the year of our Lord ——, removed into the Queen's Bench Division of our High Court of Justice by an order of that our said Court in pursuance of the statute in such case made and provided; and the costs and charges attendant upon the application for the said last-mentioned order and upon the said removal were, on the —— day of —— in the year of our Lord ——, taxed and allowed by the Queen's Bench Division of our High Court of Justice at £——; and we further command you, that of the said goods and chattels of the said C. D. in your bailiwick you further cause to be made the said £——, together with the interest on the said three several sums at the rate of four pounds per centum per annum from the said —— day of —— in the year of our Lord ——, and that you have those monies, with such interest as aforesaid, before us at Westminster immediately after the execution hereof, to be rendered to the said A. B.; and that you do all such things as by the statute passed in the second year of our reign you are authorised and required to do in this behalf. And in what manner you shall have executed this our writ make appear to us at Westminster immediately after the execution hereof, and have you there then this writ.

Witness, —— at Westminster, the —— day of —— in the year of our Lord ——.

132.

Writ of Fieri Facias for Costs on a Judgment for Plaintiff in Ejectment where Defendant has appeared.

Reg. Gen. Hil. Term, 1853.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith; to the sheriff of —— greeting: We command you that of the goods and chattels of C. D. in your bailiwick you cause to be

made £——, which A. B. lately in the Queen's Bench Division of our High Court of Justice recovered against him, for the said A. B.'s cost of suit in an action of ejectment brought by the said A. B. against the said C. D. in that Court, whereof the said C. D. is convicted, together with interest upon the said sum at the rate of four pounds per centum per annum from the —— day of —— in the year of our Lord ——, on which day the judgment aforesaid was entered up, and have that money, with such interest as aforesaid, before us at Westminster immediately after the execution hereof, to be rendered to the said A. B.; and that you do all things as by the statute passed in the second year of our reign you are authorised and required to do in that behalf. And in what manner you shall have executed this our writ make appear to us at Westminster immediately after the execution hereof, and have you there then this writ.

Witness, —— at Westminster, the —— day of —— in the year of our Lord ——.

———

133.

Præcipe of Fieri Facias.

Judicature Act, 1875, *Appendix* (*E.*), *No.* 1.

187—. B. No.—.

In the High Court of Justice,
—— Division.

Between A. B. plaintiff,
and
C. D. and others, defendants.

Seal a writ of *fieri facias* directed to the sheriff of —— to levy against C. D. —— the sum of £—— and interest thereon at the rate of £—— *per centum per annum* from the —— day of —— [and £—— costs] to ——.

Judgment [*or* order] dated —— day of ——.

[Taxing master's certificate dated —— day of ——.]

X. Y.,
Solicitor for [*party on whose behalf writ is to issue*].

———

134.

Warrant on Fieri Facias.

County of B. } —— esq., sheriff of the county aforesaid, to
to wit. } ——. By virtue of a writ of our sovereign lady the Queen to me directed, I command you, and every of you, that of the goods and chattels of —— in my bailiwick, you or one of you cause to be made the sum of £—— and also interest thereon at the rate of —— pounds *per centum per annum* from the —— day of —— one thousand eight

hundred and seventy ——, which said sum of money and interest were lately before her Majesty's High Court of Justice, —— Division, in a certain action wherein —— w — plaintiff and —— w — defendant by a —— of the said Court, bearing date the —— day of —— one thousand eight hundred and seventy —— adjudged to be paid by the said —— to ——, together with certain costs in the said —— mentioned, and which costs have been taxed and allowed by one of the taxing masters of the said Court at the sum of ——. And I further command you, and every of you, that of the goods and chattels in my bailiwick of the said —— you further cause to be made the said sum of —— pounds —— shillings and —— pence, together with interest thereon at the rate of —— pounds *per centum per annum* from the —— day of —— one thousand eight hundred and seventy ——, so that I may have that money with such interest as aforesaid before her Majesty's said Court immediately after the execution hereof to be paid to the said —— in the said writ named. And that you execute this warrant so that I may do all such things as by the statute passed in the second year of the reign of her present Majesty I am authorised and required to do in this behalf, as I am by the said writ commanded.

Hereof fail not, as you will answer at your peril. Given under the seal of my office, this —— day of —— in the year of our Lord one thousand eight hundred and ——.

By the same sheriff.

Writ Indorsed as under.

Levy £—— and £—— for costs of execution, &c., and also interest on £—— at £—— *per centum per annum*, from the —— day of —— 18—, until payment; besides sheriff's poundage, officers' fees, costs of levying, and all other legal incidental expenses.

This writ was issued by ——. The defendant is a ——, and resides at ——, in my bailiwick. Fi. Fa. lodged ——.

Before you levy beware the parties are not privileged as ambassadors, or servants to ambassadors, or otherwise protected.

135.

Warrant to Bailiffs on Fieri Facias on Order for Payment of Money and Costs.

County of B. } —— sheriff of the county aforesaid, to —— and
to wit. } —— my bailiffs, greeting: By virtue of the Queen's writ to me directed, I command you, jointly and severally, that —— of the goods and chattels of —— in my bailiwick, you, or one of you, cause to be made ——, which lately in the —— Division of the High Court of Justice of our lady the

Queen at Westminster, by a rule of the said Court entitled—— were by the said Court ordered to be paid by the said——to——, together with the costs of the said rule, which said costs were afterwards on the —— day of —— in the year of our Lord one thousand eight hundred and seventy —— taxed and allowed by the said Court of our said lady the Queen, at the sum of ——; and that of the said goods and chattels of the said —— in my bailiwick, you further cause to be made interest upon the said two several sums of —— and —— at the rate of four pounds *per centum per annum*, from the said —— day of —— in the year of our Lord one thousand eight hundred and seventy —— so that I may have that money, together with such interest as aforesaid, before —— the Queen at Westminster, immediately after the execution hereof, to be rendered to the said —— for the said sum of money so ordered to be paid by the said —— to the said ——, and for costs and interest as aforesaid, as by the said writ I am commanded. And I further command you that you do all such things as by the statute passed in the second year of the reign of our lady the Queen, I am authorised and required to do in this behalf. Hereof fail not, as you will answer at your peril Given under the seal of my office, this —— day of —— in the year of our Lord one thousand eight hundred and forty——.

By the same sheriff.

Before you levy on the goods and chattels of the defendant, or defendants, beware he, she, or they are not privileged as an ambassador, or ambassadors, or servant to an ambassador, or otherwise privileged or protected.

136.

Warrant on Fieri Facias on Order for Payment of Costs.

County of B. } —— sheriff of the county aforesaid, to —— my
to wit } bailiff, and to —— his assistants, greeting: By virtue of a writ of our sovereign lady the Queen to me directed, I command you, jointly and severally, that —— of the goods and chattels of —— in my bailiwick, you, or one of you, cause to be made ——, which lately in her Majesty's High Court of Justice, —— Division, by an order of the said Court, entitled —— were by the said Court ordered to be paid by the said —— to ——, together with the costs of the said order, which said costs were afterwards on the —— day of —— in the year of our Lord one thousand eight hundred and —— taxed and allowed by one of the taxing masters of the said Court, at the said sum of ——; and that of the said goods and chattels of the said —— in my bailiwick, you further cause to be made interest upon the said two several sums of —— and —— at the rate of four pounds *per centum per annum*, from the said —— day of —— in the year of our Lord one thousand eight hundred and ——, so that I may have

that money, together with such interest as aforesaid, before her Majesty's said Court at Westminster, immediately after the execution hereof, to be rendered to the said —— for the said sum of money so ordered to be paid by the said —— to the said ——, and for costs and interest as aforesaid, as by the said writ I am commanded. And I further command you that you do all such things as by the statute passed in the second year of the reign of her present Majesty I am authorised and required to do in this behalf. Hereof fail not, as you will answer at your peril. Given under the seal of my office, this —— day of —— in the year of our Lord one thousand eight hundred and ——. By the same sheriff.

Before you levy on the goods and chattels of the defendant, beware he is not an ambassador, or servant to an ambassador, or otherwise privileged or protected.

137.

Warrant on Chancery Fieri Facias, on an Order for Costs.

County of B. } —— sheriff of the county aforesaid, to ——
to wit } and —— my bailiffs, greeting: By virtue of the Queen's writ bearing date the —— day of —— one thousand eight hundred and —— to me directed, I command you, each and every of you, jointly and severally, that of the goods and chattels of —— in my bailiwick, you or any one or more of you, cause to be made the sum of —— for certain costs which were lately in her Majesty's High Court of Justice, Chancery Division, by —— of her Majesty's said court bearing date the —— day of —— one thousand eight hundred and —— w —— to be paid by the said —— to ——, and which costs have been taxed and allowed as in the said writ mentioned. And I further command you that of the goods and chattels in my bailiwick, of the said —— you further cause to be made interest on the said sum of —— at the rate of four pounds *per centum per annum*, from the —— day of —— in the year of our Lord one thousand eight hundred and ——, so that I may have that money and interest before her Majesty's said High Court of Justice, Chancery Division, immediately after the execution hereof, to be paid to the said —— in pursuance of the said ——. And that you execute this warrant so that I may do all such things as by the statute passed in the second year of the reign of our lady the now Queen, I am authorised and required to do in this behalf. Hereof fail not, as you will answer at your peril. Given under the seal of my office, this —— day of —— one thousand eight hundred and ——.

Before you levy on the goods and chattels of the defendant, beware he is not privileged as an an ambassador, servant to an ambassador, or otherwise privileged or protected.

138.

Warrant on Fieri Facias on Judgment for Defendant's Costs.

County of B. } —— sheriff of the county aforesaid, to —— my
to wit } bailiffs, greeting: By virtue of a writ of our sovereign lady the Queen to me directed, bearing date the —— day of —— one thousand eight hundred and ——, I command you, and every of you, that —— of the goods and chattels of —— in my bailiwick, you or one of you cause to be made the sum of ——, which lately in our said lady the Queen's High Court of Justice, —— Division, were awarded to —— for the costs of defence in an action lately prosecuted in the said court by the said —— against the said ——, together with interest upon the said sum, at the rate of four pounds *per centum per annum*, from the —— day of —— one thousand eight hundred and ——, so that I may have that money before the said court at Westminster, immediately after the execution hereof, to be rendered to the said ——. And I further command you that you execute this warrant so that I may do all such things as by the statute passed in the second year of our said lady the Queen's reign, I am authorised and required to do in this behalf, as I am by the said writ commanded. Hereof fail not, as you will answer at your peril. Given under the seal of my office, this —— day of —— one thousand eight hundred and ——.

Writ Indorsed.

Levy £ —— and £ —— for costs of execution, &c., and also interest on £ —— at four pounds *per centum per annum*, from the —— day of —— 18—, until payment; besides sheriff's poundage, officers' fees, costs of levying, and all other legal and incidental expenses.

This writ was issued by —— of ——, attorney for the said ——. The plaintiff is a —— and resides at —— in your bailiwick.

Before you levy, beware the parties are not privileged as ambassadors, or servants to ambassadors, or otherwise protected.

139.

Warrant on Fieri Facias on Action removed from Lord Mayor's Court.

County of B. } —— sheriff of the county aforesaid, to —— my
to wit } bailiffs, greeting: By virtue of a writ of our sovereign lady the Queen, to me directed, bearing date the —— day of —— in the year of our Lord one thousand eight hundred and ——, I command you, and every of you, that of the goods and chattels of —— in my bailiwick, you or one of you cause to be made the sum of ——, which —— lately in the

Mayor's Court, London, by the judgment of the said court recovered against the said ——, whereof the said —— is convicted, and which judgment has become and is of the same force, charge, and effect as a judgment recovered in her Majesty's High Court of Justice, the said judgment having been sealed by the sealer of the writs of the said court, in pursuance of the statute in that case made and provided, and the costs attendant thereupon were on the —— day of —— one thousand eight hundred and — — allowed by the said court at the sum of ——. And I further command you, that of the said goods and chattels you also cause to be made the said sum of ——, together with interest upon the said several sums, at the rate of four pounds *per centum per annum*, from the said —— day of — — one thousand eight hundred and ——, so that I may have that money, with such interest as aforesaid, before —— at Westminster, *immediately after the execution hereof*, to be rendered to the said — —. And that you execute this warrant so that I may do all such things as by the statute passed in the second year of the reign of her present Majesty I am authorised and required to do in this behalf, as I am by the said writ commanded. Hereof fail not, as you will answer at your peril. Given under the seal of my office, this —— day of —— in the year of our Lord one thousand eight hundred and ——.

Writ Indorsed.

Levy £—— and £—— for costs of execution, &c., and also interest on £—— at four pounds *per centum per annum*, from the —— day of —— 18—, until payment ——, besides sheriff's poundage, officers' fees, costs of levying, and all other legal incidental expenses.

This writ was issued by ——, solicitor for the said plaintiff . The defendant is a —— and resides at ——.

Before you levy on the goods and chattels of the defendant, beware he is not an ambassador, or servant to an ambassador, or otherwise privileged or protected.

140.

Warrant on Fieri Facias on Cause removed from Inferior Court.

County of B. } —— sheriff of the county aforesaid, to —— my
to wit } bailiffs, greeting: By virtue of a writ of our sovereign lady the Queen, to me directed, bearing date the —— day of — — in the year of our Lord one thousand eight hundred and ——, I command you, and every of you, that of the goods and chattels of —— in my bailiwick, you or one of you cause to be made the sum of ——, which ——, lately in the —— court of —— recovered against the said ——, and which judgment was afterwards removed into the High Court of Justice, —— Division at Westminster, by virtue of an order of ——, one

of the judges of the said High Court, in pursuance of the statute in that case made and provided, and the costs attendant thereon were taxed and allowed on the —— day of —— one thousand eight hundred and —— at the sum of ——. And I further command you, that you also cause to be made the said sum of ——, together with interest upon the said two several sums —— at the rate of four pounds *per centum per annum*, from the —— day of ——, in the year of our Lord one thousand eight hundred and ——, so that I may have that money with such interest as aforesaid, before —— the Queen, at Westminster, *immediately after the execution hereof*, to render to the said —— in the said writ named ——. And that you execute this warrant so that I may do all such things as by the statute passed in the second year of the reign of her present Majesty I am authorised and required to do in this behalf, as I am by the said writ commanded. Hereof fail not, as you will answer at your peril. Given under the seal of my office, this —— day of ——, in the year of our Lord one thousand eight hundred and ——.

Writ Indorsed.

Levy £—— interest at four pounds *per centum per annum*, from the —— day of —— 18—, until payment ——, besides sheriff's poundage, officers' fees, costs of levying, and all other —— incidental expenses.

The defendant is a —— and resides at —— in your bailiwick.

Before you levy on the goods and chattels of the defendant, beware he is not an ambassador, or servant to an ambassador, or otherwise privileged or protected.

141.

Warrant on Fieri Facias for Plaintiff's Costs in Ejectment, where Defendant Appeared.

County of B. } —— sheriff of the county aforesaid, to ——
to wit. } my bailiffs, greeting: By virtue of a writ of our sovereign lady the Queen to me directed, bearing date the —— day of —— 18—, I command you, each and every of you, that —— of the goods and chattels of —— in my bailiwick, you, any or one of you, cause to be made the sum of —— recovered against him for —— costs of suit in an action of ejectment in the said writ mentioned, together with interest upon the said sum, at the rate of four pounds *per centum per annum* from the —— day of —— one thousand eight hundred and —— in the said writ also mentioned, so that I may have that money with such interest as aforesaid before —— our said lady the Queen at Westminster, immediately after the execution hereof, to be rendered to the said ——. And that you execute this warrant so that I may do all

such things as by the statute passed in the second year of our said lady the Queen's reign, I am authorized and required to do in this behalf, as I am by the said writ commanded. Hereof fail not, as you will answer at your peril. Given under the seal of my office, this —— day of —— in the year of our Lord one thousand eight hundred and ——.

Before you levy on the goods and chattels of the defendant, beware he is not an ambassador, or servant to an ambassador, or otherwise privileged or protected.

The writ is in force for one year only from the date of it, unless renewed.

142.

Warrant on Fieri Facias for Defendant's Costs in Ejectment.

County of B. } —— sheriff of the county aforesaid, to —— my
to wit. } bailiffs, greeting: By virtue of a writ of our sovereign lady the Queen to me directed, bearing date the —— day of —— 187—, I command you, each and every of you, that —— of the goods and chattels of —— in my bailiwick, you, any or one of you, cause to be made the sum of —— awarded to —— for h costs of defence in an action of ejectment in the said writ mentioned, together with interest upon the said sum, at the rate of four pounds *per centum per annum* from the —— day of —— one thousand eight hundred and seventy —— in the said writ also mentioned, so that I may have that money, with such interest as aforesaid, before —— our said lady the Queen at Westminster, immediately after the execution hereof, to be rendered to the said ——. And that you execute this warrant so that I may do all such things as by the statute passed in the second year of our said lady the Queen's reign I am authorized and required to do in this behalf, as I am by the said writ commanded. Hereof fail not, as you will answer at your peril. Given under the seal of my office, this —— day of —— in the year of our Lord one thousand eight hundred and fifty——.

Before you levy on the goods and chattels of the defendant, beware he is not an ambassador, or servant to an ambassador, or otherwise privileged or protected.

The writ is in force for one year only from the date of it, unless renewed.

Returns to Fi. Fa. (*a*).

143.

Nulla Bona.

The within-named C. D. hath not any goods or chattels in my bailiwick, whereof I can cause to be made the debt, damages and interest, as the within writ commands me.

The answer of ——, sheriff.

144.

Fieri Feci.

By virtue of this writ to me directed, I have caused to be made of the goods and chattels of the within-named C. D. the debt, damages and interest within written, which I have ready at the time and place within mentioned, to be rendered to the within-named A. B., as within I am commanded.

The answer of ——, sheriff.

145.

Fi. Fe. as to Part and Nulla Bona as to the Remainder.

By virtue of this writ to me directed, I have caused to be made of the goods and chattels of the within-named C. D. to the value of £——, which said sum I have ready at the time and place within contained, to render to the within-named E. F. in part satisfaction of his claim within specified. And I further certify and return that the said C. D. hath no more goods or chattels in my bailiwick, whereof I may cause to be made the residue of the said sum, or any part thereof, as the within writ commands me.

The answer, &c.

146.

Fi. Fe., and that Goods remain in the Sheriff's Hands for want of Buyers.

By virtue of this writ to me directed, I have caused to be made of the goods and chattels of the within-named C. D. to the value of £——, which remain in my hands for want of buyers. Therefore I cannot have that money, or any part thereof, at the time and place within mentioned, as the said writ commands me.

The return, &c.

(*a*) Baron Watson in his Sheriff Law, 2nd ed., p. 88, says, "The forms of returns used at this day are the same as when Dalton wrote, excepting that now they are in English instead of in Latin." The forms are varied to meet the exigencies of each case, and are different in different counties.

147.

Return of Part Sold, the rest remaining Unsold.

By virtue of this writ to me directed, I have caused to be made of the goods and chattels of the within-named C. D. to the value of £——, and have thereof sold to the value of £——, which sum I have ready at the time and place within contained, but the residue of the said goods and chattels remain in my hands for want of buyers.

The answer, &c.

148.

Fi. Fe. as to Part, and that the Sheriff has Paid part of the Sum levied to the Landlord for Rent.

By virtue of this writ to me directed, I have caused to be made of the goods and chattels of the within-named C. D. to the value of £——, part of which said sum of £—— *I have paid to E. C., the landlord of the premises on which the said goods and chattels were taken for rent due to him for the said premises at —— last,* and I have retained in my hands the sum of £—— for poundage and expenses; and £——, the residue of the said sum of £——, I have ready at the time and place within mentioned, to render to the said J. K. in part satisfaction of his damages and interest. And the said C. D. hath not any more goods and chattels in my bailiwick, whereof I can cause to be made the residue of the said damages and interest, as within I am commanded.

The answer, &c.

149.

Fi. Fe. as to Part, and Payment of Queen's Taxes.

[*The same as last, excepting, instead of the words in italics*] £——, part of which said sum of £—— I have paid for Queen's taxes due and owing to her Majesty for and in respect of the said premises at the time of taking the said goods and chattels.

150.

Return of Nulla Bona Testatoris.

The within-named C. D. has no goods and chattels, which were of the within-named —— at the time of his death in the hands of C. D. to be administered, in my bailiwick, whereof I can cause to be levied the damages within mentioned, or any part thereof.

The answer, &c.

151.

Same with Devastavit.

[*Same as last, then*] but divers goods and chattels which were of the said —— at the time of his death, to the value of the damages within mentioned, after the death of the said —— came to the hands of the said C. D. to be administered, which said goods and chattels the said C. D. hath, before the coming of this writ to me, eloigned, wasted, and converted to his use.

The answer, &c.

152.

Mandavi Ballivo.

By virtue of this writ to me directed, I made my mandate to ——, bailiff of the liberty of —— in my county, to whom belongeth the execution and return of all writs and processes within the said liberty, and without whom no execution of this writ could be made by me within the same; which said bailiff hath returned to me, that by virtue of my mandate to him thereupon directed as aforesaid, he hath caused to be made of the goods and chattels of the within-named C. D. the damages within mentioned, and that he hath the money ready before our said lady the Queen, at the time and place within mentioned, as by the said mandate he was commanded.

