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The Maine Civil Officer, or, The Powers and Duties of Sheriffs, Coroners, Constables, and Collectors of Taxes; with an Appendix, Containing the Necessary Forms and an Abridgment of the Law Relative to the Duties of Civil Officers

Jeremiah Perley

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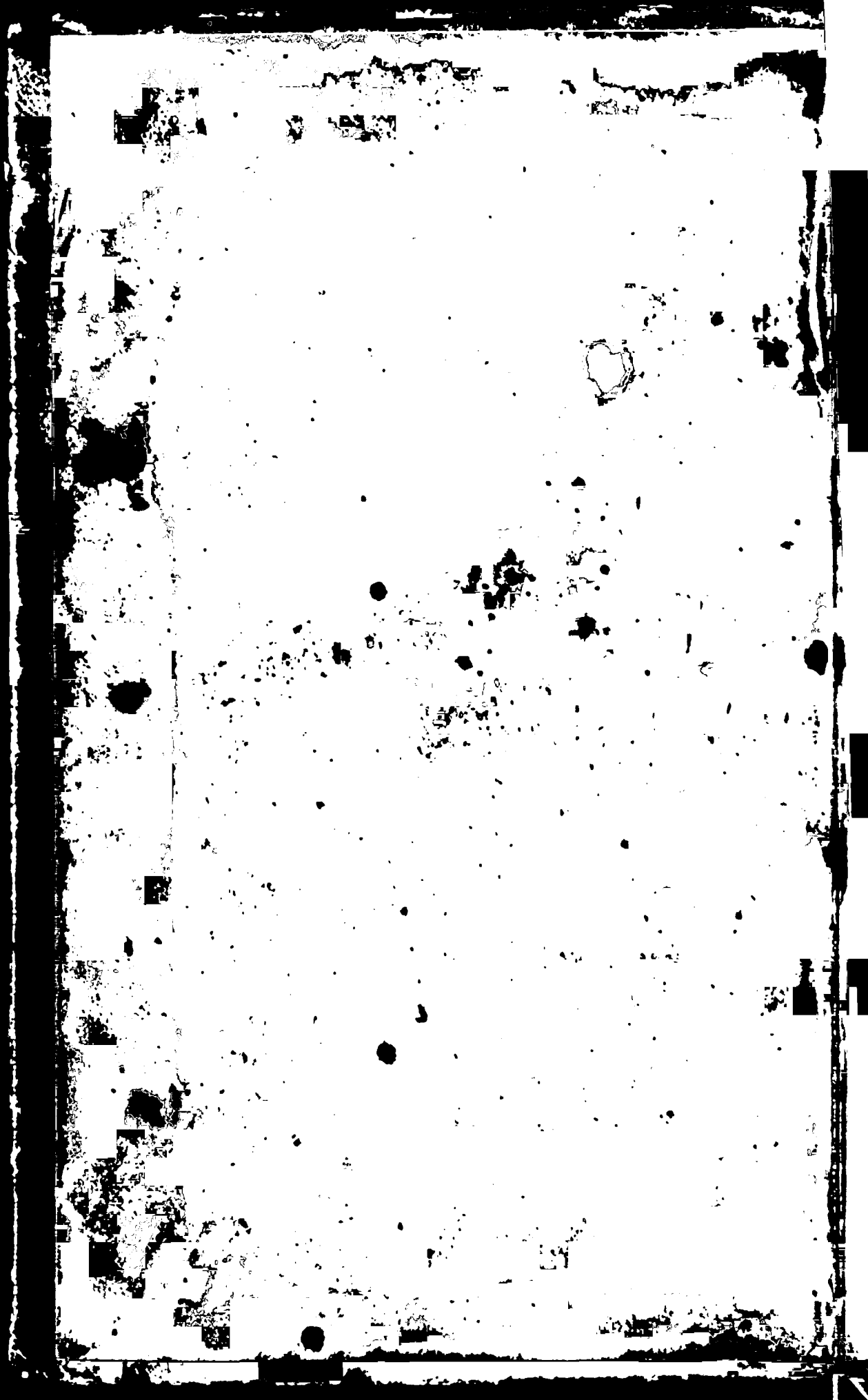
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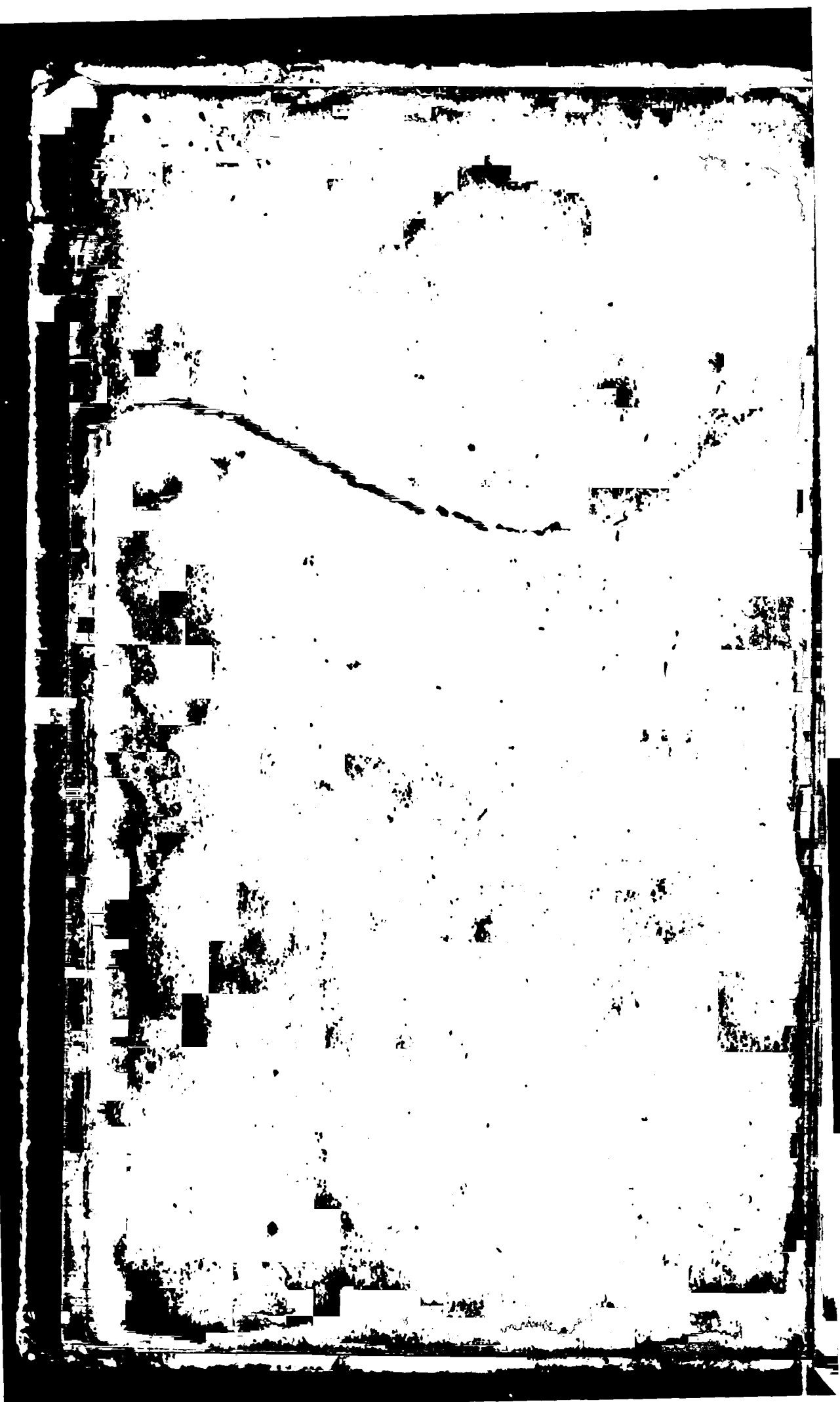