The answer, &c.

153.

Sheriff's Bill of Sale.

Know all men by these presents, that I, —— sheriff of the county of ——, for and in consideration of the sum of —— of lawful money of Great Britain, to me in hand paid by —— of —— in the county of ——, the receipt whereof I do hereby .. knowledge, have bargained, sold, assigned, transferred, and set over, And by these presents do (as far as I can and lawfully may, but without any warranty of title), bargain, sell, assign, transfer, and set over unto the said —— h— executors, administrators and assigns, All and singular the —— goods, chattels, and effects mentioned and particularly set forth in the schedule or inventory hereunder written, which said —— goods, chattels and effects were lately seized in execution by me as the property of ——, by virtue of her Majesty's writ of *fieri facias* issuing out of the —— Division of her Majesty's High Court of Justice, at Westminster, returnable before the said Court immediately after the execution thereof, at the suit of —— for the sum of —— and interest thereon as therein mentioned, which said writ was induced to levy ——, besides ——, To have, hold, receive and take, all and singular the said —— goods, chattels, and effects, unto the said —— h— executors, administrators,

and assigns, as h and their own proper —— goods, chattels, and effects, to his and their own use and uses for ever. In witness whereof, I the said sheriff have hereunto set my hand and seal the —— day of —— one thousand eight hundred and ——.

Sealed and delivered in the presence of ——.

The schedule or inventory above referred to :—

154.

Affidavit of Execution of Assignment by Sheriff.

In the High Court of Justice,
Queen's Bench Division.

I —— of —— make oath and say :—

1. That the paper writing marked —— hereunto annexed is a true copy of an assignment made on the —— day of —— one thousand eight hundred and —— between —— esquire, sheriff, of the —— of —— of the one part, and —— of —— of the other part. And that the paper writing marked —— hereunto annexed is a true copy of the inventory —— in the said assignment mentioned and referred to. And that the said assignment was made by the said sheriff by —— h— undersheriff, by virtue of a writ of *fieri facias* issued out of the —— Division of our High Court of Justice on the —— day of —— one thousand eight hundred and —— to the said sheriff directed and endorsed, to levy a certain sum upon the goods and chattels of —— who resides at —— and is a ——.

2. And I further say that the said —— resides at —— in the said —— of ——, and is by occupation a ——, and that the only attesting witness to such assignment [*is* or *are*] —— who reside at ——.

Sworn at —— this —— day of —— one thousand eight hundred and ——, before me, ——.

A Commissioner to administer Oaths in the Supreme Court of Judicature.

155.

Writ of Elegit.

(See Chapter XXII., p. 351.)

Judicature Act, 1875, App. (F), No. 2.

187—. B. No. —

In the High Court of Justice,
—— Division.

Between A. B., plaintiff,
and
C. D. and others, defendants.

Victoria, by the grace of God of the United Kingdom of

Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of ——, greeting:

Whereas lately in our High Court of Justice in a certain action [*or* certain actions] there depending, wherein A. B. is plaintiff and C. D. and others are defendants [*or* in a certain matter there depending, intituled, "In the matter of E. F.," *as the case may be*] by a judgment [*or* order, *as the case may be*] of our said Court, made in the said action [*or* matter, *as the case may be*] and bearing date the —— day of ——, it was adjudged [*or* ordered, *as the case may be*] that C. D. should pay unto A. B. the sum of £——, together with interest thereon after the rate of £—— *per centum per annum* from the —— day of ——, together also with certain costs as in the said judgment [*or* order, *as the case may be*] mentioned, and which costs have been taxed and allowed by ——, one of the taxing masters of our said Court, at the sum of £——, as appears by the certificate of the said taxing master dated the —— day of ——. And afterwards the said A. B. came into our said Court, and according to the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick, as the said C. D., or any one in trust for him, was seized and possessed of on the —— day of ——, in the year of our Lord —— or at any time afterwards, or over which the said C. D. on the said —— day of ——, or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns until the said two several sums of £—— and £——, together with interest upon the said sum of £—— at the rate of £—— *per centum per annum* from the said —— day of ——, and on the said sum of £—— (*costs*) at the rate of £4 *per centum per annum* from the —— day of —— shall have been levied. Therefore we command you that without delay you cause to be delivered to the said A. B., by a reasonable price and extent, all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands and tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick, as the said C. D., or any person or persons in trust for him, was or were seised or possessed of on the said —— day of ——, or at any time afterwards, or over which the said C. D. on the said —— day of ——, or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said A. B. as his proper goods and

chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns until the said two several sums of £—— and £——, together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us in our Court aforesaid, immediately after the execution thereof, under your seals and the seals of those by whose oath you shall make the said extent and appointment. And have there then this writ.

Witness ourselves at Westminster, &c.

156.

Writ of Elegit on a Judgment for Plaintiff.

Reg. Gen. Hil. Term, 1853.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of —— greeting: Whereas A. B., lately in the Queen's Bench Division of our High Court of Justice, by the judgment of the same Court recovered against C. D. £—— [*the amount of all the moneys recovered by the judgment*], whereof the said C. D. is convicted, and afterwards the said A. B. came into our said Court, and, according to the form of the statutes in such case made and provided, chose to be delivered to him all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D. or any person in trust for him was seised or possessed of on the —— day of —— in the year of our Lord ——, on which day the judgment aforesaid was entered up, or at any time afterwards, or over which the said C. D. on that day, or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and his assigns, according to the form of the said statutes, until the said sum, together with interest thereon at the rate of four pounds per centum per annum from the —— day of ——, in the year of our Lord ——, shall have been levied. Therefore we command you that, without delay, you cause to be delivered to the said A. B. by a reasonable price and extent all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D., or any person

in trust for him, was seised or possessed of on the said —— day of ——, or at any time afterwards, or over which the said C. D. on that day, or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said A. B. as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said £——, together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us at Westminster immediately after the execution hereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement, and have you then there this writ.

Witness, —— at Westminster, the —— day of —— in the year of our Lord ——.

157.

Writ of Elegit on a Rule for Payment of Money.

Reg. Gen. Hil. Term, 1853.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of —— greeting: Whereas lately in the Queen's Bench Division of our High Court of Justice, by a rule of the said Court, dated the —— day of —— in the year of our Lord —— the sum of £—— was ordered to be paid by C. D. to A. B., and afterwards the said A. B. came into our said Court, and, according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D., or any person in trust for him, was seised or possessed of on the —— day of —— in the year of our Lord ——, on which day the said rule was made, or at any time afterwards, or over which the said C. D. on that day, or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said sum, together with interest upon the same at the rate of four pounds per centum per annum from the said —— day of —— in the year of our Lord ——, shall have been levied. Therefore we command you that, without delay, you cause to be delivered to the said

A. B., by a reasonable price and extent, all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick, as the said C. D., or any person in trust for him, was seised or possessed of on the said —— day of ——, or at any time afterwards, or over which the said C. D. on that day, or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said A. B. as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said £——, together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us at Westminster immediately after the execution hereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement, and have you there then this writ.

Witness, —— at Westminster, the —— day of —— in the year of our Lord ——.

158.

Writ of Elegit on a Rule for Payment of Money and Costs.

Reg. Gen. Hil. Term, 1853.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of —— greeting: Whereas lately in the Queen's Bench Division of our High Court of Justice, by a rule of the said Court, dated the —— day of —— in the year of our Lord ——, the sum of £—— was ordered to be paid by C. D. to A. B., together with certain costs in the said rule mentioned, which said costs were afterwards, on the —— day of —— in the year of our Lord ——, taxed and allowed by the Queen's Bench Division of our High Court of Justice, at £——; and afterwards the said A. B. came into our said Court, and, according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D., or any one in trust for him, was seised or possessed of on the —— day of —— in the year of our Lord ——, or at any time afterwards, or over which the said C. D. on that day, or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and

chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums, together with interest upon the same at the rate of four pounds per centum per annum from the said —— day of —— in the year of our Lord ——, shall have been levied. Therefore we command you, that, without delay, you cause to be delivered to the said A. B., by a reasonable price and extent, all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D., or any person in trust for him, was seised or possessed of on the —— day of ——, or at any time afterwards, or over which the said C. D. on that day, or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said A. B. as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of £—— and £——, together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us at Westminster immediately after the execution hereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement, and have you there then this writ.

Witness, —— at Westminster, the —— day of —— in the year of our Lord ——.

159.

Writ of Elegit on a Judgment of an Inferior Court removed into one of the Superior Courts.

Reg. Gen. Hil. Term, 1853.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of —— greeting: Whereas A. B., lately in —— [*insert the style of the Court*], by the judgment of the said Court recovered against C. D. £——, whereof the said C. D. is convicted: And whereas the said judgment was afterwards, on the —— day of —— in the year of our Lord —— removed into the Queen's Bench Division of our High Court of Justice by virtue of an order of that our said Court in pursuance of the statute in that case made and provided, and the costs and charges attendant upon the application for the said order and upon the said removal were afterwards, on the —— day of —— in the year of our Lord ——, taxed and allowed by the Queen's Bench Division of the High Court of Justice at £——, and afterwards the said A. B. came into that our said Court,

and, according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D., or any person in trust for him, was seised or possessed of on the said —— day of —— in the —— year of our Lord aforesaid, or at any time afterwards, or over which the said C. D. on that day, or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums, together with interest upon the same at the rate of four pounds per centum per annum from the said —— day of —— in the year of our Lord ——, shall have been levied. Therefore we command you, that, without delay, you cause to be delivered to the said A. B., by a reasonable price and extent, all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D., or any one in trust for him, was seised or possessed of on the said —— day of ——, or at any time afterwards, or over which the said C. D. on that day, or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said A. B. as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of £—— and £——, together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us at Westminster immediately after the execution hereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement, and have you there then this writ.

Witness, —— at Westminster, the —— day of —— in the year of our Lord ——.

160.

Writ of Elegit on a Rule or Order for Payment of Money made in an Inferior Court, and removed into one of the Superior Courts.

Reg. Gen. Hil. Term, 1853.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to

the sheriff of —— greeting: Whereas lately in —— [*insert the style of the Court*], by a rule [*or* "order"] of the said Court, entitled —— [*as the case may be*], the sum of £—— was by the said Court ordered to be paid by C. D. to A. B.: And whereas the said rule [*or* "order"] was afterwards, on the —— day of —— in the year of our Lord ——, removed into the Queen's Bench Division of the High Court of Justice, in pursuance of the statute in that case made and provided, and the costs and charges attendant upon the application for the said last-mentioned order and upon the said removal were afterwards, on the —— day of —— in the year of our Lord ——, taxed and allowed by the Queen's Bench Division of our High Court of Justice, at £——, and afterwards the said A. B. came into that our said Court, and, according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D., or any person in trust for him, was seised or possessed of on the said —— day of —— in the year of our Lord ——, or at any time afterwards, or over which the said C. D. on the said —— day of ——, or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums, together with interest on the same at the rate of four pounds per centum per annum from the said —— day of ——, shall have been levied. Therefore we command you, that, without delay, you cause to be delivered to the said A. B., by a reasonable price and extent, all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D., or any one in trust for him, was seised or possessed of on the said —— day of ——, or at any time afterwards, or over which the said C. D. on that day, or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said A. B. as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said several sums of £—— and £——, together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us at Westminster immediately after the execution hereof, under your seal and the seals of those by

whose oath you shall make the said extent and appraisement, and have you there then this writ.

Witness, —— at Westminster, the —— day of —— in the year of our Lord ——.

161.

Writ of Elegit on a Rule or Order for Payment of Money and Costs made in an Inferior Court, and removed into one of the Superior Courts.

Reg. Gen. Hil. Term, 1853.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of —— greeting: Whereas lately in —— [*insert the style of the Court*], by a rule [*or* "order"] of the said Court, entitled —— [*as the case may be*], the sum of £—— was by the said Court ordered to be paid by C. D. to A. B., together with the costs of the said rule [*or* "order"], which said costs were afterwards, on the —— day of —— in the year of our Lord ——, taxed and allowed by the said Court at £——: And whereas the said rule [*or* "order"] was removed into the Queen's Bench Division of our High Court of Justice by virtue of an order of that our said Court in pursuance of the statute in that case made and provided, and the costs and charges attendant upon the application for the said last-mentioned order, and upon the said removal were afterwards, on the —— day of —— in the year of our Lord ——, taxed and allowed by the Queen's Bench Division of the High Court of Justice at £——; and afterwards the said A. B. came into the Queen's Bench Division of our High Court of Justice, and, according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D., or any person in trust for him, was seised or possessed of on the said —— day of ——, or at any time afterwards, or over which the said C. D. on that day, or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said three several sums, together with interest upon the same at the rate of four pounds per centum per annum from the said —— day of ——, shall have been levied. Therefore we command you, that, without delay, you cause to be delivered to the said A. B., by a reasonable price and extent, all the goods and chattels of the said C. D. in your baili-

wick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D., or any person in trust for him, was seised or possessed of on the said —— day of ——, or at any time afterwards, or over which the said C. D. on that day, or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said A. B. as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said three several sums of £——, and £——, and £——, together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us at Westminster immediately after the execution hereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement, and have you there then this writ.

Witness, —— at Westminster, the —— day of —— in the year of our Lord ——.

162.

Form of Præcipe.

Elegit.

Judicature Act, 1875, App. (E.), No. 2.

In the High Court of Justice,
—— Division.

Between A. B., plaintiff,
and
C. D. and others, defendants.

Send a writ of *elegit* directed to the sheriff of —— against —— of —— in the county of —— for not paying to A. B. the sum of £——, together with interest thereon, from the —— day of —— [and the sum of £—— for costs, with interest thereon at the rate of £4 *per centum per annum*].

Judgment [*or* order] dated —— day of —— 18—.

[Taxing master's certificate, dated —— day of —— 18—.]

X. Y.,
Solicitor for ——.

163.

Warrant on Elegit.

County of B. } ——, sheriff of the county aforesaid, to —— to wit. } my bailiffs: By virtue of her Majesty's writ of *elegit* to me directed, I command you and each of you, jointly and

severally, that you or one of you seize and take all the goods and chattels of —— in my bailiwick (except h oxen and beasts of the plough), and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure in my bailiwick, as the said ——, or any person in trust for ——, was seised or possessed of on the —— day of —— one thousand eight hundred and ——, or at any time afterwards, or over which h on the said —— day of ——, or at any time afterwards, had any disposing power, which h might, without the assent of any other person, exercise for h own benefit, so that I may, by the oath of good and lawful men of my bailiwick, cause the same to be delivered to —— in the said writ named, to hold the said goods and chattels to the said —— as h proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to h and to h assigns, until the sum of ——, the —— damages in the said writ mentioned, together with interest on the said sum of —— at the rate of four pounds *per centum per annum* from the —— day of —— one thousand eight hundred and —— shall have been levied. And that you forthwith certify to me what you shall have done herein, so that I may make the same appear to —— the Queen, at Westminster, immediately after the execution thereof.

Hereof fail not. Given under the seal of my office this —— day of —— one thousand eight hundred and ——.

By the same sheriff.

164.

Elegit.

Another Form of Warrant.

County of B. } G. H., esquire, sheriff of the said county of
to wit. } B., to E. F., &c., my bailiffs, greeting: By virtue of her Majesty's writ of *elegit* to me directed, I command you, and each of you, that without fail you jointly and severally seize and take all the goods and chattels of C. D. (except his oxen and beasts of the plough) in my bailiwick, so that I may, by reasonable price, cause the same to be delivered to ——, to hold to the said —— as his proper goods and chattels, and forthwith certify the same to me. Given under my hand and seal of office.

The answer, &c.

165.

Charge to the Jury on Elegit.

Your charge is to inquire what goods and chattels (except oxen and beasts of the plough) C. D. was possessed of on the

—— day of ——, A.D. 18—, or at any time afterwards, in my bailiwick, and the value thereof; your charge is also to inquire what lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure, C. D., or any one in trust for him, was seised or possessed of on the —— day of ——, A.D. ——, or at any time afterwards, or over which the said C. D. on the —— day of —— A.D. ——, or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit, and also to inquire and say what is the yearly value thereof, that the same may at a reasonable price and extent be made to be delivered to A. B., to hold as his own proper goods and chattels, and also to hold the same lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and his assigns, until the said sum of £——, together with interest as aforesaid, shall have been levied.

166.

Juror's Oath and Affirmation.

You shall well and truly try what goods and chattels (except his oxen and beasts of the plough) C. D. was possessed of on the —— day of ——, A.D. 18—, or at any time afterwards, in my bailiwick, and the value thereof. You shall also well and truly try what lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure, C. D., or any one one in trust for him, was seised or possessed of on the —— day of ——, A.D. 18—, or at any time afterwards, or over which the said C. D. on the —— day of ——, A.D. 18—, or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit in my bailiwick, and the yearly value thereof, and a true verdict give according to the evidence. So help you God.

167.

Return of Nihil to Elegit.

The within-named C. D. had not nor hath, where writ has been duly registered, any goods or chattels in my bailiwick, nor had nor hath he, or any person in trust for him, any land, tenement, rectory, tithe-rent, or hereditament, in my bailiwick, nor any disposing power over any such land [&c.], in my bailiwick, which I can cause to be delivered to the said A. B. by a reasonable price and extent as within I am commanded.

The answer of ——, sheriff.

168.

Return of Delivery of Goods and No Lands.

By virtue of this writ to me directed, I have caused to be delivered to the within-named A. B. all the goods and chattels of the within-named C. D. in my bailiwick (except his oxen and beasts of the plough), at the price of £——, to hold the said goods and chattels as his proper goods and chattels, in part satisfaction of the sum and interest within mentioned. And I do further certify and return that the said C. D. had not, nor hath he, nor had nor hath any person in trust for him, any land, tenement, rectory, tithe-rent, or hereditament, in my bailiwick, nor any disposing power over any such land [&c.] in my bailiwick, which I can cause to be delivered to the said A. B. for the residue of the said sum and interest, or any part thereof, as within I am commanded.

The answer of ——.

169.

Return of Lands Delivered.

By virtue of this writ to me directed, I have caused to be delivered to the within-named A. B. at a reasonable extent all the lands which the said C. D. hath in my bailiwick. And I do further certify and return that the said C. D. had not, nor hath he, any goods or chattels within my bailiwick, nor any tenements, &c. [*as before*] which I can cause to be delivered to the said A. B. as within I am commanded.

The answer of ——.

The execution of this writ appears in the inquisition hereunto annexed.

The answer of ——.

170.

Inquisition.

County of B. (*to wit.*) An inquisition indented, taken at A., in the county of B., the —— day of —— in the —— year of the reign of our sovereign lady Queen Victoria, before me, G. H., esquire, sheriff of the said county, by virtue of her said Majesty's writ to me directed in this behalf, and to this inquisition annexed, by the oath of (*here name the jurors who were upon the inquest*) twelve honest and lawful men of the county aforesaid, who, being sworn and charged, upon their oath say that C. D., named in the writ hereunto annexed, on the day of the taking of this inquisition was possessed in his own right of the goods and chattels following, that is to say (*here describe the goods*), of the price of £——, as of his own proper goods and chattels; which said goods and chattels I, the said

sheriff, have caused to be delivered to the said A. B., to hold the said goods and chattels as his own proper goods and chattels in part satisfaction of his debt, damages, and interest (*or* "damages and interest,") in the said writ mentioned, as by the said writ I am commanded; (or, *if there be no goods or chattels, say,* "had no goods or chattels in my bailiwick, to the knowledge of the said jurors;") and the jurors aforesaid, upon their oath aforsaid, do further say that the said C. D., on the —— day of —— in the —— year of the reign &c., (on which day the judgment in the said writ mentioned was obtained,) was seized in his demesne as of fee of and in (*here describe the lands in such a manner as they would be described in a conveyance, stating the place and county in which they lie, the estate the defendant had in them, and whether seised in severalty, or as a joint tenant, or tenant in common. See the next form, adding after each messuage or parcel of land the value of it, thus:* "the same being of the clear yearly value of £——, in all issues beyond reprises,") which said lands and tenements I, the said sheriff, on the day of the taking of this inquisition, have caused to be delivered to the said A. B., by a reasonable price and extent, to hold as his freehold to him and his assigns, according to the force of the statute in such case made and provided, until the debt, damages, and interest (*or* "damages and interest") in the said writ mentioned, shall be thereof levied; as by the said writ I am commanded. And the jurors aforesaid, upon their oath aforesaid, do further say that the said C. D., *on the day of the taking of this inquisition aforesaid had no other or more goods and chattels in my bailiwick;* nor had he, or any person or persons in trust for him, on the —— day of —— (the day on which the judgment aforesaid was obtained), or at any time afterwards, any other or more lands and tenements in my bailiwick, to the knowledge of the said jurors. In witness whereof, as well I, the said sheriff, as the jurors aforesaid, have severally set our respective seals to this inquisition, on the day and year and at the place aforesaid.

———

171.

Inquisition, where Lands holden in Joint Tenancy are Extended.

[*Same as the last precedent to the words* "who being sworn and charged, upon their oath say that C. D., named in the said writ hereunto annexed, on the day of the taking of this inquisition"], had no goods or chattels in my bailiwick, to the knowledge of the said jurors; and the jurors aforesaid, upon their oath aforesaid, do further say, that the said C. D., on the —— day of —— in the —— year of the reign, &c. (on which day the said judgment in the said writ mentioned was obtained) was seized in his demesne as of fee of and in one undivided moiety (the whole in two equal moieties to be

divided) of and in one messuage or tenement, with the appurtenances, situate, lying, and being in the parish of ——, in the county aforesaid, now in the tenure and occupation of E. F., abutting towards the east on, &c., towards the north on, &c., towards the west on, &c., and towards the south on, &c.; and being of the clear yearly value of ——, in all issues beyond reprises; and also of and in one undivided moiety (the whole into equal moieties to be divided) of and in one other messuage, &c.; which said undivided moieties of the said several messuages with the appurtenances, so in the tenure and occupation of the said E. F. as aforesaid, I, the said sheriff, on the day of the taking of this inquisition, have caused to be delivered to the said A. B., by a reasonable price and extent, to hold as his freehold [*concluding as in the last form*].

172.

Affidavit for immediate Extent in Chief.

(See Chapter XXIII. p. 367.)

In the High Court of Justice, Queen's Bench Division.

J. K. —— of —— maketh oath and saith that A. B. —— of —— is justly and truly indebted to our sovereign lady the Queen in the sum of £ ——, being so much of her Majesty's monies deposited in his hands by —— for the service of her said Majesty and unaccounted for by the said A. B.; and that he verily believes that the said A. B. has stopped payment and is in embarrassed and insolvent circumstances, and that, unless some method more speedy than the ordinary course of proceeding at law be forthwith had against the said A. B. for the recovery of the debt so due and owing to her Majesty as aforesaid, the same is in danger of being and will be lost.

Sworn &c. J. K.

173.

Affidavit for Extent in Chief in the Second Degree.

In the High Court of Justice, Queen's Bench Division.

J. K. —— of —— maketh oath and saith that on the —— day of —— last a writ of extent directed to the sheriff of the county of B. was issued out of this honourable court against A. B. of —— for the sum of £—— due to her Majesty; and this deponent further saith that by an inquisition indented taken at —— it was found (amongst other things) by the said jury of the county of B. that on the —— day of —— and on the day of taking the said inquisition C. D. of —— was indebted to the said A. B. in the sum of £—— for &c. and which said debt of —— due and owing from the said C. D. the said sheriff of the county of B. then and there seized into her

Majesty's hands as by the said inquisition will more fully appear; and this deponent further saith that the said C. D. is greatly decayed in his credit and circumstances, and &c. [*as before*].

174.

Fiat for Extent in Chief.

Upon reading this affidavit, let a writ or writs of immediate extent issue against the within-named A. B. and C. D. for the recovery of the within-mentioned sum of £ ——, with the usual proviso. Dated the —— day of —— 18—.

175.

Fiat for Extent in Chief in Second degree.

Upon reading this affidavit and extent against A. B. and an inquisition taken thereupon returned by the sheriff of ——, whereby the within-named C. D. is found indebted to the said A. B. in the said sum of £—— seized into her Majesty's hands, let a writ or writs of immediate extent issue against the said C. D. for the said recovery of the said £ ——, with the usual proviso. Dated the —— day of —— 18—.

176.

Liberate to Sheriff on Extent in Chief.

Victoria &c. to the sheriff of —— greeting: Whereas C. D. [*recite writ*]. And you have returned to us that the said C. D. was not found in your bailiwick after our writ was delivered to you but that you have taken into our hands all the lands and tenements goods and chattels of the said C. D. in your bailiwick and caused them to be extended and appraised according to the tenor of our writ aforesaid to wit —— messuages which are appraised at £ —— &c. [*as in the return*]: Therefore we command you that you deliver to the said A. B. all the lands and tenements goods and chattels aforesaid by you so taken into our hands if he will have them by the extent and appraisement aforesaid to hold according to the form of the ordinance aforesaid until he shall be satisfied of his debt aforesaid: And in what manner &c.

177.

Writ of Extent in Chief.

Victoria &c. to the sheriff of —— greeting: Whereas A. B. and C. D. of —— by their writing obligatory sealed with their seals bearing date the —— day of —— A.D. 18— became jointly and severally bound to us in the sum of £—— of good and lawful money of Great Britain payable at a day now past which said sum of money they have not nor hath either of them yet paid or caused to be paid to us as we are informed: And we being willing to be satisfied the same with all the speed we can as is just do command you that you omit not by reason of any liberty in your bailiwick but enter the same and take the said A. B. and C. D. by their bodies wherever they shall be found in your bailiwick and keep them safely and securely in prison till we shall be fully satisfied the said debt; and that as well by the oaths of good and lawful men of your bailiwick as by the oaths and testimony of any other good and lawful men by whom the truth may be the better known as by all other lawful means you diligently inquire what lands and tenements and of what yearly values the said A. B. and C. D. or either of them had in your bailiwick on the said —— day of —— A.D. 18— on which day they first became our debtors as aforesaid or at any time since; and what goods and chattels and of what sorts and prices and what debts credits specialties and sums of money the said A. B. and C. D. or either of them or any person or persons to their or either of their use or in trust for them or either of them now hath or have in your bailiwick; and that all and singular such goods and chattels, lands and tenements, debts, credits, specialties, and sums of money, in whose hands soever the same now are you diligently appraise and extend on the oaths of the said good and lawful men and do take and seize the same into our hands there to remain until we shall be fully satisfied the said debt according to the form of the statute made for the recovery of such our debts: And lest this our command should not be fully executed we further command and empower you by these presents to summon before you such persons as you shall think proper and carefully examine them in the premises and that you distinctly and openly make appear to the justices of the Queen's Bench Division of the High Court of Justice on the —— day of —— next in what manner you shall have executed this our command and that you then have there this writ: Provided that what goods and chattels you shall seize into our hands by virtue hereof you do not sell or cause to be sold until we shall otherwise command you. Witness &c.

178.

Juror's Oath.

You shall well and truly inquire what lands and tenements and of what yearly value C. D. has and what goods and chattels and of what sorts and values and of what debts credits specialties and sums of money the said C. D. or any person or persons to his use or in trust for him now have and that you appraise such goods and chattels so that I may extend seize and take the same into her Majesty's hands until she shall be fully satisfied the sum of £—— due to her upon an extent directed to me.

So help you God.

179.

Return.

The within-named C. D. is not found in my bailiwick. The residue of the execution of this writ appears in the inquisition hereunto annexed.

The answer of &c.

180.

Inquisition.

County of B. (to wit.) An inquisition indented taken at the house of —— known by the name or sign of the —— in the said county the —— day of —— in the —— year of the reign of our sovereign lady Victoria by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, &c. before me —— sheriff of the said county by virtue of her Majesty's writ of extent to me directed and to this inquisition annexed on the oaths of A. B. [*here name the twelve jurors*] honest and lawful men of my bailiwick who being chosen tried and sworn on their oath say that C. D. in the said writ named is possessed of the goods and chattels following that is to say [*here state the goods*] as of his own goods and chattels and the said jurors do appraise and value the same at the sum of £—— ; all which said goods and chattels I the said sheriff have seized and taken into her Majesty's hands: And the jurors aforesaid upon their oath aforesaid further say that the said C. D. is seised in his demesne as of fee of and in &c. with the appurtenances thereto belonging situate and being at —— in the parish of —— in the said county and in the occupation of —— of the clear yearly value of £—— in all issues beyond reprises which I the said sheriff have seized and taken into her Majesty's hands; and that the said C. D. has not any other or more goods or chattels debts credits specialties or sums of

money or any other or more lands or tenements in my bailiwick to the knowledge of the said jurors which can be extended appraised or seized into her Majesty's hands. In witness &c.

G. H. &c.

181.

Warrant on Extent.

County of B. to wit. } —— sheriff of the county aforesaid, to the keeper of the gaol of the said county, and also to —— and Job Doe, my bailiff, greeting: By virtue of her Majesty's writ of extent to me directed I command you and every of you, jointly and severally, that you omit not, &c., but take —— if he shall be found in my bailiwick, and him safely keep, so that I may have his body before the justices of the Queen's Bench Division of her Majesty's High Court of Justice, on the —— day of ——. And also, that you seize and take all and singular the goods and chattels, lands and tenements, debts, credits, specialties, and sums of money, which the said —— or any other person or persons in trust for him, or to his use, have or had on the —— day of —— in the —— year of the reign of her present Majesty; so that I may cause the same to be diligently appraised and extended, and to be taken and seized into her Majesty's hands, that she may retain the same until she be fully satisfied a debt or sum of —— according to the form of the statute made for recovering her Majesty's debts of that nature, *but that you do not sell or dispose of the said goods and chattels, lands and tenements*, until you have other commands from me herein.

Hereof fail not, as you will answer at your peril. Given under the seal of my office, this —— day of —— in the year of our Lord one thousand eight hundred and ——.

182.

Writ of Attachment.

(See Chapter XXIV. section 1, p. 396.)

Judicature Act, 1875, App. (F.), No. 2.

187—. B. No.—

In the High Court of Justice,
—— Division.

Between A. B., plaintiff,
and
C. D. and others, defendants.

Victoria, &c. To the sheriff of —— greeting: We command you to attach C. D. so as to have him before us in the —— Division of our High Court of Justice, wheresoever the said Court shall then be, there to answer to us, as well touching a

contempt which he, it is alleged, hath committed against us, as also such other matters as shall be then and there laid to his charge, and further to perform and abide such order as the said Court shall make in this behalf. And hereof fail not, and bring this writ with you. Witness, &c.

183.

Præcipe.

Judicature Act, 1875, App. (E.), No. 9.

187—. B. No. —.

In the High Court of Justice,
—— Division.

Between A. B., plaintiff,
and
C. D. and others, defendants.

Seal in pursuance of order dated —— day of —— an attachment directed to the sheriff of —— against C. D. for not delivering to A. B.

184.

Warrant on Attachment.

County of B. } — — sheriff of the county aforesaid, to the
to wit. } keeper of the gaol of the said county, and also to —— my bailiffs, greeting: By virtue of a writ of our sovereign lady the Queen, to me directed, I command you and every of you, jointly and severally, that you omit not by reason of any liberty in my bailiwick, but that you or one of you enter the same and attach —— if he shall be found in my bailiwick, and h safely keep, so that I may have h body before —— Her Majesty's High Court of Justice, —— Division, on the —— day of ——, to answer her Majesty concerning divers trespasses, contempts and offences by him done and committed.

Hereof fail not, as you will answer at your peril. Given under the seal of my office, this —— day of —— in the year of our Lord one thousand eight hundred and ——.

By the same sheriff.

Writ indorsed as under.

By rule of court. For contempt in not paying —— the sum of £—— pursuant to a rule of court, and the master's allocatur thereon, with costs of attachment. A bill of costs to be filed herewith. Writ issued —— day of —— 18—.

Beware the defendant be not privileged or protected. This warrant is allowed for one defendant only, and to be executed by no bailiffs but those who have given the said sheriff security.

185.

Writ of Capias ad Satisfaciendum on a Judgment for Plaintiff.

(See Chapter XXIV. section 2, p. 398.)

Reg. Gen. Hil. Term, 1853.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of —— greeting: We command you, that you take C. D., if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at Westminster immediately after the execution hereof, to satisfy A. B. £—— [*the amount of all the monies recovered by the judgment*] which the said A. B. lately in the Queen's Bench Division of our High Court of Justice, recovered against the said C. D., whereof the said C. D. is convicted, together with interest upon the said sum, at the rate of four pounds per centum per annum, from the —— day of ——, in the year of our Lord ——, on which day the judgment aforesaid was entered up, and have you there then this writ.

Witness, —— at Westminster, the —— day of —— in the year of our Lord ——.

186.

Writ of Capias ad Satisfaciendum on a Judgment for Defendant.

Reg. Gen. Hil. Term, 1853.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of —— greeting: We command you, that you take A. B. if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at Westminster immediately after the execution hereof, to satisfy C. D. £——, which lately in the Queen's Bench Division of our High Court of Justice, were awarded to the said C. D., for his costs of defence in an action lately prosecuted in our said Court by the said A. B. against the said C. D., whereof the said A. B. is convicted, together with interest upon the said sum at the rate of four pounds per centum per annum from the —— day of —— in the year of our Lord ——, on which day the judgment aforesaid was entered up, and have you there then this writ.

Witness, —— at Westminster, the —— day of —— in the year of our Lord ——.

187.

Writ of Capias ad Satisfaciendum on a Rule for Payment of Money.

Reg. Gen. Hil. Term, 1853.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of —— greeting: We command you, that you take C. D., if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at Westminster immediately after the execution hereof, to satisfy A. B. £——, which lately in the Queen's Bench Division of our High Court of Justice, by a rule of our said Court dated the —— day of —— in the year of our Lord ——, were ordered to be paid by the said C. D. to the said A. B., and further to satisfy the said A. B. interest upon the said sum at the rate of four pounds per centum per annum from the day and year aforesaid, and have you there then this writ.

Witness, —— at Westminster, the —— day of ——, in the year of our Lord ——.

188.

Writ of Capias ad Satisfaciendum on a Rule for Payment of Money and Costs.

Reg. Gen. Hil. Term, 1853.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of —— greeting: We command you, that you take C. D., if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at Westminster immediately after the execution hereof, to satisfy A. B. £——, which lately in the Queen's Bench Division of our High Court of Justice by a rule of our said Court dated the —— day of —— in the year of our Lord ——, were ordered to be paid by the said C. D. to the said A. B., together with certain costs in the said rule mentioned, which said costs have been taxed and allowed by our said Court at £—— [*the amount of the allocatur or allocaturs, if more than one*], and further to satisfy the said C. D. the last-mentioned sum, together with interest upon the said two several sums at the rate of four pounds per centum per annum from the —— day of —— in the year of our Lord ——, on which day the said costs were taxed, and have you there then this writ.

Witness, —— at Westminster, the —— day of —— in the year of our Lord ——.

189.

Writ of Capias ad Satisfaciendum on a Rule for Payment of Costs only.

Reg. Gen. Hil. Term, 1853.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of —— greeting: We command you, that you take C. D., if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at Westminster immediately after the execution hereof, to satisfy A. B. £—— for certain costs, which by a rule of the Queen's Bench Division of our High Court of Justice, dated the —— day of —— in the year of our Lord ——, were ordered to be paid by the said C. D. to the said A. B., which said costs have been taxed and allowed by our said Court at the said sum, and further to satisfy the said C. D. interest upon the said sum at the rate of four pounds per centum per annum from the —— day of —— in the year of our Lord ——, and have you there then this writ.

Witness, —— at Westminster, on the —— day of ——, in the year of our Lord ——.

190.

Writ of Capias ad Satisfaciendum on a Judgment in an Inferior Court, Removed into one of the Superior Courts.

Reg. Gen. Hil. Term, 1853.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of —— greeting: We command you, that you take C. D., if he shall be found in your bailiwick, and him safely keep so that you may have his body before us at Westminster immediately after the execution hereof, to satisfy A. B. £——, which the said A. B. lately in —— [*insert the style of the Court*], for the judgment of the said Court recovered against the said C. D., whereof the said C. D. is convicted; and which judgment was afterwards, on the —— day of —— in the year of our Lord ——, removed into the Queen's Bench Division of our High Court of Justice, by virtue of an order of that our said Court, in pursuance of the statute in such case made and provided, and the costs and charges attendant upon the application for the said order and upon the said removal were on the —— day of —— in the year of our Lord ——, taxed and allowed by the Queen's Bench Division of our High Court of Justice at ——, and further to satisfy the said A. B. the said £——, together with interest upon the said two several sums at the rate of four pounds per centum per annum from the said —— day of —— in the year of our Lord ——, and have you there then this writ.

Witness, —— at Westminster, the —— day of —— in the year of our Lord ——.

191.

Writ of Capias ad Satisfaciendum on a Rule or Order of an Inferior Court for Payment of Money, removed into one of the Superior Courts.

Reg. Gen. Hil. Term, 1853.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of —— greeting: We command you, that you take C. D., if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at Westminster immediately after the execution hereof, to satisfy A. B. £——, which lately in —— [*insert the style of the Court*], by a rule [*or* "order"] of the said Court, intituled —— [*as the case may be*], were ordered to be paid by the said C. D. to the said A. B., and which rule [*or* "order" was afterwards, on the —— day of —— in the year of our Lord —— removed into the Queen's Bench Division of our High Court of Justice, in pursuance of the statute in such case made and provided, and the costs and charges attendant upon the application for the said last mentioned order and upon the said removal were on the —— day of —— in the year of our Lord ——, taxed and allowed by the Queen's Bench Division of our High Court of Justice, at £——, and also to satisfy the said A. B. the said £——, together with interest on the said two several sums at the rate of four pounds per centum per annum from the said —— day of —— in the year of our Lord ——, and have you there then this writ.

Witness, —— at Westminster, the —— day of —— in the year of our Lord ——.

192.

Writ of Capias ad Satisfaciendum on a Rule or Order of an Inferior Court for Payment of Money and Costs, removed into one of the Superior Courts.

Reg. Gen. Hil. Term, 1853.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of —— greeting: We command you that you take C. D., if he shall be found in your bailiwick, and him safely keep so that you may have his body before us at Westminster immediately after the execution hereof, to satisfy A. B. £——, which lately in [*Insert the style of the Court*], by a rule [*or* "order"] of the said Court, intituled, &c. [*as the case may be*], were by the said Court ordered to be paid by the said C. D. to the said A. B., and also £—— for the costs of the said rule, by the said Court also ordered to be paid by the said C. D. to the said A. B., which said rule [*or* "order"] was afterwards, on the —— day of —— in the year of our Lord ——, removed into the

Queen's Bench Division of our High Court of Justice, by an order of that our said Court in pursuance of the statute in such case made and provided, and the costs and charges attendant upon the application for the said last-mentioned order and upon the said removal were on the —— day of —— in the year of our Lord ——, taxed and allowed by the Queen's Bench Division of our High Court of Justice at £——, and also to satisfy the said A. B. the said £——, together with interest on the said three several sums at the rate of four pounds per centum per annum from the —— day of —— in the year of our Lord ——, and have you there then this writ.

Witness, —— at Westminster, the —— day of —— in the year of our Lord ——.

193.

Warrant to apprehend Person charged with Indictable Offence under 11 & 12 *Vict. c.* 42, *s.* 1.

County of B. to wit. } To the constable of —— and to all other peace officers in the said county —— of ——.

Whereas —— of —— hath this day been charged upon oath before the undersigned —— of her Majesty's justices of the peace in and for the said county —— of —— for that he, on the —— day of —— one thousand eight hundred and —— at —— did ——.

These are therefore to command you, in her Majesty's name, forthwith to apprehend the said ——, and to bring him before —— or some other of her Majesty's justices of the peace in and for the said county of —— to answer unto the said charge, and to be further dealt with according to law.

Given under —— hand and seal this —— day of —— in the year of our Lord one thousand eight hundred and —— at —— in the county —— aforesaid.

Back of Warrant.

County of B. to wit. } Whereas proof upon oath hath this day been made before me, one of her Majesty's justices of the peace for the said county —— of —— that the name of —— to the within warrant subscribed is of the handwriting of the justice of the peace within mentioned: I do therefore hereby authorize —— who bringeth me this warrant, and all other persons to whom this warrant was originally directed, or by whom it may lawfully be executed, and also all constables and other peace officers of the said county —— of —— to execute the same within the last-mentioned county,* —— and to bring the said —— if apprehended within the said county, —— before me, or before some other justice or justices of the

* The words following this asterisk are to be used only where the justice backing the warrant shall think fit, and may be omitted in backing English warrants in Ireland, Scotland, &c., or in backing Irish or Scotch warrants, &c., in England.

peace of the said county, —— to be dealt with according to law.

Given under my hand this —— day of —— in the year of our Lord one thousand eight hundred and ——.

194.

REGULÆ GENERALES

Under the Debtors Act, 1869.

Michaelmas Term, 1869.

In pursuance of the Common Law Procedure Act, 1852, and the Debtors Act, 1869, it is ordered, that on and after the 1st day of January, 1870, the following rules shall be in force for regulating the practice under and carrying into effect the first part of the said Debtors Act, 1869 :—

1. All applications to commit to prison under section 5 shall, in the first instance, be made by summons before a judge, which shall specify the date and other particulars of the judgment or order for non-payment of which the application is made, together with the amount due, and be indorsed with the particulars required by Rule 73 of H. T. 1853.

2. The service of the summons, whenever it may be practicable, shall be personal; but if it appear to the judge that reasonable efforts have been made to effect personal service, and either that the summons has come to the knowledge of the debtor, or that he wilfully evades service, an order may be made as if personal service had been effected, upon such terms as to the judge may seem fit.

3. Proof of the means of the debtor shall, whenever practicable, be given by *affidavit*; but, if it appear to the judge, either before or at the hearing, that a *viva voce* examination, either of the debtor or of any other person, or the production of any document, is necessary or expedient, an order may be made commanding the attendance of any such person before the judge, at a time and place to be therein mentioned, for the purpose of being examined on oath touching the matter in question, and for the production of any such document, subject to such terms and conditions as to the judge may seem fit. The disobedience to any such order shall be deemed a contempt of court, and punishable accordingly.

4. The order of committal (which may be in the form A. in the schedule, or to the like effect,) shall, before delivery to the sheriff, be indorsed with the particulars required by Rule 73 of H. T. 1853. Concurrent orders may be issued for execution in different counties. The sheriff and officer shall be entitled to the same fees in respect thereof as are now payable upon a *ca. sa.*

5. Upon payment of the sum or sums mentioned in the order (including the sheriff's fees in like manner as upon a *ca. sa.*), the debtor shall be entitled to a certificate in the form B. in the schedule, or to the like effect, signed by the attorney

in the cause of the creditor, or signed by the creditor, and attested by an attorney on his behalf, or a justice of the peace.

6. Orders to arrest under the 6th section (which may be in the form C. in the schedule, or to the like effect) shall be made upon *affidavit* and *ex parte*, but the defendant shall be at liberty, at any time after the arrest, to apply to rescind or vary the order, or to be discharged from custody, or for such other relief as may be just; such orders shall, before delivery to the sheriff, be indorsed with the particulars required by Rule 73 of H. T. 1853. Concurrent orders may be issued for arrest in different counties. The sheriff and officer shall be entitled to the same fees in respect thereof as are now payable upon a *capias*.

7. The security to be given by the defendant may be a deposit in court of the amount mentioned in the order, or a bond to the plaintiff by the defendant and two sufficient sureties (or, with leave of a judge, more than two), or, with the plaintiff's consent, any other form of security. The plaintiff may, within four days after receiving particulars of the names and addresses of the proposed sureties, and the form of the proposed bond, give notice that he objects thereto, stating therein in what particulars; and, in case of his so doing, the sufficiency of the security shall be determined by the master, who shall have power to award the costs of such reference to either party. It shall be the plaintiff's duty to obtain an appointment for that purpose, and, unless he does so within four days after giving notice of objection, the security shall be deemed sufficient.

8. The money deposited, and the security, and all proceedings thereon, shall be subject to the order and control of the court, or a judge.

9. Unless otherwise ordered, the costs of and consequent on an order to arrest, shall be costs in the cause.

10. Upon payment into court of the amount mentioned in the order, a receipt shall be given by the proper officer; and upon receiving the bond, or other security, a certificate to that effect shall be given, signed or attested by the plaintiff's attorney; and the delivery of such receipt or certificate to the sheriff shall entitle the defendant to be discharged out of custody.

11. The sheriff or other officer named either in an order of committal or an order to arrest under the 6th section shall, within two days after the arrest, indorse on the order the true date of such arrest.

A. E. Cockburn,
W. Bovill,
Fitzroy Kelly,
W. F. Channell,
Colin Blackburn,
H. S. Keating,
John Mellor,
M. E. Smith,
Robert Lush,
James Hannen.

195.

Reg. Gen. Hil. Term, 1853, *ss.* 70 –78.

Execution.

70. It shall not be necessary, before issuing execution upon any judgment whatever, to enter the proceedings upon any roll.

71. No writ of execution shall be issued till the judgment paper, postea, or inquisition, as the case may be, has been seen by the proper officer, nor shall any writ of execution be issued without a præcipe being filed with the proper officer.

72. Every writ of execution shall bear date on the day on which the same shall be issued, and shall be tested in the name of the Lord Chief Justice or of the Lord Chief Baron of the court from which the same shall issue, or in case of a vacancy of such office, then in the name of the senior puisne judge of the said court, and may be made returnable on a day certain in term.

73. Every writ of execution shall be endorsed with the name and place of abode or office of business of the attorney actually suing out the same, and in case such attorney shall not be an attorney of the court in which the same is sued out, then also with the name and place of abode or office of business of the attorney of such court in whose name such writ shall be taken out; and when the attorney actually suing out any writ shall sue out the same as agent for an attorney in the country, the name and place of abode of such attorney in the country shall also be indorsed upon the said writ; and in case no attorney shall be employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be, mentioning the city, town or parish, and also the name of the hamlet, street, and number of the house of such plaintiff or defendant's residence, if any such there be.

74. Writs of capias *ad satisfaciendum* for the purposes of outlawry on final process, or to fix bail, must be made returnable on a day certain in term, and may be so returnable on any day in term, and it shall be sufficient for either purpose that there be eight days between the teste and return.

75. A writ of capias *ad satisfaciendum* to fix bail shall have eight days between the teste and return, and must, in London or Middlesex, be entered four clear days in the public book at the sheriff's office.

76. Every writ of execution shall be indorsed with a direction to the sheriff, or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of four pounds per centum per annum from the time when the judgment was entered up, or if it was entered up before the 1st of October, 1838, then from that day; provided that in cases where there is an agreement between

the parties that more than four per cent. interest shall be secured by the judgment, then the indorsement may be accordingly to levy the amount of interest so agreed.

77. In cases of an assessment of further damages, pursuant to the statute of 8 & 9 Will. 3, it shall be stated in the body of the writ of execution that the sheriff, or other officer or person to whom the writ is directed, is to levy interest on the damages assessed and costs taxed in that behalf, at the rate of four pounds per centum per annum from the day on which execution was awarded, unless execution was awarded before the 1st of October, 1838, and in that case from that day.

Revivor and Scire Facias.

78. A plaintiff shall not be allowed a rule to quash his own writ of *scire facias* or revivor, after a defendant has appeared, except on payment of costs.

196.

Reg. Gen. Mich. Term, 1869, *Sch. A.*

Upon hearing, &c.,* I do order that the said A. B. be, for default in payment of the debt hereinafter mentioned, committed to prison for the term of (six) weeks from the date of his arrest, including the day of such date, or until he shall pay £——, being the amount of [an instalment due to the said C. D. upon *or*] a judgment of the Court of —— (*or* an order made by ——), bearing date the —— day of——, together with £—— for costs of this order, and sheriff's fees for the execution thereof. And I order that the sheriff of (Middlesex) do take the said A. B., for the purpose aforesaid, if he shall be found within his bailiwick.

Dated, &c.

197.

Reg. Gen. Mich. Term, 1869, *Sch. B.*

I certify that A. B., now in the gaol of —— upon an order of the Honorable Mr. Justice ——, at the suit of C. D., for non-payment of a debt of —— pounds, has satisfied the said debt, together with the costs mentioned in the said order and sheriff's fees.

Dated, &c.

E. F. of, &c.
Attorney for the said C. D.
or
C. D., of, &c.

Witness to the signature of C. D.,
G. H., of &c., his Attorney,
or
J. K., of &c.,
Justice of the Peace for ——.

* Christian and surname of the debtor, and of the party claiming.

198.

Reg. Gen. Mich. Term, 1869, *Sch. C.*

Upon reading the affidavit of, &c., I do order that the defendant be arrested and imprisoned for —— months from the date of his arrest, including the day of such date, unless and until he shall sooner deposit in Court the sum of £—— by way of security, or give to the plaintiff a bond executed by him* and two sufficient sureties in the penalty of † —— or some other security satisfactory to the plaintiff, that he will not go out of England without the leave of the Court [or *that any sum recovered against him in this action shall be paid*, or *that he shall be rendered to prison*]. And I order that the sheriff of (Middlesex) do within one calendar month from the date hereof, including the day of such date and not afterwards, take the defendant for the purpose aforesaid, if he shall be found in the said sheriff's bailiwick.

199.

Bond on Order to Arrest.

Know all men by these presents that we, —— are held and firmly bound to —— sheriff of the county of —— in the sum of —— of good and lawful money of Great Britain to be paid to the said sheriff, or his certain attorney, executors, administrators, or assigns, for which payment to be well and faithfully made we bind ourselves, and each of us for himself, in the whole and every part thereof, and the heirs, executors and administrators of us and every of us, firmly by these presents, sealed with our seals. Dated this —— day of —— one thousand eight hundred and —— taken by the said sheriff in the bailiwick of the said sheriff, by virtue of the order to arrest issued out of her Majesty's High Court of Justice, —— Division, bearing date at Westminster and —— to the said sheriff directed and delivered, against the said ——. And whereas a copy of the said order, together with every memorandum or notice subscribed thereto and all indorsements thereon, was on execution thereof duly delivered to the said ——. And whereas he is by the said writ required to cause special bail to be put in for him in the said court, within eight days after execution thereof on him inclusive of the day of such execution ——. Now the condition of this obligation is such that if the said —— do cause special bail to be put in for him to the said action in her Majesty's said court, as re-

* With leave of a judge there may be more than two sureties.

† When the action is for a penalty or sum in the nature of a penalty, other than a penalty in respect of any contract, this must be sufficient to include the probable costs of the action, and the terms must be those in italics.

quired by the said order, then this present obligation to be void and of no force, otherwise to stand and remain in full force, vigour, and effect.

Sealed and delivered in the presence of ——.

200.

Assignment by Sheriff of Bond.

I, the within-named sheriff, at the request of the within-named plaintiff, assign over to —— this bail-bond, pursuant to the statute. In witness whereof I have hereto set my hand and seal this —— day of ——, 18—.

G. H., esquire, sheriff.

Sealed and delivered in the presence of A. B.

201.

Return of Non est Inventus.

The within-named C. D. is not found in my bailiwick.

The answer of G. H., esquire, sheriff.

202.

Return of Non est inventus as to one Defendant, and Mandavi Ballivo as to another.

The within-named C. D. is not fonnd in my bailiwick; and as regards the taking of the within-named J. K. I have commanded L. M. bailiff of the liberty of —— who, &c.

The answer of ——.

203.

Return of Cepi Corpus and Discharge out of Custody.

I have taken the within-named C. D., and committed him to the common gaol of our lady the Queen of her castle of H., there to be kept in safe custody, so that I might have his body before the justices of her Majesty's High Court of Justice, —— Division, at Westminster, as within I am commanded; and I do hereby further certify and return, that afterwards, that is to say, on the —— day of ——, A.D. 18—, by command of a certain other writ of our lady the Queen to me directed and delivered, a transcript whereof is annexed to this writ, I caused the said C. D. to be delivered from that prison, and therefore the body of the said C. D. before, &c., at the day and place within contained, I cannot have, as within I am commanded.

The answer, &c.

204.

Return of Privileged Person.

Before and at the time of the coming of this writ to me directed, the within-named C. D. was and still is a peer of the realm, having privilege of parliament ("a menial servant of her Majesty the Queen," *or the like,*) wherefore the body of the said C. D. before our lady the Queen, on the day and at the place within contained, I cannot have as within I am commanded.

The answer, &c.

205.

Return of Cepi Corpus et Paratum habeo.

On the —— day of ——, A.D. 18—, I took the within-named C. D. and forthwith delivered to him a copy of this writ, and whose body I have already as within I am commanded.

The answer of G. H., esquire, sheriff.

On the —— day of ——, A.D. 18—, I took the within-named C. D. and forthwith delivered to him a copy of this writ, and whose body is now in the county gaol at A.

The answer of G. H., esquire, sheriff.

206.

Return of prior Removal by Habeas Corpus.

By virtue of this writ to me directed, I did, on the — day of ——, take the within-named C. D. and did safely keep him in her Majesty's prison in and for the county of B., until afterwards, to wit, on, &c., I received her said Majesty's writ of *habeas corpus cum causâ*, commanding me to have the body of the said C. D. before the Hon. ——, at his chambers in Lincoln's Inn, London, immediately after the receipt of that writ: By virtue of which said writ, on the day and at the place therein mentioned, I had the body of the said C. D. before, &c., who then received of me the body of the said C. D., and then committed him to the Queen's prison (*or as the case may be*), and then wholly discharged me from further keeping him under my custody: Wherefore I cannot have the body of the said C. D. before our said lady the Queen at the day and place within contained, as within I am commanded.

The answer of G. H., esquire, sheriff.

207.

Return of Languidus.

By virtue of this writ to me directed, I made my certain warrant in writing to A. B. and E. F., my bailiffs, jointly and severally, to take and arrest the within-named C. D.; by virtue of which said warrant the said A. B. and E. F. proceeded to an asylum for lunatics, where the said defendant then was, in order to arrest him; and then there found the said C. D. insane, and in a desperate and raving state, so that he could not be taken or removed without danger to the life of the officer. And the within-named C. D. then was and still remains so sick, weak, and infirm, that, without peril and danger of his life, I cannot have his body before our said lady the Queen at the day and place within contained, as I am within commanded.

The answer of G. H., esquire, sheriff.

208.

Return of Rescue.

By virtue of this writ to me directed, I made my certain warrant in writing, under my seal of office, to E. F. and A. B., my bailiffs, jointly and severally, to take and arrest the within-named C. D.; by virtue of which warrant the said E. F. and A. B. afterwards, to wit, on the —— day of —— last, at ——, in my county, and within my bailiwick, took and arrested the within-named C. D. according to the exigency of the said writ, and safely kept him in their custody until J. K., of ——, and divers other persons to my said bailiffs unknown, on ——, at —— aforesaid, with force and arms assaulted and ill-treated my said bailiffs, and the said C. D. out of the custody of my said bailiffs then and there rescued, and the said C. D. then and there with force and arms rescued himself, and escaped out of the custody of my said bailiffs, against the peace of our lady the now Queen, and afterwards the said C. D. is not found in my bailiwick.

The answer of G. H., esquire, sheriff.

209.

Return of Mandavi Ballivo.

By virtue of this writ to me directed and delivered, I have made my mandate to the bailiff of the liberty of ——, in my county, to take and arrest the within-named C. D.; which said bailiff hath the full return of all writs and process, and the execution of the same within the liberty aforesaid, so that no execution of this writ can be made by me within the said liberty; which said bailiff has not yet given me any answer thereto (*or*, "hath answered that the within-named C. D. is not found in his bailiwick;" *or*, "that he hath taken the within-named C. D. whose body he hath ready," &c.)

210.

Writ De Contumace Capiendo.

(See Chapter XXIV. section 3, p. 405.)

53 Geo. 3, c. 127, s. 1.

Whereas it is expedient that excommunication, together with all proceedings following thereupon, should, saving in certain cases, be discontinued, and that other proceedings should be substituted in lieu thereof; and that certain other regulations should be made in the proceedings of the ecclesiastical Courts; and that more convenient modes of recovering tithes and church rates in certain cases should be provided: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal and commons, in this present Parliament assembled, and by the authority of the same, that, from and after the passing of this Act, excommunication, together with all proceedings following thereupon, shall in all cases, save those hereafter to be specified, be discontinued throughout that part of the United Kingdom of Great Britain and Ireland called England; and that, in all causes which according to the laws of this realm are cognizable in the ecclesiastical Courts, when any person or persons having been duly cited to appear in any ecclesiastical Court, or required to comply with the lawful orders or decrees, as well final as interlocutory, of any such Court, shall refuse or neglect to pay obedience to such lawful orders or decrees, or when any person or persons shall commit a contempt in the face of such Court, no sentence of excommunication shall be given or pronounced, saving in the particular cases hereafter to be specified, but instead thereof it shall be lawful for the judges or judge who issued out the citation, or whose lawful orders or decrees have not been obeyed, or before whom such contempt in the face of the Court shall have been committed, to pronounce such person or persons contumacious and in contempt, and within ten days to signify the same, in the form to this Act annexed, to his Majesty in Chancery, as hath heretofore been done in signifying excommunications; and thereupon a writ *de contumace capiendo* in the form to this Act annexed shall issue from the Court of Chancery, directed to the same persons to whom the writs *de excommunicato capiendo* have heretofore been directed; and the same shall be returnable in like manner as the writ *de excommunicato capiendo* hath been by law returnable heretofore, and shall have the same force and effect as the said writ; and all rules and regulations not hereby altered, now by law applying to the said writ and the proceedings following thereupon, and particularly the several provisions contained in a certain Act passed in the fifth year of Queen Elizabeth, intituled: "An Act for the due execution of the writ *de excommunicato capiendo*," shall extend and be applied to the said writ *de contumace capiendo*, and the proceedings following thereupon, as if the same were herein

particularly repeated and enacted; and the proper officers of the said Court of Chancery are hereby authorised and required to issue such writ *de contumace capiendo* accordingly; and all sheriffs, gaolers, and other officers are hereby authorised and required to execute the same by taking and detaining the body of the person against whom the said writ shall be directed to be executed; and upon the due appearance of the party so cited and not having appeared as aforesaid, or the obedience of the party so cited and not having obeyed as aforesaid, or the due submission of the party so having committed a contempt in the face of the Court, the judges or judge of such ecclesiastical Court shall pronounce such party absolved from the contumacy and contempt aforesaid, and shall forthwith make an order upon the sheriff, gaoler, or other officer in whose custody he shall be, in the form to this Act annexed, for discharging such party out of custody; and such sheriff, gaoler, or other officer shall, on the said order being shown to him, so soon as such party shall have discharged the costs lawfully incurred by reason of such custody and contempt, forthwith discharge him.

211.

Writ Ne Exeat Regno.

(See Chapter XXIV., section 4, p. 406.)

Victoria, &c.: Because we are given to understand that C. D. purposes to go over towards foreign parts (to prosecute there many things prejudicial and hurtful to us and many of our people): we willing to resist his malice in this behalf command you firmly enjoining that you cause the aforesaid C. D. to come corporally before you and by what means you can compel him to find sufficient manucaptors who will bail him under a certain penalty to be reasonably imposed on them by you, for which you will answer to us. In witness, &c.

Or thus—

And him the said C. D. to find sufficient security under the penalty of £—— to be paid to our use or any one of them in the penalty of &c. that he go not towards foreign parts without our special licence, nor presume to prosecute or cause to be attempted to be prosecuted anything whatsoever there which may be able to prevail to the contempt of us or to the prejudice or damage of our people, nor send any person or persons there for that purpose. And if he shall refuse to do this before you that then you do commit him the said C. D. to our next gaol to be kept safely in the same until he will freely do so; and when you shall have so taken that security thereupon without delay distinctly and openly inform us thereof, or certify in our Chancery under your seal remitting to us this writ, &c. Witness, &c.

212.

Return to Ne Exeat Regno.

I have caused the within-named A. corporally to come before me, and he found bail in the penalty of £—— according to the condition of the within writ.

The answer of ——, sheriff.

213.

Warrant on Ne Exeat Regno.

County of B. } —— sheriff of the county aforesaid, to the
to wit. } keeper of the gaol of the said county, and also to —— my bailiffs, greeting: By virtue of a writ of our sovereign lady the Queen, to me directed, bearing date the —— day of —— one thousand eight hundred and eighty —, I command you, and each of you, jointly and severally, that you or one of you do without delay arrest the body of —— and keep him safe, until he gives sufficient bail or security in the sum of —— that he will not go or attempt to go into parts beyond the seas without leave of the —— Division of the High Court of Justice of our said lady the Queen. And in case he refuse to give such bail or security, then I further command you, each and every of you, that you commit him to the prison of my county, there to be kept in safe custody until he shall do it of his own accord, and when he shall have given such security, you are forthwith to make the same known to me so that I may make and return a certificate thereof to the said Court of our said lady the Queen distinctly and plainly under my seal of office.

Hereof fail not, as you will answer at your peril. Given under the seal of my office, this —— day of —— in the year of our Lord one thousand eight hundred and ——.

Writ indorsed by the Lord Chancellor of Great Britain at the instance of ——.

Take security in the sum of £——.

214.

Writ of Possession.

(See Chapter XXIV., section 5, p. 407.)

Judicature Act, 1875, App. (F.), No. 7.

187—. B. No. —.

In the High Court of Justice,
—— Division.

Between A. B., plaintiff,
and
C. D. and others, defendants.

Victoria — — to the sheriff of —— greeting: Whereas lately in our High Court of Justice, by a judgment of the —

Division of the same Court [A. B. recovered] *or* [E. F. was ordered to deliver to A. B.] possession of all that —— with the appurtenances in your bailiwick: Therefore we command you that you omit not by reason of any liberty of your county, but that you enter the same, and without delay you cause the said A. B. to have possession of the said lands and premises with the appurtenances. And in what manner you have executed this our writ make appear to the judges of the Queen's Bench Division of our High Court of Justice immediately after the execution hereof, and have you there then this writ. Witness, &c.

215.

Writ of Habere Facias in Ejectment upon a Judgment by Default.

Reg. Gen. Hil. Term, 1853.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of —— greeting: Whereas A. B. lately in the Queen's Bench Division of our High Court of Justice by the judgment of the same Court, recovered possession of —— [*here describe the property as in the writ of ejectment, or if part only of the land has been recovered, describe such part in the judgment*], with the appurtenances, in your bailiwick: Therefore we command you that without delay you cause the said A. B. to have possession of the said land and premises with the appurtenances. And in what manner you have executed this our writ make appear to us at Westminster immediately upon the execution hereof, and have you there then this writ.

Witness, —— at Westminster, the —— day of —— in the year of our Lord ——.

216.

Writ of Habere Facias and Fieri Facias for Costs upon a Judgment for Plaintiff in Ejectment, where Defendant has appeared.

Reg. Gen. Hil. Term, 1853.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of —— greeting: Whereas A. B. lately in the Queen's Bench Division of our High Court of Justice recovered possession of —— [*here describe the property as in the writ of ejectment, or, if part only of the land has been recovered, describe such part as in the judgment*], with the appurtenances, in your bailiwick, in an action of ejectment at the suit of the said A. B. against C. D.; Therefore we command you that without delay you cause the said A. B. to have possession of the said land and premises with the appurtenances; and we also command

you, that of the goods and chattels of the said C. D. in your bailiwick you cause to be made £——, which the said A. B. lately in our said Court recovered against the said C. D. for the said A. B.'s costs of the said suit, whereof the said C. D. is convicted, together with interest upon the said sum at the rate of four pounds per centum per annum from the —— day of —— in the year of our Lord ——, on which day the judgment aforesaid was entered up, and have that money and interest aforesaid in our said Court immediately after the execution hereof, to be rendered to the said A. B.; and that you do all things as by the statute passed in the second year of our reign you are authorised and required to do in that behalf. And in what manner you shall have executed this our writ make appear to us at Westminster immediately after the execution hereof, and have you there then this writ.

Witness, —— at Westminster, the —— day of —— in the year of our Lord ——.

217.

Writ of Habere Facias Possessionem on a Rule to deliver Possession of Land pursuant to an Award (*a*).

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of ——— greeting. We command you that you omit not by reason of any liberty of your county, but that you enter the same, and without delay you cause *A. B.* to have possession of [*here describe the lands and tenements as in the rule for the delivery of possession*], and which lands and tenements, by a rule of the Queen's Bench Division of our High Court of Justice, dated the ——— day of ——— 18—, made pursuant to the sixteenth section of the Common Law Procedure Act, 1854, *E. F.* [*the party named in the rule*] was ordered to deliver possession to the said *A. B.*; and in what manner you have executed this our writ make appear to us in the Queen's Bench Division of our High Court of Justice, at Westminster, immediately after the execution hereof, and have you there then this writ. Witness —— at Westminster, the —— day of —— in the year of our Lord ——.

(*a*) See C. L. P. A. 1854, s. 16.

218.

Præcips.

Writ of Possession.

Judicature Act, 1875, App. (F.), No. 7.

187—. B. No. —.

In the High Court of Justice,
—— Division.
Between A. B., plaintiff,
and
C. D. and others, defendants.

Seal a writ of possession directed to the sheriff of —— to deliver possession to A. B. of ——.

Judgment dated —— day of ——.

219.

Warrant on Writ of Possession on Judgment by Default.

County of B. } —— sheriff of the county aforesaid, to ——
to wit. } my bailiffs, greeting: By virtue of a writ of our sovereign lady the Queen to me directed, reciting that —— lately in our said lady the Queen's High Court of Justice, —— Division, by the judgment of the same court recovered possession of —— in my bailiwick, I command you, and every of you, that you omit not by reason of any liberty of your county, but that you enter the same and without delay you deliver to the said —— possession of the said land and premises with the appurtenances and render me an account of what you shall do herein, that I may make the same appear to our said lady the Queen at Westminster immediately upon the execution thereof.

Hereof fail not. Given under the seal of my office, this —— day of —— in the year of our Lord one thousand eight hundred and eighty ——.

Take poundage of one shilling in the pound, according to the yearly value.

220.

Warrant on Possession, and Fi. Fa. for Costs.

County of B. } —— sheriff of the county aforesaid, to ——
to wit. } my bailiff, greeting: By virtue of a writ of our sovereign lady the Queen to me directed, bearing date the —— day of ——one thousand eight hundred and ——, reciting that —— lately in our said lady the Queen's High Court of Justice, —— Division, recovered possession of —— in my bailiwick, in an action of ejectment against ——, I command you, each and every of you, that without delay you any or one of you deliver

to the said —— possession of the said land and premises with the appurtenances. I also command you, each and every of you, that of the goods and chattels of the said —— in my bailiwick you any or one of you cause to be made the sum of —— for the said —— costs of the said suit, together with interest upon the said sum, at the rate of four pounds *per centum per annum* from the —— day of —— one thousand eight hundred and ——, so that I may have that money and interest aforesaid, in our lady the Queen's said court immediately after the execution hereof, to be rendered to the said ——. And that you execute this warrant so that I may do all such things as by the statute passed in the second year of our said lady the Queen's reign, I am authorized and required to do in this behalf, and render me an account of what you shall do herein, that I may make the same appear to our said lady the Queen at Westminster, immediately after the execution hereof.

Herewith fail not as you will answer at your peril. Given under the seal of my office, this —— day of —— in the year of our Lord one thousand eight hundred and ——.

Before you levy on the goods and chattels of the defendant beware he is not an ambassador, or servant to an ambassador, or otherwise privileged or protected.

The writ is in force for one year only from the date of it, unless renewed.

221.

Bond of Indemnity.

Know all men by these presents that we A. B. of —— C. D. of —— and E. F. of —— in the county of B. are held and firmly bound to G. H. of —— high sheriff of the said county in the sum of £—— to be paid to the said G. H. or to his certain attorney, executors, administrators, or assigns, for which payment to be well and truly made we bind ourselves and each of us our and each of our heirs executors and administrators and every of them jointly and severally firmly by these presents, sealed with our seals and dated this &c.

Whereas on the —— of —— A.D. 18— a writ of *hab. fac. poss.* was delivered to the said G. H. at the suit of the above-named A. B.; and whereas also the above-named A. B. hath applied to and requested the said high sheriff to deliver to him under the said writ certain tenements in his bailiwick, that is to say ——, which he hath consented to do upon being indemnified for so doing.

Now the condition of the above written obligation is such that if the above bounden A. B., C. D. and E. F. or any of them their or any of their heirs executors or administrators do and shall from time to time and at all times hereafter well and sufficiently indemnify the said G. H. from all costs and expenses to be incurred or to which he may become liable by

reason of the premises then that the above written obligation to be void, otherwise to stand and remain in full force vigour and effect.

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

Signed sealed and delivered in the presence of me. } ——.

222.

Return to Writ of Possession.

By virtue of this writ to me directed on the —— day of —— in the year within written I caused the within-named A. B. to have possession of —— with the appurtenances as within I am commanded. Also I have caused to be levied of the goods and chattels of the said J. K. the sum of £——which money I have ready as within I am commanded.

The answer of ——.

223.

Writ of Delivery.

(See Chapter XXIV., section 6, p. 411.)

Judicature Act, 1875. B. No.—.

In the High Court of Justice,
—— Division.

Between A. B., plaintiff,
and
C. D. and others, defendants.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to the sheriff of —— greeting: We command you that without delay you cause the following chattels, that is to say [*here enumerate the chattels recovered by the judgment for the return of which execution has been ordered to issue*], to be returned to A. B., which the said A. B. lately in our High Court of Justice recovered against C. D. [*or* C. D. was ordered to deliver to the said A. B.] in an action in the Queen's Bench Division of our said court. And we further command you, that, if the said chattels cannot be found in your bailiwick, you distrain the said C. D. by all his lands and chattels in your bailiwick, so that neither the said C. D. nor any one for him do lay hands on the same until the said C. D. render to the said A. B. the said chattels; and in what manner you shall have executed this our writ make appear to the judges of the Queen's Bench Division of our High Court of Justice immediately after the execution hereof, and have you there then this writ. Witness, &c.

224.

Præcipe.

Writ of Delivery.

Judicature Act, 1875, App. (E.), No. 8.

187—. B. No. —.

In the High Court of Justice,
Queen's Bench Division.

Between A. B., plaintiff,
and
C. D. and others, defendants.

Seal a writ of delivery directed to the sheriff of — to make delivery to A. B. of —.

225.

Sessions Estreat Roll.

(See Chapter XXIV., section 9, p. 417.)

County of B. to wit. } —— sheriff of the said county, to the keeper of the gaol of the said county, and also to —— and ——, my bailiffs, greeting: By virtue of her Majesty's writ to me directed, I command you that you omit not by reason of any liberty in my bailiwick, but that you enter the same, and of the goods and chattels, lands and tenements of the persons in the schedule hereunder writtten named, you cause to be levied the debts and sums of money charged, so that I may have the same ready for payment at the next General Quarter Sessions of the peace, to be paid over in such manner as any two or more of the Lords Commissioners of her Majesty's Treasury may direct. And if the said debts, or any of them, cannot be levied by reason of the insufficiency of the goods and chattels, then that you take the bodies of the parties refusing to pay the aforesaid debts, and lodge them in her Majesty's gaol, there to await the decision of the justices at the next General Quarter Sessions, unless the parties shall become bound with sufficient sureties for their appearance at such sessions. Hereof fail not, as you will answer at your peril. Given under the seal of my office, the —— day of —— 18—.

By the same sheriff.

The Schedule referred to:—

	£	s.	d.
Of —— of —— in the county of —— because — he went not to the General Quarter Sessions of the peace holden at —— aforesaid on the —— day of —— 18— to give evidence against —— for —— as by recognizance — undertook.			

226.

Writ of Venditioni Exponas.

(See Chapter XXIV., section ii., p. 419.)

Judicature Act, 1875, App. (F.), No. 3.

187—. B. No. —.

In the High Court of Justice.
Queen's Bench Division.

Between A. B., plaintiff,
and
C. D. and others, defendants.

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of —— greeting: Whereas by our writ we lately commanded you that of the goods and chattels of C. D. [*here recite the fieri facias to the end*]. And on the——day of—— you returned to us in the Queen's Bench Division of our High Court of Justice aforesaid, that by virtue of the said writ to you directed you had taken goods and chattels of the said C. D. to the value of the money and interest aforesaid, which said goods and chattels remained in your hands unsold for want of buyers. Therefore we, being desirous that the said A. B. should be satisfied his money and interest aforesaid, command you that you expose to sale and sell or cause to be sold the goods and chattels of the said C. D. by you in form aforesaid taken, and every part thereof, for the best price that can be gotten for the same, and have the money arising from such sale before us in our said court of justice immediately after the execution hereof, to be paid to the said A. B. And have there then this writ.

Witness Ourself at Westminster the —— day of —— in the —— year of our reign.

227.

Præcipe.

Venditioni Exponas.

Judicature Act, 1875, App. (E.), No. 3.

188—. B. No. —.

In the High Court of Justice,
Queen's Bench Division.

Between A. B., plaintiff,
and
C. D. and others, defendants.

Seal a writ of *venditioni exponas* directed to the sheriff of —— to sell the goods and chattels of C. D. taken under a writ of *fieri facias* in this action, tested —— day of ——.

X. Y.,
Solicitor for ——.

228.

Warrant on Venditioni Exponas.

County of B. } —— esquire, sheriff of the county aforesaid,
to wit. } to —— and ——, my bailiffs, greeting: By virtue of her Majesty's writ of *venditioni exponas* to me directed I command you that you immediately expose to sale and sell the goods and chattels late the property of ——, which you have in your custody by virtue of a warrant to you directed on a writ of —— issued out of the Queen's Bench Division of her Majesty's High Court of Justice, at Westminster, at the suit of —— for ——, provided nevertheless that you do not sell the said goods and chattels for a less sum than —— at which they were appraised, so that I may retain the monies arising from the sale thereof, and have the same before the said High Court, on —— in pursuance of the said writ, Hereof fail not. Given under the seal of my office, this —— day of —— in the year of our Lord one thousand eight hundred and ——.

229.

Warrant on Scire Facias to revive.

County of B. } —— esquire, sheriff of the county aforesaid,
to wit. } to —— and ——, my bailiffs, greeting: By virtue of a writ of our sovereign lady the Queen to me directed, I command you, and each of you, that you give notice to —— that he be before the Queen's Bench Division of her Majesty's High Court of Justice, on the —— day of —— to shew —— why —— ought not to have execution against him for —— damages upon a judgment lately in the said court recovered against him by the said ——, and further to do and receive what the said court shall then and there consider in that behalf. And how you shall execute this my warrant forthwith make known to me. Hereof fail not. Given under the seal of my office, this —— day of —— in the year of our Lord one thousand eight hundred and ——.

230.

Warrant on Proclamation.

County of B. } —— sheriff of the county aforesaid, to ——
to wit. } greeting: By virtue of her Majesty's writ of proclamation to me directed, and of a certain writ of assistance, I require you publicly to proclaim the inclosed proclamation in your —— and afterwards to affix the same upon the —— that it may plainly appear to her Majesty's subjects and liege people. Hereof fail not, as you will answer at your peril. Given under the seal of my office, this —— day of —— in the year of our Lord one thousand eight hundred and ——.

231.

8 *Anne*, *c.* 14, *s.* 1.

(See Chapter XX., p. 325.)

For the more easy and effectual recovery of rents reserved on leases for life or lives, term of years, at will, or otherwise: Be it enacted by the Qneen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in Parliament assembled, and by authority of the same, that, from and after the first day of May which shall be in the year of our Lord one thousand seven hundred and ten, no goods or chattels whatsoever lying or being in or upon any messuage, lands, or tenements which are or shall be leased for life or lives, term of years, at will, or otherwise, shall be liable to be taken by virtue of any execution on any pretence whatsoever, unless the party at whose suit the said execution is sued out shall before the removal of such goods from off the said premises by virtue of such execution or extent pay to the landlord of the said premises or his bailiff all such sum or sums of money as are or shall be due for rent for the said premises at the time of the taking such goods or chattels by virtue of such execution: Provided the said arrears of rent do not amount to more than one year's rent; and, in case the said arrears shall exceed one year's rent, then the said party at whose suit such execution is sued out paying the said landlord or his bailiff one year's rent, may proceed to execute his judgment as he might have done before the making of this Act [and the sheriff or other officer is hereby impowered and required to levy and pay to the plaintiff as well the money so paid for rent as the execution money.]

232.

3 *Geo.* 1, *c.* 15.

An Act for the better regulating the Office of Sheriffs, and for ascertaining their Fees, and the Fees for suing out their Patents and passing their Accompts.

. . . . . .

3. And be it enacted by the authority aforesaid, that, from and after the ninth day of July in the year of our Lord one thousand seven hundred and seventeen, all sheriffs who shall levy any debts, duties, or sums of money whatsoever, except post fines, due or hereafter to become due to the King's Majesty, his heirs or successors, by process to them directed upon the summons of the pipe or green wax, by *levari facias* out of the Court of Exchequer, shall from time to time, for their care, pains, and charges, and for their encouragement therein, have an allowance upon their accompts of twelve pence out of every twenty shillings, for any sum not exceeding one hundred pounds so by them levied or collected, and the

[Sheriffs levying debts, &c., (except post-fines),

to have 1s. per pound for the first £100 and 6d. for every 20s. above that sum;

sum of six pence only for every twenty shillings over and above the first one hundred pounds; and for all debts, duties, and sums of money, except post fines, due or to become due to his Majesty, his heirs and successors, by process of *fieri facias* and extent, issuing out of any of the offices of the Court of Exchequer, the sum of one shilling and sixpence out of every twenty shillings for any sum not exceeding one hundred pounds so by them levied or collected; and the sum of twelve pence only for every twenty shillings over and above the first one hundred pounds: Provided always such sheriff shall duly answer the same upon his accompt by the general sealing day of such term in which he ought to be dismissed the Court, or in such time to which he shall have a day granted to finish his said accompts by warrant signed by the Lord Chief Baron or one of the barons of the coif of the said Court for the time being, and not otherwise.

[and on process by *fi. fa.* and extent, to have 1s. 6d. per pound for the first £100 and 1s. per pound above, provided he answer the same on his account.]

. . . . . .

5. And be it enacted by the authority aforesaid, that no sheriff or undersheriff shall be attached or taken into custody by any officer of the Court of Exchequer, or other person whatsoever, for not being apposed upon any writ or process for not finishing his accompts in due time, or for any contempt or neglect whatsoever relating to his accompt, but by writ under the seal of the said Court of Exchequer, or by warrant for that purpose to be signed by the Lord Chief Baron, or one of the barons of the coif of the said Court of Exchequer for the time being, to be executed by the marshal of the said Court, or his deputy; in which warrant the name of such sheriff or undersheriff shall be particularly inserted, and his offence particularly specified and expressed.

[No sheriff shall be attached, &c., for not finishing his accounts, &c., but by writ under the Exchequer seal, or by warrant of a baron, wherein such sheriff's name and his offence to be inserted.]

6. And, for preventing delays and unnecessary attendance of sheriffs in passing their accompts, be it enacted by the authority aforesaid, that from and after the first day of Michaelmas term, in the year of our Lord one thousand seven hundred and seventeen, if any officer, clerk, or other person concerned in or about the passing of sheriffs' accompts, shall wilfully retard or hinder any sheriff in the passing of his accompts, or by his wilful neglect or absence, or by other undue means or ways, prevent any sheriff from being apposed or cast out of Court in due time, or, after payment or tender of his or their due fees herein ascertained, shall refuse or neglect to inrol, make out, sign, and deliver his quietus in due time; in every such case the person so offending shall make such recompense and satisfaction to the party aggrieved as shall be adjudged, ordered, or decreed by the barons of the Court of Exchequer, upon complaint thereof made and exhibited before them in such short and summary way and method as to them shall seem meet.

[No clerk, &c., concerned in passing sheriffs' accounts, shall hinder the same or prevent his being apposed, &c., nor after payment or tender of the fees, shall refuse, &c., to make out, &c., his quietus, on penalty of such satisfaction as the barons shall order in a summary way.]

. . . . . .

8. And whereas great inconveniences have arisen by the

death of sheriffs during the time of their sheriffalty: Be it enacted by the authority aforesaid, that, if any high sheriff of any county of England or Wales shall happen to die before the expiration or determination of his year, or before he be lawfully superseded, in such case the undersheriff or deputy sheriff by him appointed shall nevertheless continue in his office, and shall execute the same and all things belonging thereunto in the name of the said deceased sheriff, until another sheriff be appointed for the said county and sworn in manner as is hereinafter directed; and the said undersheriff or deputy sheriff shall be answerable for the execution of the said office in all things and to all respects, intents, and purposes whatsoever during such interval as the high sheriff so deceased would by law have been if he had been living; and the security given to the high sheriff so deceased by the said undersheriff and his pledges shall stand, remain, and be a security to the King, his heirs and successors, and to all persons whatsoever, for such undersheriff's due performance of his office during such interval.

[Sheriff dying before his office is expired, his under-sheriff shall execute the same in the deceased sheriff's name till a new sheriff sworn, and be answerable for the execution thereof as the deceased should have been; and the security given by the under-sheriff is to continue.]

9. And whereas it frequently happens that the process issuing out of the Court of Exchequer for levying debts and duties due to the Crown may be in part executed by a sheriff before he be superseded and afterwards in part by the subsequent sheriff, and no provision hath hitherto been made for settling and adjusting the distribution of the fees and poundage claimed and demanded by them in such cases: Be it therefore enacted by the authority aforesaid, that, when and so often as any sheriff shall by process out of the Court of Exchequer seize or extend any goods, chattels, or personal estate, into the hands of his Majesty, his heirs or successors, for any debts or duties due to the Crown, and shall die or be superseded before a writ of *venditioni exponas* be awarded to him for sale of the same, or before such sheriff hath made actual sale thereof, and a writ shall afterwards be awarded to a subsequent sheriff, who by virtue thereof shall make sale or disposition of such goods, chattels, and personal estate so seized or extended by such preceding sheriff as aforesaid, in such case the barons of the Court of Exchequer, if then sitting, and if not sitting the said barons or any one of them being of the degree of the coif, shall order, settle, and apportion the fees or poundage due for such seizure and sale betwixt such preceding and subsequent sheriffs, in such manner and proportions as to him or them shall seem meet with regard to the expense and trouble each respective sheriff hath had or shall have in the execution of the said process.

[When a sheriff seizes goods, &c., for the King's debts, and he dies or is superseded before sale, and the subsequent sheriff makes sale, &c., the Exchequer may apportion the fees, &c., between the precedent and the subsequent sheriff.]

10. And whereas the office of undersheriff, and other offices and places in the disposal of the high sheriff, have of late years been frequently sold and let to farm, contrary to several statutes heretofore made for restraining sheriffs from such practices, and contrary to the oath and duty of a sheriff, whereby many and great inconveniences have happened to the subjects of this realm by the oppressions and exactions of

undersheriffs, bailiffs, and other officers concerned in the execution of the king's process: For remedy whereof, be it enacted by the authority aforesaid, that from and after the said twenty-ninth day of September, in the year of our Lord one thousand seven hundred and seventeen, it shall not be lawful to or for any person or persons whatsoever to buy, sell, let, or take to farm the office of undersheriff, deputy sheriff, seal keeper, county clerk, shire clerk, gaoler, bailiff, or any other office or place pertaining to the office of high sheriff of any county or shire in England or Wales, or to contract for, promise, or grant for money or other reward or benefit, the said offices or places, or any of them; nor to give, take, promise, or receive any other consideration whatsoever for the said offices, or any of them, directly or indirectly, by themselves, or any person in trust for them, or for their use; and whosoever shall offend therein shall forfeit the sum of five hundred pounds, a moiety whereof to his Majesty, his heirs and successors, and the other moiety thereof to such person or persons as shall sue for the same, to be recovered by action of debt, bill, plaint, or information in any of the Courts of Record at Westminster, in which no essoign, protection, or wager of law shall be allowed, nor any more than one imparlance: Provided that such suit be commenced within two years after such offence committed, and not otherwise.

[After Sept. 29th, 1717, none shall buy, &c., the office of under-sheriff, &c.,

on forfeiture of £500, one-half to the King, the other to the prosecutor; to be recovered in any court at Westminster.

Prosecution within two years.]

11. Provided that nothing in this Act before contained shall any ways hinder or prevent such high sheriff from constituting and appointing an undersheriff, or deputy sheriff, to act in his stead, as by law he may and ought to do; nor to hinder the undersheriff, in case of the high sheriff's death, when he acts as high sheriff, from constituting or appointing a deputy, which he is hereby impowered to do; nor to hinder, prevent, or abridge such sheriff or undersheriff from demanding, taking, or receiving the just and lawful fees and perquisites of the office of sheriff, or any place or employment pertaining thereunto, or from taking security for the due answering the same; nor to discharge, hinder, or prevent such undersheriff, deputy sheriff, seal keeper, county clerk, shire clerk, gaoler, bailiff, or other person having or executing any place or office under such sheriff, from accompting to the high sheriff for all such just and lawful fees and perquisites as shall by them or any of them be taken and received in their respective offices, places, or employments, nor from giving security so to do; nor to hinder or prevent the high sheriff from allowing or securing such salary or recompense to his undersheriff, deputy sheriff, seal keeper, county clerk, shire clerk, gaoler, bailiff, or other officer, for the execution of the said offices, places, or employments, or any of them, as to him shall seem meet; nor to hinder or prevent the undersheriff, deputy sheriff, seal keeper, or other officer or person afore-mentioned, from taking and receiving such salary or recompense for his or their pains and services therein.

[Nothing ante shall hinder a high sheriff from appointing an under-sheriff, &c., nor an under-sheriff acting as high sheriff on his death, &c., from appointing a deputy, nor from taking the fees, &c., nor discharge such under-sheriff, &c., from accounting for fees, &c., nor hinder the sheriff from allowing salaries to his under-sheriff, &c., nor the under-sheriff, &c., from receiving the same.]

12. And for the more effectual enforcing and obliging the respective clerks of assizes, clerks of peace, clerks of the commissioners of sewers, clerks of the market, town clerks, or other persons to whom it doth or may belong to make returns of estreats into the Court of Exchequer, to make out and deliver their respective estreats, duplicates, certificates, and schedules in due time, so that the sheriff may not be hindered or retarded in the passing his accompt for want of the said estreats, according to the direction, purport, and intent of an Act made in the two-and-twentieth and three-and-twentieth years of the reign of his late Majesty King Charles the Second, intituled "An Act for the better and more certain recovery of fines and forfeitures due to his Majesty," and made perpetual by an Act made in the fourth and fifth years of the reign of their late Majesties King William and Queen Mary: Be it enacted by the authority aforesaid, that over and above the penalties mentioned in the said Acts, or either of them, it shall and may be lawful to and for the barons of the Court of Exchequer from time to time to amerce such clerk of the assize, clerk of the peace, clerk of the commissioners of sewers, clerk of the market, town clerk, or other person, to whom it doth or may belong to make returns of estreats into the said Court of Exchequer as aforesaid, for refusing, neglecting, or omitting to perform and do his or their duty in returning the said estreats at the times and according to the direction, purport, and intent of the said two Acts, and to cause the said amerciaments to be levied and answered by such ways and means and in such manner as other amerciaments set in the said Court may or have been used to be done.

[Besides the penalties in the Act 22 & 23 Car. 2, c. 22, made perpetual by 4 W. & M. c. 24, s. 4, the barons may amerce clerks of the assizes, &c. for refusing to return estreats, and may cause such amercements to be levied as usual.]

13. And for preventing of oppressions and injuries which may happen to his Majesty's subjects, by the abuse of heriffs, bailiffs, and others employed in levying and collecting any debts, duties, or sums of money due or hereafter to become due to his Majesty, his heirs or successors, by process of the Court of Exchequer, be it enacted by the authority aforesaid, that no sheriff, undersheriff, bailiff, or other person employed in levying or collecting any of the said debts, duties, or sums of money, shall take, ask, or receive any fee, gratuity, or reward whatsoever, of the person or persons liable to pay the said debts, duties, or sums of money, or of any other person, for or upon pretence of such levying or collecting, except the sum of fourpence only for an acquittance for such sum as shall be so levied or collected, which acquittance such officer is hereby required to give and deliver to the person upon or from whom such debt shall be levied, collected, or received; and the bailiff or other person receiving such debt or sum of money shall from time to time answer and accompt for the same to the sheriff or his deputy, and may require an acquittance also from such sheriff or his deputy for such sum, who are hereby required to give the same without any fee or reward; of and from such debts or sums of money so levied, collected, or received as aforesaid, the said sheriffs, and every of them, shall

[No sheriff or other employed in levying, &c., debts to the Crown shall take any fee for levying, &c., except 4d. only for an acquittance; and the bailiff, &c., receiving such debt shall account for the same to the sheriff, &c., and may require an acquittance without fee.

And the sheriff is to answer it on his accounts in the Exchequer.

If a sheriff, &c., shall nichil, &c. such debts collected, &c., he forfeits treble damages to the party, and double the sum so nichilled.

The penalty to be ordered by the Exchequer in a summary way.

And if a sheriff, &c., demands or takes any money for executing such process, or as fees for collecting such debts, &c., or for not levying, &c.,

he is guilty of extortion, and forfeits treble damages, &c., to the party grieved, and double the sum extorted, to be ordered as above, if conviction be within two years after such offence.]

[But the sheriff may take such poundage, &c., as given by this Act, or by warrant of the Treasury, &c., for any extraordinary service to the Crown.]

effectually discharge the said debtors and persons respectively, by totting and answering the same to his Majesty, his heirs and successors, upon their respective accompts in the Exchequer: And in case any sheriff, undersheriff, or deputy sheriff shall nichil or not duly answer to the Crown any debt or sum of money so levied, collected, or received, such sheriff, undersheriff, or deputy sheriff, for every such offence shall forfeit treble damages to the party aggrieved, and double the sum so nichilled or not duly answered as aforesaid, which said damages and penalty shall be ordered, decreed, and given to the person aggrieved by the Court of Exchequer, upon complaint and proof of such abuse as aforesaid made and exhibited before the barons of the said Court, in such short and summary way and method as to them shall seem meet: And, in case any sheriff, undersheriff, deputy sheriff, bailiff, or other person shall presume to demand, take, or receive any sum or sums of money whatsoever, be the same more or less, of any person whatsoever from whom any debt or sum of money is or shall be due and payable to the Crown by process out of the Court of Exchequer, for or in respect or upon pretence of executing the said process, or for or in respect or upon pretence of fees due to them or any of them for collecting or receiving the same, contrary to the true intent and meaning of this Act; or if any of the officers or persons aforesaid shall demand, take, and receive any sum or sums of money whatsoever for not levying or forbearing to levy any debts, duties, or sums of money which are or shall be due to his Majesty, his heirs and successors, and written out to them or any of them by the process aforesaid; in all and every such case, every person so offending, and being thereof lawfully convicted, shall be adjudged, deemed, and taken, and is and are hereby adjudged, deemed, and taken to be guilty of extortion, injustice, and oppression; and all and every such person and persons being thereof lawfully convicted shall forfeit for every such offence treble damages and costs to the party aggrieved, and double the sum so extorted: All which damages and penalties shall be ordered, decreed, and given by the barons of the Court of Exchequer, upon complaint and proof of such extortion made and exhibited before them in such short and summary way and method as to them shall seem meet, as aforesaid: Provided such conviction be had and made within two years after such offence committed, and not otherwise.

14. Provided that nothing in this Act contained shall be construed to deprive any sheriff of such poundage or allowance as is allowed and given to them by virtue of this Act, or of such poundage, allowance, or reward as may hereafter be made, allowed, and given to them, or any of them, by warrant or order from the Lord High Treasurer, or Commissioners of the Treasury, Chancellor of the Exchequer, or barons of the Court of Exchequer for the time being, for or in respect of any extraordinary service to the Crown that may happen to be performed by them, or any of them; but that the said sheriff

shall and may enjoy the full benefit and advantage of such poundage, allowance, and reward without any impeachment or molestation whatsoever, any thing in this Act contained to the contrary thereof in any wise notwithstanding.

15. And be it enacted by the authority aforesaid, that whatever orders or decrees shall be made by the barons of the Court of Exchequer, for costs, damages, and penalties, in the cases afore-mentioned, or any of them, or in any other case in this Act hereafter mentioned, by virtue and in pursuance of this Act, in such short and summary way and method as is hereinbefore directed and prescribed, shall have the same effect, force, and virtue, to all intents and purposes, as any other order or decree of the same Court; and the said costs, damages, and penalties shall be raised, levied, and obtained by such process, ways, and methods as are used in the said Court to enforce a compliance with any other orders or decrees of the same Court.

[All orders, &c., for costs, &c., ordered by this Act in a summary way, shall have the same force, &c., as other orders of the Exchequer; and such costs, &c., shall be raised, &c., by such process, &c., as are used there.]

16. And for ascertaining the fees for executing of writs of *elegit*, so far as the same relate to the extending of real estates, and for ascertaining the fees for executing of writs of *habere facias possessionem aut seizinam*, be it enacted by the authority aforesaid, that, from and after the last day of Michaelmas term, in the year of our Lord one thousand seven hundred and seventeen, it shall not be lawful for any sheriff, undersheriff, deputy sheriff, or their bailiffs, or for the bailiff of any franchise or liberty, or any of them, by reason or colour of their office or offices, or by reason or colour of their executing of any writ or writs of *habere facias possessionem aut seizinam*, to demand, ask, or receive any other or greater consideration, fee, gratuity, or reward than is hereafter mentioned (which shall be lawful to be demanded and taken), that is to say, the sum of twelve pence for every twenty shillings of the yearly value of any manor, messuage, lands, tenements, and hereditaments, whereof possession or seizin shall be by them or any of them given, where the whole exceedeth not the yearly value of one hundred pounds, and the sum of six pence only for every twenty shillings per annum over and above the said yearly value of one hundred pounds.

[No sheriff, &c., shall for executing an *hab. fac. possess.*, &c., take above 1s. per pound of the yearly value of any manor, &c., where the whole exceeds not £100 per annum, and 6d. only for every 20s. above the said yearly value.]

. . . . . .

20. Provided that the sheriffs of Wales and the county palatine of Chester shall not be obliged to take the aforesaid oaths, or either of them, but shall still take the usual and accustomed oaths as they have formerly done (except the words following, videlicet, Ye shall be dwelling in your own proper person within your bailiwick, for the time ye shall continue in the same office (except ye be otherwise licensed by the King), which words shall hereafter be left out of the said oath.

[Sheriffs of Wales and Cheshire to take the old oath with an omission.]

21. Provided that this Act, or anything therein contained, shall not extend to the sheriffs of London and Middlesex, the county palatine of Durham, the county of Westmoreland, or to the sheriffs of any city or town being a county of itself, or

[This Act not to extend to sheriffs of London, &c. as to their

disposing of the offices of under-sheriff, &c.] to any of them, as to their placing in or disposing of any of the offices, places, or employments of their undersheriffs, county clerks, bailiffs, or other officers, or their continuance therein.

. . . . . .

[Sheriffs of the city of Chester to account as formerly before the mayor of that city, for all things granted by their charters.] 24. And be it further enacted by the authority aforesaid, that the sheriffs of the city and county of the city of Chester, and their successors, shall and may accompt, as formerly, before the mayor of the same city and his successors (for the time being) for and touching all such matters and things as have been heretofore granted from the Crown to the same city in and by their several and respective charters.

[But for other matters before the auditors of the county, as the sheriffs of that county are above appointed to do.] 25. And as for and concerning all other matters and things whatsoever not mentioned to be granted in or by the charters of or to the same city, and for which the sheriffs of the same city are or ought to be accomptable to his Majesty, his heirs and successors, it is hereby further declared and enacted by the authority aforesaid, that the sheriffs of the said city of Chester and their successors shall at all times hereafter accompt for and concerning the same before, and be apposed by, and obtain their *quietus est* and discharge from, the auditor of the county of Chester, or his deputy, in like manner as the sheriffs of the said county of Chester are by this Act appointed to do, and not elsewhere or in any other manner whatsoever.

233.

20 *Geo.* 2, *c.* 37.

An Act for the Ease of Sheriffs with regard to the Return of Process.

For the ease of sheriffs with regard to the return of process, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that, from and after the twenty-ninth day of September one thousand seven hundred and forty-seven, all sheriffs of any county, city, liberty, division, town corporate, or place, shall, at the expiration of their office, turn over to the succeeding sheriff, by indenture and schedule, all such writs and process as shall remain in their hands unexecuted, who shall duly execute and return the same; and in case any such sheriff shall refuse or neglect to turn over such process in manner aforesaid, every such sheriff so neglecting or refusing shall be liable to make such satisfaction, by damages and costs, to the party aggrieved, as he, she, or they shall sustain by such neglect or refusal.

Writs and process unexecuted to be turned over to the succeeding sheriff;

on penalty of making good the damage to the party aggrieved.

Sheriff not liable to make return of any writ, &c., after a certain time. 2. And be it further enacted by the authority aforesaid, that no sheriff shall be liable to be called upon to make a return of any writ or process, unless he be required so to do within six months after the expiration of his said office.

234.

43 Geo. 3, c. 99.

37. And be it further enacted, that no goods or chattels whatever belonging to any person or persons at the time any of the said duties to be assessed under the regulations of this Act became in arrear, shall be liable to be taken by virtue of any execution or other process, warrant, or authority, or by virtue of any assignment, on any account or pretence whatever, except at the suit of the landlord for rent, unless the party at whose suit the said execution or seizure shall be sued out or made, or to whom such assignment shall be made, shall, before the sale or removal of such goods or chattels, pay or cause to be paid to the collector or collectors of the said duties so due all arrears of the said duties which shall be due at the time of seizing such goods or chattels, or which shall be payable for the year in which such seizure shall be made, provided the duties shall not be claimed for more than one year; and, in case the said duties shall be claimed for more than one year, then the said party at whose instance such seizure shall have been made, paying the said collector or collectors the aforesaid duties due for one whole year, may proceed in his seizure as he might have done if no duties had been so claimed; but, in case of refusal to pay the said duties, the said collector or collectors are hereby authorised and required to distrain such goods and chattels, notwithstanding such seizure or assignment, and proceed to the sale thereof according to this Act, in order to obtain payment of the whole of the said duties so assessed, together with the reasonable costs and charges attending such distress and sale; and every such collector so doing shall be indemnified by virtue of this Act.

When duties are in arrear, no goods shall be taken by virtue of any process, &c., except at the suit of the landlord for rent, unless the party suing, &c., shall pay or cause to be paid the arrears, not exceeding one year.

In case of refusal the collector may distrain and sell the goods.

235.

57 *Geo.* 3, *c.* 117.

An Act to regulate the issuing of Extents in Aid.

[11*th July*, 1817.

Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present Parliament assembled, and by the authority of the same, that, upon the issuing of every extent in aid on behalf of any debtor to his Majesty after the passing of this Act, his Majesty's Court of Exchequer at Westminster, or the chancellor of his Majesty's Exchequer, or lord chief baron or other baron of the said Court granting the *fiat* for the issuing of such extent in aid, shall cause the amount of the debt or sum of money due or claimed to be due to his Majesty to be stated and specified in the said *fiat*; and that, in all cases in which the debt or debts found due to the debtor to his Majesty shall be equal to or exceed the debt

Amount of debt due to the Crown shall be stated in fiat for extent in aid, and such amount or the amount due to the debtor, if less, shall be indorsed

upon the writ, as the sum to be levied by the sheriff.

stated and specified in the said *fiat* as aforesaid, the amount of the debt so stated and specified in the said *fiat* shall be indorsed upon the writ, and the writ so indorsed shall be deemed to be and be the authority and direction to the sheriff or other officer who shall execute such writ, in making his levy and executing the same, as to the amount to be levied and taken under the said writ; and that, in all cases in which the debt or debts found due to the debtor to his Majesty shall be of less amount than the debt stated and specified in the said *fiat* as aforesaid, the amount of such debt or debts found due to such debtor to his Majesty shall be indorsed upon the writ, and the writ so indorsed shall be deemed to be and be the authority and direction to the sheriff or other officer who shall execute the said writ, in making his levy and executing the same, as to the amount to be levied and taken under the said writ; and that the money levied, taken, recovered, or received, under or by virtue of every such extent in aid so prosecuted and issued, shall be by order of the said Court paid over to and for his Majesty's use, towards satisfaction of the debt so due to his Majesty as aforesaid.

If any overplus from sale, &c., the Court of Exchequer shall dispose of it upon summary application.

2. Provided always, and be it further enacted, that, in every case in which the sum produced by the sale of any lands, goods, or chattels taken, or by the receipt of any sum of money by any sheriff or other officer under any such writ of extent for the purpose of levying the amount or sum of money indorsed upon the back of the writ, shall be more than sufficient to satisfy the amount of the sum so indorsed upon the writ, such overplus shall be paid into the Court of Exchequer, together with the said amount indorsed upon the said writ; and the said Court shall, upon any summary application or applications, make such order for the return, disposal, or distribution of any such surplus, or any part or proportion thereof, as to the said Court shall appear to be proper.

Debtor to the Crown not to be prejudiced in recovering the remainder of any debt.

3. Provided always, and be it further enacted, that nothing in this Act contained, and no seizure of any debt into the hands of his Majesty, or part recovery or payment of such debt, or other proceeding had under or in pursuance of this Act, or in relation to the applying for, obtaining, or executing any such writ, or disposing of any such overplus, shall affect or in any manner prejudice, either at law or in equity, any right, claim, or demand of the person or persons to whom such debt shall been due or owing, when seized into his Majesty's hands, or his or their assignee or assignees, or executor or executors, or administrator or administrators, as to the remaining part of such debt, or as to the suing any person or persons against whom any such writ shall have issued, or whose lands or goods shall have been seized or taken under any such writ, for the residue or remaining part of such debt, or as to the recovery of or receiving any residue or remaining part of any debt so seized or in part levied, recovered, or paid, or any further or other debt seized or sued for under or by virtue of any such extent, but still remaining due and unpaid, either in the whole

or in part; but that it shall be lawful for any person or persons as aforesaid, his or their assignee or assignees, executor or executors, or administrator or administrators, to demand, sue for, and recover the remainder of any such debt so seized, or any other debt or debts, by the like process and in the same manner as if no such extent in aid had issued; anything contained in any Act or Acts of Parliament or law or laws to the contrary notwithstanding.

Extents in aid not to be sued out by simple contract debtors to the Crown, &c., except in certain cases.

4. And be it further enacted, that, from and after the passing of this Act, it shall not be lawful for any person or persons, companies or societies of persons, corporate or not corporate, who shall or may be indebted to his Majesty by simple contract only; nor for any such person or persons, companies or societies, who shall or may be indebted to his Majesty by bond for answering, accounting for, and paying any particular duty or duties, or sum or sums of money which shall arise or become due and payable to his Majesty from such person or persons, companies or societies respectively, for and in respect and in the course of his or their particular trades, manufactories, professions, businesses, or callings; nor for any subdistributor of stamps who shall have given bond to his Majesty; nor for any person who shall have given bond to his Majesty, either jointly or separately, as a surety only for some other debtor to his Majesty, until such surety shall have made proof of a demand having been made upon him on behalf of his Majesty, in consequence of the nonperformance of the conditions of the bond by the principal, and then only to the amount of the said demand; to sue out and prosecute any extent or extents in aid by reason or on account of any such debt or debts to his Majesty respectively, for the recovery of any debt or debts due to such person or persons, companies or societies, or to such subdistributor of stamps or surety as aforesaid; and that all and every commission and commissions to find debts, extent and extents in aid, and other proceedings, which shall be so issued or instituted at the instance of or for such simple contract or bond debtor or debtors respectively, and all proceedings thereupon shall be null and void: Provided always, that nothing herein contained shall extend or be construed to extend to preclude or prevent any persons who shall or may become debtor or debtors to his Majesty by simple contract only, by the collection or receipt of any money arising from his Majesty's revenue for his Majesty's use, from applying for and suing out any commission or commissions, extent or extents in aid, in case one or more of such persons shall be bound to his Majesty by bond or specialty of record in the said Court of Exchequer, for answering, securing, paying over, or accounting for to his Majesty, the particular duties or sums of money which shall constitute the debt that may be so then due from such person or persons to his Majesty, any thing hereinbefore contained to the contrary notwithstanding.

Extent in aid not to issue on

5. Provided nevertheless, and be it further enacted, that no extent in aid shall be issued on any bond given by any person

bonds by sureties for payment of duties by insurance companies.

or persons as a surety or sureties for the paying or accounting for any duties which may become due to his Majesty from any body or society, whether incorporated or otherwise, carrying on the business of insurance against any risks either of fire or of any other kind whatever.

Persons imprisoned under writs of *capias* in extents in aid, may apply to the Courts of Exchequer for their discharge.

6. And be it further enacted, that it shall and may be lawful for any person or persons, who may now or shall hereafter be imprisoned under or by virtue of any writ of *capias* in any extent or extents in aid, to apply to the barons of his Majesty's Court of Exchequer in England or Scotland, or to any baron of the same Court in vacation, for his, her, or their discharge, giving one month's previous notice in writing to the person or persons to whom he, she, or they owed the debt or sum or sums of money for which he, she, or they is or are so imprisoned at the time such debt was seized under such extent in aid, of his, her, or their intention to make such application, and stating in such notice the ground of such application, and an enumeration and description of all and every the property, debts, and effects whatsoever of such person or persons in his, her, or their own possession or power, or in the possession or power of any other person or persons for his, her, or their use; and for the said Court, or any such baron in vacation to whom such application shall be made, to order such person or persons to be brought before them or him to be examined upon oath touching and concerning his, her, or their property and effects; and, if such person or persons respectively shall upon such examination make a full disclosure of all his, her, or their property and effects to the satisfaction of the said Court or baron, or it shall otherwise appear reasonable and proper to such Court or baron that such person or persons should be no longer imprisoned under such writ, for such Court or baron to order a writ of *supersedeas quoad corpus* to be issued out of the said Court for the liberation of such person or persons from such imprisonment: Provided always, that no such liberation as aforesaid shall be held or deemed to satisfy or supersede such extent in aid, or any proceedings thereon, except as to such imprisonment as aforesaid, or the debt or debts seized under and by virtue thereof, and for which such person or person shall be so imprisoned.

236.

3 *Geo.* 4, *c.* 46.

An Act for the more speedy Return and Levying of Fines, Penalties, and Forfeitures, and Recognizances estreated.

[24*th June*, 1822.]

22 & 23 Car. 2, c. 22.

Whereas an Act was passed in the twenty-second and twenty-third years of his late Majesty King Charles the Second, intituled "An Act for the better and more certain recovery of fines and forfeitures due to his Majesty," which Act was made perpetual by an Act passed in the fourth and fifth years of the

reign of their late Majesties William and Mary, intituled "An Act for reviving, continuing, and explaining several laws therein mentioned which are expired and near expiring:" And whereas an Act was passed in the forty-first year of his late Majesty George the Third, intituled "An Act for better payment of fines and forfeitures imposed by justices out of sessions in England:" And whereas great delays occur in the return of fines, issues, amerciaments, forfeited recognizances, sum and sums of money paid or to be paid in lieu or satisfaction of them or any of them, by or before any justices of the peace, or at any general or quarter sessions of the peace in that part of the United Kingdom called England: And whereas such delays impede the due administration of justice, as well as the recovery of the fines and forfeitures due to the Crown thereupon, and it is therefore expedient that further provision should be made for the speedy and regular return of all such fines, issues, amerciaments, forfeited recognizances, and sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them: . . . . . 4 Will. & Mary, c. 24. 41 Geo. 3, c. 85.

Fines, &c., imposed by any justices shall be certified by them to the clerk of the peace, &c.,

2. And be it further enacted, that, from and after the twenty-ninth day of September one thousand eight hundred and twenty-two, all fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them (save and except the same shall by virtue of any Act or Acts of Parliament made or to be made be otherwise directed to be levied, recovered, appropriated, or disposed of), which already are or hereafter shall be set, imposed, lost, or forfeited by or before any justice or justices of the peace in that part of the United Kingdom called England, shall be and are hereby required to be certified by the justice or justices of the peace by or before whom any such fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them shall be set, imposed, lost, or forfeited, to the clerk of the peace of the county, or town clerk of the city, borough, or place, in writing, containing the names and residences, trade, profession, or calling of the parties, the amount of the sum forfeited by each respectively, and the cause of each forfeiture, signed by such justice or justices of the peace, on or before the ensuing general or quarter sessions of such county, city, borough, or place respectively; and such clerk of the peace or town clerk shall copy on a roll such fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, together with all fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, imposed or forfeited at such Court of general or quarter sessions, and shall, within such time as shall be fixed and determined by such Court, not exceeding twenty-one days after the adjournment of such Court, send a copy of such roll, with a writ of *distringas* and *capias*, or *fieri facias* and *capias*, according to the form and effect in

who shall copy the same on a roll together with fines, &c., imposed at quarter sessions, and send a copy of such roll, with writ of *distringas*, &c., to the sheriff, &c., as authority for levying

such fines, &c.

the schedule marked (A.) annexed to this Act (*a*), to the sheriff of such county, or the sheriff, bailiff, or officer of such city, borough, or place having execution of process therein respectively, as the case may be; which shall be the authority to such sheriff of such county, or the sheriff, bailiff, or officer, as the case may be, for proceeding to the immediate levying and recovering of such fines, issues, amerciaments, forfeited recognizances, sum or sums of money to be paid in lieu or satisfaction of them or any of them, on the goods and chattels of such several persons, or for taking into custody the bodies of such persons, in case sufficient goods and chattels shall not be found whereon distress can be made for recovery thereof; and every person so taken shall be lodged in the common gaol until the next general or quarter sessions of the peace, there to abide the judgment of the said Court.

Persons apprehended to be lodged in common gaol.

Clerk of the peace, &c., to make oath as to fines, &c.

3. And be it further enacted, that the clerk of the peace or town clerk shall, before he shall deliver the roll to such sheriff, bailiff, or officer, containing the fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, and is hereby required, to make oath before any justice of the peace for the county, riding, city, borough, or place for which such clerk of the peace or town clerk shall act, which oath shall be indorsed on the back of the writ or of the said roll attached thereto, such clerk of the peace or town clerk stating therein all such fines, issues, amerciaments, forfeited recognizances, sum or sums of money, which shall have been paid or otherwise accounted for; and such oath shall be made in the form following:

Form of oath.

"I ——, make oath, that this roll is truly and carefully made up and examined, and that all fines, issues, amerciaments, recognizances, and forfeitures, which were set, lost, imposed, or forfeited, and in right and due course of law ought to be levied and paid, are, to the best of my knowledge and understanding, inserted in the said roll, and that in the said roll are also contained and expressed all such fines as have been paid to or received by me, either in Court or otherwise, without any wilful or fraudulent discharge, omission, misnomer, or defect whatever. "So help me God."

. . . . . .

Persons may appeal to quarter sessions against levy of forfeited recognizance, &c., upon giving security.

5. Provided always, and be it enacted, that, if any person, on whose goods and chattels such sheriff, bailiff, or officer shall be authorized to levy any such forfeited recognizance or sum of money to be paid in lieu or satisfaction thereof, shall give security to the said sheriff, bailiff, or officer for his appearance at the next general or quarter sessions, then and there to abide the decision of the Court, and also to pay such forfeited recognizance or sum of money to be paid in lieu or satisfaction thereof, together with all such expenses as shall be ordered and

(*a*) By 22 & 23 Vict. c. 21, s. 30, the form of writ in the schedule to that Act is substituted for the form in schedule (A) to this Act.

adjudged by the Court, it shall be lawful for such sheriff, bailiff, or officer, and he is hereby authorized and required, to discharge such person so giving such security out of custody: Provided also, that, in case such party so giving security shall not appear in pursuance of his undertaking, it shall be lawful for the Court forthwith to issue a writ of *distringas* and *capias* or *fieri facias* and *capias*, against the surety or sureties of the person so bound as aforesaid.

Justices at quarter sessions to hear and determine such appeals.

6. And be it further enacted, that the Court of general or quarter sessions before whom any person so committed to gaol or bound to appear shall be brought, is hereby authorized and required to inquire into the circumstances of the case, and shall, at its discretion, be empowered to order the discharge of the whole of the forfeited recognizance or sum of money paid or to be paid in lieu or satisfaction thereof, or any part thereof; and such order shall be made in the form or to the effect of the schedule marked (C.) to this Act annexed, and shall be signed by the clerk of the peace; which said order shall be a discharge to such sheriff, bailiff, or officer, on the passing of his accounts at the Exchequer, or before any auditor or other proper officer duly authorized to pass the same; and in all cases where the party shall have been lodged in the common gaol by such sheriff, bailiff, or other officer, the justices of the peace so assembled are hereby empowered either to remand such party to the custody of the sheriff, bailiff, or other officer, or, upon the release of such party from the whole of such forfeited recognizance, to order such party to be discharged from custody; and such order shall be a full and sufficient discharge to the said sheriff, bailiff, or officer on the passing of his accounts at the Exchequer or before any auditor or other proper officer duly authorized to pass the same; and it shall and may be lawful to and for the said Court of general or quarter sessions to award such costs, charges, and expenses to be paid by either party to the other, as to the said Court shall seem just and reasonable.

. . . . . .

Sheriff to return writ to quarter sessions, and indorse on the roll what has been done in the execution of the process; which return, &c., shall be forwarded by clerk of the peace to the Treasury.

8. And be it further enacted, that the said sheriff, bailiff, or officer shall at the opening of the Court on the first day of the ensuing general or quarter sessions, return the said writ, and shall state on the back of the said roll what shall have been done in the execution of such process; which return, together with a duplicate of the roll of fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them at the preceding quarter sessions; and the certificate of the Court on the back of the roll, stating that due diligence has been exercised on the part of the sheriff, shall be transmitted by the clerk of the peace to the lords commissioners of his Majesty's Treasury of the United Kingdom of Great Britain and Ireland.

Proceedings

9. Provided always, and be it further enacted, that none of

not liable to stamp duty.

the proceedings under this Act shall be liable to or charged with any stamp duty.

Allowance to clerk of the peace, &c., on discharge of forfeited recognizance.

10. And be it further enacted, that the clerk of the peace and other officers shall be entitled to their usual and legal fees on the discharge of any forfeited recognizance, and the said clerk of the peace to an allowance of sixpence for every one hundred words, for all copies of the roll sent to the said lords commissioners of the Treasury; and, in case any such sheriff, bailiff, officer, or clerk of the peace shall refuse or neglect to do and perform any duty, act, or thing imposed or required upon or from such sheriff or clerk, bailiff or officer, in manner by this Act directed, then and in every such case such sheriff, bailiff, or officer, or clerk so refusing or neglecting, shall forfeit and pay the sum of fifty pounds, to be recovered by any person or persons who will sue for the same, together with full costs of suit, by action of debt or on the case in any of his Majesty's Courts of record at Westminster, wherein no essoign, protection, wager of law, or any more than one imparlance shall be allowed.

Penalty on sheriff, &c., for neglect of duty under this Act, £50.

This Act not to affect the appropriation of fines, &c.

11. Provided always, and be it enacted, that nothing in this Act contained shall extend or be construed to extend so as to prevent or interfere with the appropriation of any such fines, issues, amerciaments, forfeited recognizances, sum or sums of money, when so paid or accounted for into the said Court of Exchequer by any such sheriff, bailiff, or officer; but the same shall and may be applied, disposed of, and appropriated in such and the like manner as such fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid in lieu or satisfaction of them or any of them, paid into the Exchequer, were applied, disposed of, and appropriated before the passing of this Act.

. . . . . .

Saving as to rights of his Majesty in respect of the duchy of Lancaster.

13. Provided always, and be it further enacted, that nothing in this Act contained shall extend or be in anyways prejudical to the rights, liberties, or privileges of the King's most excellent Majesty, his heirs and successors, in right of his duchy or county palatine of Lancaster; but that the same rights and privileges shall be enjoyed and used in all respects, and to all intents and purposes whatsoever, in the same manner and form as they were before the passing of this Act, any thing herein contained to the contrary notwithstanding.

. . . . . .

Saving as to rights of bodies corporate, &c.

15. Provided always, and be it further enacted, that nothing in this Act contained shall in any sort extend or be construed to extend to the prejudicing the rights and privileges of any bodies politic or corporate, or their successors, or of any lord or lords of any manor, liberty, or franchise whatsoever; any thing herein to the contrary thereof in anywise notwithstanding.

. . . . . .

16. Provided always, and be it enacted, that nothing in this Act contained shall extend to or be in any ways prejudicial to the rights, customs, privileges, liberties, charter or charters of the city of London; but that the said city may enjoy the same accordingly, as they formerly have enjoyed the same, in all respects and to all intents and purposes whatsoever, in the same and in as full and ample a manner as they before this Act had enjoyed the same; anything herein contained to the contrary thereof in anywise notwithstanding. Saving as to rights of the city of London.

. . . . . .

SCHEDULE (C).

To the Sheriff [Bailiff or Officer, as the case may be] of the County, City, Borough or Place, as the case may be, of ——.

Whereas —— hath appeared before the justices assembled at the general or quarter sessions [*as the case may be*] held at the —— on the —— day of ——, has forfeited the sum of —— [*here describe the nature of the fine or forfeiture*], and having made it appear to the satisfaction of the justices so assembled that he should be relieved from the payment of the said sum of —— [*or if the penalty is mitigated, state from what part thereof*], you are therefore hereby required to discharge the said sum of —— from the estreat roll delivered to you after the quarter sessions held at ——; for which discharge this warrant shall be your authority, and shall exonerate you from the said charge on the final passing of your accounts at the Exchequer, or before any other officer duly authorised to pass such account.

By order of the Court.

237.

4 *Geo.* 4, *c.* 37.

An Act to amend an Act for the more speedy Return and Levying of Fines, Penalties, and Forfeitures, and Recognizances estreated.

[27*th June* 1823.]

Whereas an Act passed in the third year of the reign of his present Majesty, intituled "An Act for the more speedy return and levying of fines, penalties, and forfeitures, and recognizances estreated:" And whereas it is expedient that some of the provisions of the said Act should be amended: May it therefore please your Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that it shall be lawful for the justices assembled at any general or quarter sessions of the peace, and they are hereby authorised and required, at the following or any subsequent general or quarter sessions held after the return of the writ and roll issued from any preceding general or quarter sessions, at the opening of the Court, to insert or cause to be 3 Geo. 4, c. 46. Justices in quarter sessions to insert in roll all such fines, &c., as have not been levied

or accounted for by the sheriff, &c., or have not been discharged.

inserted in any following roll all such fines, issues, amerciaments, forfeited recognizances, sum or sums of money to be paid in lieu or satisfaction of them or any of them, which have not been duly levied or recovered or properly accounted for by the sheriff, bailiff, or other officer, or have not been discharged on appeal before the general or quarter sessions, or by sign manual, warrant, or authority of any three or more of the commissioners of his Majesty's Treasury of the United Kingdom of Great Britain and Ireland, and so to continue such process from sessions to sessions, till it shall be duly ascertained, to the satisfaction of the said commissioners of his Majesty's Treasury, that the party in default has not any goods or chattels, lands or tenements, in the county, division, riding, city, town or place on which a levy can be made, nor in any other county, division, riding, city, town or place in Great Britain, and that he is not to be found, or that his body cannot be lodged in any of his Majesty's gaols: Provided always, that the said sheriff, bailiff, or other officer to whom the writ of *distringas* and *capias* or *fieri facias* or other writ deemed necessary by the justices at any such general or quarter sessions to meet the exigency of the case shall be sent by order of the said Court, shall keep and detain in his possession the writ or writs so directed to him and the roll or rolls attached to such writ or writs, delivering to the said Court of general or quarter sessions a copy of such roll or rolls on the first day of the sitting of the said Court, and also a copy of any former roll or rolls where the fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them, or any of them, shall not have been delivered; and such original writ and roll or writs and rolls shall continue in force and effect, and shall be sufficient authority without any further writ or roll; and such sheriff, bailiff, or other officer is hereby authorised and required, on quitting his office, to deliver over to his successor all rolls and writs in his possession, particularising any fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them, or any of them, in order that the sheriff, bailiff, or other officer coming into office may use every means in his power for recovering the sums so unpaid, and not charged to his predecessor on the passing of his accounts at the Exchequer or before any auditor or auditors or other person duly authorised to pass the same; the officer or officers entrusted with the execution of the process in any county, division, riding, city, town, or place, being first duly and diligently examined on oath by the Court, at the delivery of the roll on the first day of each general or quarter sessions, and in case such examination should not then take place, then on the subsequent day; and every such examination shall be duly recorded by the clerk of the peace or town clerk or other proper officer, in order that such sheriff, bailiff, or other officer may be chargeable with all sums not satisfactorily accounted for on the final passing of his accounts.

Sheriff, &c., to keep writs and rolls in his possession, which shall continue in force and be authority to act upon.

Sheriff, &c., on quitting office to deliver over to his successor all rolls and writs, particularising fines, &c., that incoming officer may use means for their recovery.

. . . . . .

3. And be it further enacted, that in all cases where the party incurring or subject to any fine, issue, amerciament, forfeited recognizance, sum or sums of money to be paid in lieu or satisfaction of them, or any of them, shall reside or shall have fled or removed from or out of the jurisdiction of the sheriff, bailiff, or other officer, in which any such fine, issue, amerciament, forfeited recognizance, sum or sums of money to be paid in lieu or satisfaction of them, or any of them, shall have been incurred, imposed, or forfeited, or become due, it shall be lawful for such sheriff, bailiff, or other officer, and he is hereby authorised and required, to issue his warrant, together with a copy of the writ, directed to the sheriff, bailiff, or other officer acting for the county, riding, city, borough, or place in which such person shall then reside or be, or in which any goods or chattels or other property shall be found, requiring such sheriff, bailiff, or other officer to execute such writ; and every such last-mentioned sheriff, bailiff, or other officer is hereby authorised and required to act in all respects under such warrant, in the same manner as if the orignal writ had been delivered to him by order of the Court of the general or quarter sessions of the county, riding, city, borough or place for which such sheriff, bailiff, or other officer shall act; and the said sheriff, bailiff, or other officer is hereby required, within thirty days after the receipt of such warrant, to return to the sheriff, bailiff, or other officer from whom he shall have received the same, what he shall have done in the execution of such process, and whether the party shall have given good and sufficient security to appeal at the ensuing general or quarter sessions to be held for the county, riding, city, borough or place from which the writ issued, and, in case a levy shall have been made, to pay over all monies received in pursuance of the warrant to the sheriff, bailiff, or other officer from whom he shall have received the same.

Where party subject to fines, &c., resides or has removed out of jurisdiction of sheriff, &c., the sheriff shall issue his warrant to the sheriff, &c., acting for the place where the party is or where his goods are found, requiring him to execute the writ, &c.

4. And be it further enacted, that every sheriff, bailiff, or other officer acting for any county, division, riding, city, borough or place shall and he is hereby required to make up or cause to be made up annually, and immediately after the expiration of the year for which he shall act, or after the usual period for making up his account, in case he shall act under any grant, appointment, or other authority for a longer period than one year, an account in writing, containing the names and residences of all persons incurring fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them, or any of them, which he has been authorised or required to levy by virtue of any writ or writs issued to him, or to any predecessor in office; and in case any fine, issue, amerciament, forfeited recognizance, sum or sums of money paid or to be paid in lieu or satisfaction of them, or any of them, shall not have been levied or paid, the causes of nonpayment shall be fully and particularly stated; and such account such sheriff, bailiff, or other officer is hereby required to transmit, within thirty days from the

Sheriff, &c., to render an account yearly of all persons incurring fines, &c.

Causes of non-payment to be stated.

Account to be transmitted to the

Treasury for inspection.

expiration of the year for which such account ought to be made up, to the commissioners of his Majesty's Treasury, or at or within such other period as such sheriff, bailiff, or other officer shall be required by the said commissioners of his Majesty's Treasury, or any three or more of them, in order that such account may be duly examined, checked, and inspected under the direction of the said commissioners of his Majesty's Treasury, or any three or more of them; and when so examined and approved, such account shall be transmitted to the proper officer in the Court of Exchequer, or to the auditor or other officer duly authorised to pass such account.

Clerks of the peace, &c., to send to the Treasury, within 20 days from the opening of the quarter sessions, copies of the rolls delivered by sheriffs, &c.

5. And be it further enacted, that every clerk of the peace and town clerk or other proper officer is hereby required, within twenty days from the opening of the Court of general or quarter sessions, to send to the commissioners of his Majesty's Treasury a copy or an extract of the roll or rolls delivered by the sheriff, bailiff, or other officer on the first day of the opening of such Court of general or quarter sessions, in such form as shall be required by the said commissioners of his Majesty's Treasury, also the causes of discharge in case any person shall have been relieved on appeal to the said Court of general or quarter sessions, and the answer given by any sheriff, bailiff, or other officer to such Court, where any fine, issue, amerciament, forfeited recognizance, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, has not been received by such sheriff, bailiff, or other officer duly authorised to receive the same.

238.

3 & 4 *Will.* 4, *c.* 99.

An Act for facilitating the Appointment of Sheriffs, and the more effectual Audit and Passing of their Accounts; and for the more speedy Return and Recovery of Fines, Issues, forfeited Recognizances, Penalties, and Deodands; and to abolish certain Offices in the Court of Exchequer.

[29*th August*, 1833.]

Whereas the appointment of sheriffs, and the audit and passing of their accounts in the Court of Exchequer, are attended with unnecessary expense, delay, and trouble: . . . .

Sheriff not to sue out patents, nor bailiffs to make proffers, &c.

2. And be it further enacted, that from and after the passing of this Act it shall not be necessary for any sheriff or sheriffs of any county, city, or town in England or Wales to sue out any patent or writ of assistance, or to make or pay proffers, nor shall any bailiff or bailiffs of liberties in England or Wales be required to make or pay any proffers, nor shall he or they have any day of prefixion, or be apposed, or take any oath or oaths before the cursitor baron to account, or account, or be cast out of Court, as now or heretofore in use in his Majesty's Court of Exchequer, any law, statute, or usage to the contrary notwithstanding.

Appointment of sheriffs by warrant.

3. And be it further enacted, that whenever any person shall be duly pricked or nominated by his Majesty for and to be sheriff of any county in England or Wales, except the county palatine of Lancaster, the same shall be forthwith notified in the *London Gazette*, and a warrant in the form set forth in the schedule to this Act shall be forthwith made out and signed by the clerk of the Privy Council, and transmitted by him to the person so nominated and appointed sheriff as aforesaid; and the appointment of sheriff thereby made shall be as good, valid, and effectual in the law to all intents and purposes whatsoever as if the same had been made by patent under the great seal of Great Britain, or by any ways and means heretofore in use; and the sheriff and sheriffs so appointed as aforesaid shall thereupon, and upon taking the oath of office hereafter mentioned, have and exercise all powers, privileges, and authorities whatsoever usually exercised and enjoyed by sheriffs of counties in England and Wales, without any patent, writ of assistance, or other writ whatsoever, or entering into any recognizance by himself or sureties, and without payment of or being liable to pay any fees whatsoever for the same.

Clerk of peace to enrol duplicate of warrant.

4. Provided always, and be it further enacted, that a duplicate of the said warrant shall, within ten days next after the date of the same warrant, be transmitted by the said clerk of the Privy Council to the clerk of the peace of the county for which such person shall be nominated and appointed sheriff, to be by the said clerk of the peace enrolled, and which he is hereby required to enrol and keep without fee or reward.

Sheriff to appoint an undersheriff, and transmit a duplicate of appointment to the clerk of the peace to be filed.

5. And be it further enacted, that from and after the passing of this Act every person so appointed sheriff as aforesaid shall, within one calendar month next after the notification of his appointment in the *London Gazette*, by writing under his hand nominate and appoint some fit and proper person to be his undersheriff, and shall transmit a duplicate thereof to the clerk of the peace for the county, to be by him filed, and which he is hereby required to file among the records of his office, and for which he shall be entitled to demand and have from such undersheriff the sum of five shillings, and no more; and such appointment and duplicate shall not be liable to any stamp duty whatever.

Oaths of sheriff and undersheriff.

6. And be it further enacted, that each and every person so appointed sheriff and undersheriff as aforesaid, except the sheriffs of London and Middlesex and their undersheriffs, shall, before he enter upon the execution of his office, take the oath of office heretofore and now required by law; which oath shall be fairly written on parchment (without being subject to any stamp duty), and signed by him, and shall and may be sworn before the barons of his Majesty's Exchequer or any of them, or any one of his Majesty's justices of the peace for the county of which he shall be appointed sheriff or undersheriff; and the same shall be thereupon transmitted to the clerk of the

peace for the same county, who is hereby required to file the same among the records of his office, and for which he shall be entitled to demand and have from such sheriff or undersheriff the sum of five shillings, and no more.

Prisoners and writs, &c., to be turned over by sheriff at the expiration of his office to the in-coming sheriff.

7. And be it further enacted, that every sheriff of any county, city, liberty, division, town corporate, or place shall, at the expiration of his office, make out and deliver to the new or in-coming sheriff a true and correct list and account under his hand of all prisoners in his custody, and of all writs and other process in his hands not wholly executed by him, with all such particulars as shall be necessary to explain to the said in-coming sheriff the several matters intended to be transferred to him, and shall thereupon turn over and transfer to the care and custody of the said in-coming sheriff all such prisoners, writs, and process, and all records, books, and matters appertaining to the said office of sheriff; and the said in-coming sheriff shall thereupon sign and give a duplicate of such list and account to the sheriff going out of office, to whom the same shall be a good and sufficient discharge of and from all the prisoners therein mentioned and transferred to the said in-coming sheriff, and the further charge of the execution of the writs, process, and other matters therein contained, without any writ of discharge or other writ whatsoever; and the said in-coming sheriff shall thereupon stand and be charged with the said prisoners, and also with the execution and care of the said writs, process, and other matters contained in the said list and account, as fully and effectually as if the same writs and process had been turned over by indenture and schedule; and in case any sheriff shall refuse or neglect at the expiration of his office to make out, sign and deliver such list and account as aforesaid, and to turn over the process aforesaid in manner aforesaid, every such sheriff so neglecting or refusing shall be liable to make such satisfaction by damages and costs to the party aggrieved as he, she, or they shall sustain by such neglect or refusal.

Sheriffs' accounts to be audited by commissioners for auditing public accounts.

8. And be it further enacted, that the accounts of the present and future sheriffs of counties, cities, and towns within England (except the counties palatine of Chester, Lancaster and Durham) shall, from and after the passing of this Act, be examined and audited by the commissioners appointed or to be appointed for auditing public accounts [Rep., 22 & 23 Vict. c. 21, s. 28.] . . . .

Sheriffs going out of office (except those of Chester, Lancaster and Durham) to transmit accounts to commissioners.

9. And be it further enacted, that every person and persons who now are or who hereafter shall be sheriff or sheriffs of any county, city, or town within England (except the said counties palatine of Chester, Lancaster and Durham) shall, within two calendar months next after the expiration of his or their office, or in case of the death of any sheriff or sheriffs the undersheriff by him or them appointed shall, within two calendar months next after the death of such sheriff or sheriffs, transmit to the said commissioners for auditing public accounts

a just and true account, under his or their hand or hands, of all sums received by such sheriff or sheriffs to or for the use of his Majesty, and of all sums paid or claimed by him or them, or on his or their behalf (save such sums as are or have been usually inserted and allowed in the bill of cravings), with all such particulars as shall be needful to explain the same: Provided always, that such undersheriff shall not be personally responsible for any sum or sums received by such deceased sheriff, but that the same shall be answered by the representatives of the said deceased sheriff, or otherwise in due course of law: Provided always, that the sheriff of Westmoreland shall yearly, within two calendar months next after the first day of January in every year, transmit or cause to be transmitted to the said commissioners for auditing the public accounts a like account under his hand, or the hand of his undersheriff, of all sums paid by him to or for the use of his Majesty within or during the year of our Lord next preceding, and of all sums paid or claimed by him or on his behalf during the same period (save such sums as are or have been usually inserted in the bill of cravings), with all such particulars as shall be needful to explain the same.

Sheriff of Westmoreland to transmit like accounts yearly.

10. And be it further enacted, that in case it shall be necessary for any such sheriff or sheriffs, or his or their undersheriff, to make oath or affidavit to any such account, or any article, matter, or thing relating thereto, such oath or affidavit, except when the said commissioners shall require his or their personal examination before them, shall and may be sworn before any of the judges of his Majesty's Superior Courts of Record at Westminster, or before any commissioner for taking affidavits in any of the same Courts, or before any master or master extraordinary in the High Court of Chancery, or before any of his Majesty's justices of the peace.

Oath or affidavit of sheriff as to accounts may be taken before a judge, commissioner, or magistrate.

11. And be it further enacted, that the claim of every sheriff or sheriffs for certain allowances usually called the bill of cravings shall, from and after the passing of this Act, be preferred to the Lord High Treasurer or the Commissioners of his Majesty's Treasury for the time being, who, or any three or more of whom, shall and may grant a warrant for the allowance of the same in the account of such sheriff or sheriffs, or for the payment of such sum or sums of money in respect thereof as they shall think reasonable in that behalf.

Bill of cravings to be settled by the Treasury.

12. And whereas the present mode of managing and collecting certain quit rents and vicecomital or viscontiel rents due to his Majesty, and the present mode of accounting for and paying post fines on alienation of lands and other hereditaments, have been found disadvantageous to the public service, and inconvenient and troublesome to sheriffs: For remedy whereof, be it enacted, that from and after the tenth day of October next no sheriff or sheriffs shall receive or shall be chargeable with the collection and receipt of quit rents, vicecomital or viscontiel rents, and other rents or payments issuing

Quit rents, &c., to be received by commissioners of woods, forests, and

land revenues.

out of or payable to his Majesty in respect of any honours, manors, lands, tenements, or hereditaments in England or Wales; but the same (except such as shall be released pursuant to the provision next hereinafter contained) shall hereafter be considered as part and parcel of the land revenue of the Crown, and shall be under the care, management, and direction of his Majesty's commissioners of woods, forests, and land revenue, who shall have and exercise the same powers and authorities for collecting and enforcing payment thereof as are given to or vested in them for collecting and enforcing payment of any other part of his Majesty's land revenue by any Act or Acts now in force concerning the same.

. . . . . .

Account of fines by judges of assize, commissioners of sewers, clerks of the market, and of deodands to be transmitted to Treasury and to commissioners of audit, &c.

29. And be it further enacted, that an account in writing of all fines, issues, amerciaments, penalties, and recognizances set, lost, imposed, or forfeited to or for the use of his Majesty by or before any judge or judges of assize, clerk of the market, or commissioners of sewers, throughout the kingdom of England, and also all deodands found or forfeited to or for the use of his Majesty throughout the same kingdom, shall, within fourteen days next after any such fines, issues, amerciaments, penalties, recognizances, or deodands shall respectively be set, lost, imposed, forfeited, found, or accrue, be made out by the clerk of assize, clerk of the market, commissioners of sewers and coroners, or other person or persons respectively to whom it doth appertain or belong to make estreat thereof, with the names and residences of the parties liable to make payment thereof respectively, and distinguishing such as shall have been paid or received; and two copies of such account when so made out shall be signed by the person or persons so required to make out the same, who shall, within the time last aforesaid, transmit one copy thereof to the commissioners of his Majesty's Treasury, and another copy thereof to the commissioners for auditing the public accounts; and the same fines, issues, amerciaments, penalties, recognizances, and deodands shall also within the time last aforesaid be duly certified and estreated by such officers and persons respectively in and into the said Court of Exchequer; and all sum and sums of money which shall have been received for or on account of any such fines, issues, amerciaments, penalties, forfeitures, recognizances or deodands shall be paid over by the parties respectively receiving the same unto the sheriff or sheriffs of the county, city, or town wherein the same shall have been set, lost, imposed, forfeited, found, or accrued, to the intent that such sheriff or sheriffs may be charged therewith and duly account for the same.

. . . . . .

Accounts of estreats to be transmitted to Treasury

31. And be it further enacted, that his Majesty's remembrancer do and shall, on or before the first seal day next after every term, make out an account in writing of all fines, issues, amerciaments, penalties, forfeited recognizances,

and deodands estreated during the preceding vacation and term, and also of all returns within the same period of sheriffs to process issued for the purpose of levying any estreated fines, issues, amerciaments, penalties, forfeited recognizances, and deodands, and shall, within the time last aforesaid, transmit and send one copy of such account to the commissioners of his Majesty's Treasury. . . . . and to commissioners of audit.

40. Provided also, and be it further enacted, that nothing herein contained shall extend to or prejudice the rights, liberties, and privileges of the city and county of the city of Chester; but that the sheriffs thereof shall and may account and obtain their quietus in like manner as hath heretofore been accustomed. Rights of the city of Chester saved.

239.

7 *Will.* 4 & 1 *Vict. c.* 55.

An Act for better regulating the Fees payable to Sheriffs upon the Execution of Civil Process.

[15*th July*, 1837.]

Whereas it is expedient to amend the laws relating to the fees payable to sheriffs, undersheriffs, deputy sheriffs, sheriffs' agents, bailiffs, and others the officers or ministers of sheriffs in England and Wales, and to give the Courts of record at Westminster Hall a due control over such fees, and also to provide a summary remedy against such officers and others as shall extort or receive other or greater fees than by law they shall be entitled to: . . . . .

2. And be it enacted, that, from and after the passing of this Act, it shall be lawful for sheriffs, or their officers concerned in the execution of process directed to sheriffs, to demand, take, and receive such fees, and no more, as shall from time to time be allowed by any officer of the several Courts of law at Westminster charged with the duty of taxing costs in such Courts, under the sanction and authority of the judges of the said Courts respectively. Sheriffs, &c. to take only such fees as are allowed by taxing officer of Courts of law at Westminster.

3. And be it enacted, that any sheriff, officer, or minister acting in the execution of process directed to any sheriff or sheriffs, or engaged or concerned therein, who shall extort, demand, take, accept or receive from any person or persons any fee or fees, gratuity or reward not allowed as aforesaid, or greater in amount than is allowed as aforesaid, such sheriff, or other his officer or minister, upon complaint thereof made against him to any of the said Courts, and on proof being made thereof upon oath, either by the examination of witnesses *viva voce*, or on affidavits, or on interrogatories, to the satisfaction of the Court to which the said complaint shall be made, that such sheriff, officer, or minister, as the case may be, hath offended therein as aforesaid, then and in such case every such sheriff, officer, or minister, as the case may be, shall be adjudged Punishment of sheriffs, &c., taking fees not allowed, or greater than the amount allowed;

and of other persons taking any fees.

guilty of contempt of such Court, and punished by such Court accordingly; and if any person, not being such officer or minister as aforesaid, shall assume or pretend to act as such, and shall extort, demand, take, accept or receive any fee or fees, gratuity or reward under colour or pretext of such office, he shall, on like complaint and proof, be in that respect dealt with by the Court in like manner.

Court may award costs in case of summary complaint against sheriffs, &c.

4. And be it enacted, that in all cases of summary complaints as aforesaid the Court before which such complaint shall be preferred may at its discretion award the costs of or occasioned by such complaint to be paid by either party to the other; such costs to be taxed by the master of such Court: Provided always, that no such complaint shall be entertained unless made before the last day of term next following the act whereof complaint is made.

Fees to the sheriffs of Lancashire and Durham, &c.

5. And be it enacted, that from and after the passing of this Act the sheriffs of Lancashire and Durham, and their officers, shall have and be entitled to the like fees, and no more, upon process issuing out of the Court of Common Pleas at Lancaster and out of the Court of Pleas at Durham respectively, as from time to time shall be allowed under the authority of this Act to sheriffs upon process issuing from the Superior Courts at Westminster; and that the said Court of Common Pleas at Lancaster and Court of Pleas at Durham respectively, or any judge thereof respectively, being also judge of one of the Superior Courts at Westminster, shall have the same powers in every particular, with respect to offences against this Act upon process issuing out of the said Court of Common Pleas at Lancaster and Court of Pleas at Durham respectively, as are hereinbefore given to the Courts at Westminster respectively in respect of process issuing from those Courts.

. . . . . .

240.

With Regard to Priority of Process Issuing from the High Court and the County Court, the 19 & 20 *Vict. c.* 108, s. 47, *enacts as follows:—*

"When a writ against the goods of a party has issued from a superior Court, and a warrant against the goods of the same party has issued from a County Court, the right to the goods seized shall be determined by the priority of the time of the delivery of the writ to the sheriff to be executed, or of the application to the Registrar for the issue of the warrant to be executed, and the sheriff, on demand, shall by writing, signed by any clerk in the office of the undersheriff, inform the high bailiff of the precise time of such delivery of the writ, and the bailiff, on demand, shall show his warrant to any sheriff's officer, and such writing purporting to be so signed, and the indorsement on the warrant, shall, respectively, be sufficient justification to any high bailiff or sheriff acting thereon."

241.

The Bills of Sale Act, 1878 (41 & 42 *Vict. c.* 31, *ss.* 5—9.)

(For section 4, see pp. 265, 266.)

5. From and after the commencement of this Act trade machinery shall, for the purposes of this Act, be deemed to be personal chattels, and any mode of disposition of trade machinery by the owner thereof which would be a bill of sale as to any other personal chattels shall be deemed to be a bill of sale within the meaning of this Act.

For the purposes of this Act—

"Trade machinery" means the machinery used in or attached to any factory or workshop;

1st. Exclusive of the fixed motive-powers, such as the water-wheels and steam engines, and the steam-boilers, donkey engines, and other fixed appurtenances of the said motive-powers; and,

2nd. Exclusive of the fixed power machinery, such as the shafts, wheels, drums, and their fixed appurtenances, which transmit the action of the motive-powers to the other machinery, fixed and loose; and,

3rd. Exclusive of the pipes for steam, gas, and water in the factory or workshop.

The machinery or effects excluded by this section from the definition of trade machinery shall not be deemed to be personal chattels within the meaning of this Act.

"Factory or work-shop" means any premises on which any manual labour is exercised by way of trade, or for purposes of gain, in or incidental to the following purposes or any of them; that is to say,

(*a.*) In or incidental to the making any article or part of an article; or

(*b.*) In or incidental to the altering, repairing, ornamenting, or finishing of any article; or

(*c.*) In or incidental to the adapting for sale any article.

6. Every attornment, instrument, or agreement, not being a mining lease, whereby a power of distress is given or agreed to be given by any person to any other person, by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, shall be deemed to be a bill of sale, within the meaning of this Act, of any personal chattels which may be seized or taken under such power of distress.

Provided, that nothing in this section shall extend to any mortgage of any estate, or interest in any land, tenement, or hereditament which the mortgagee, being in possession, shall have demised to the mortgagor as his tenant at a fair and reasonable rent.

7. No fixtures or growing crops shall be deemed, under this Act, to be separately assigned or charged by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with such land or building, if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed, or in the land on which such crops grow, is also conveyed or assigned to the same persons or person.

The same rule of construction shall be applied to all deeds or instruments, including fixtures or growing crops, executed before the commencement of this Act and then subsisting and in force, in all questions arising under any bankruptcy, liquidation, assignment for the benefit of creditors, or execution of any process of any Court which shall take place or be issued after the commencement of this Act.

8. Every bill of sale to which this Act applies shall be duly attested and shall be registered under this Act within seven days after the giving or making thereof, and shall set forth the consideration for which such bill of sale was given, otherwise such bill of sale, as against all trustees or assignees of the estate of the person whose chattels, or any of them, are comprised in such bill of sale under the law relating to bankruptcy or liquidation, or under any assignment for the benefit of the creditors of such person, and also as against all sheriffs' officers and other persons seizing any chattels comprised in such bill of sale, in the execution of any process of any Court authorising the seizure of the chattels of the person by whom or of whose chattels such bill has been made, and also as against every person on whose behalf such process shall have been issued, shall be deemed fraudulent and void so far as regards the property in or right to the possession of any chattels comprised in such bill of sale which, at or after the time of filing the petition for bankruptcy or liquidation, or at the execution of such assignment, or of executing such process (as the case may be), and after the expiration of such seven days, are in the possession or apparent possession of the person making such bill of sale (or of any person against whom the process has issued under or in the execution of which such bill has been made or given, as the case may be).

9. Where a subsequent bill of sale is executed within or on the expiration of seven days after the execution of a prior unregistered bill of sale, and comprises all or any part of the personal chattels comprised in such prior bill of sale, then, if such subsequent bill of sale is given as a security for the same

debt as is secured by the prior bill of sale, or for any part of such debt, it shall, to the extent to which it is a security for the same debt or part thereof, and so far as respects the personal chattels or part thereof comprised in the prior bill, be absolutely void, unless it is proved to the satisfaction of the Court having cognizance of the case that the subsequent bill of sale was *bonâ fide* given for the purpose of correcting some material error in the prior bill of sale, and not for the purpose of evading this Act.

(For section 10, see p. 276.)

242.

Notice to Sheriff under 8 *Anne, c.* 14, *s.* 1, *of Rent due to Landlord of Execution Debtor.*

(See Chapter XX., p. 325.)

To the sheriff of the county of ——, and his undersheriff and bailiffs, and all others whom it may concern:

Take notice that the sum of £—— is now due and owing to [me *or* to I. K., of ——, esq.] from C. D., of ——, in the county of ——, for [one year's *or* one half year's *or* one quarter's] rent, due on the —— day of —— last, of the premises in his occupation at —— aforesaid; upon which premises as I am informed you have seized and taken in execution certain goods and chattels; and you are hereby required not to remove any of the said goods and chattels from off the said premises until the said arrears of rent are paid, pursuant to the statute in such case made and provided.

Dated this —— day of ——, 18—.

Yours, &c.

I. K. of

[*or* E. F. of

Agent for I. K., of ——, esq.]

243.

Notice from Sheriff to Execution Creditor of Rent being due from the Defendant, and requiring Payment thereof by such Creditor, pursuant to 8 *Anne, c.* 14, *s.* 1.

In the High Court of Justice,

—— Division.

Between A. B., plaintiff,

and

C. D., defendant.

Take notice that the sum of £—— is due and owing from the above-named defendant to his landlord I. K., of [&c., esq.] for [one year's *or* one half year's *or* one quarter's] rent, due on

the —— day of —— last, for and in respect of the [house *or* farm, land and] premises situate at ——, in the county of ——, now in the occupation of the said defendant, and upon which certain goods and chattels have been seized by the sheriff of ——shire under the writ of *fieri facias* issued in this action [and the said sheriff has had notice of such arrears of rent]: Now I do hereby, as the agent of the said sheriff and on his behalf, give you notice that unless the above-named plaintiff do forthwith pay the arrears of rent due to the said landlord, either to him or to his bailiff, pursuant to the statute in such case made and provided, the said sheriff will withdraw from possession of the said goods and chattels under the said writ.

Dated this —— day of ——, 18—.

Yours, &c.,

L. M., of ——,

Agent for the sheriff of ——shire.

To the above-named plaintiff; and to Mr. ——, his solicitor or agent.

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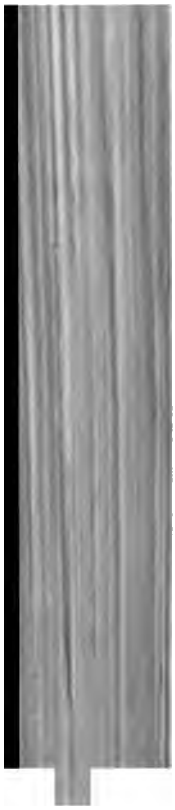
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