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THE
MAINE CIVIL OFFICER,
OR THE
POWERS AND DUTIES
OF
JUDGES, CORONERS, CONSTABLES,
AND COLLECTORS OF TAXES.



THE
MAINE CIVIL OFFICER,
OR THE
POWERS AND DUTIES
OF
SHERIFFS, CORONERS, CONSTABLES, AND
COLLECTORS OF TAXES;
With an Appendix,
CONTAINING THE NECESSARY FORMS AND AN ABRIDGEMENT
OF THE LAW RELATIVE TO THE
DUTIES OF CIVIL OFFICERS.

BY JEREMIAH PERLEY, Esq.
AUTHOR OF THE MAINE JUSTICE, &c.

SECOND EDITION, REVISED AND CORRECTED.

Hallowell:
GLAZIER, MASTERS AND SMITH.
1839.

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ADVERTISEMENT.

THE constitution and laws of this State accurately define the limits of the authority, as well as the extent of the duties, of the several offices created by them. The necessity of this is obvious, in a government of laws and not of men. Its very design, the common safety and protection, could not otherwise be attained.

A general acquaintance with those powers and obligations seems to be equally important; lest the brief authority, conferred on the Civil Officer, by the people for the security of their rights should be exercised for their destruction, either from ignorance or design. A ready access to the requisite information, must therefore be highly useful, especially in the discharge of official functions. Scattered and indigested as it is through the statutes and reports, a complete collection of all statute provisions, and the most material decisions of our courts, in relation to his duties, regularly divided and arranged under suitable heads, must greatly assist the honest and intelligent Officer. The following work, intended for this purpose, might easily have been extended, and the number of forms increased, without increasing its value, in proportion to the enhancement of the price. With diligent attention to the directions of the statutes, a faithful obedience to the commands of his precepts, and a correct statement of his proceedings in the returns; no one will be in much danger of rendering himself liable for his "neglects or misdoings."

The office of Sheriff is of the highest nature, from the importance of the trusts confided to it and the great power with which it is invested. The officer himself is supposed to possess a respectable character, corresponding to the importance of his trust and powers.* All judicial processes, whether civil or criminal, must be served by him, both at their commencement and final execution; and he is the principal keeper of the peace within the county. An accurate knowledge

* 1 Mass. Rep. 537.

of the laws conferring and defining these extensive powers and duties, as well as the mode prescribed for their exercise, is therefore necessary, as a guide to the Officer, and for the security of the citizen.

The powers and duties of Coroners and Constables, in the service of precepts, being generally the same as those of Sheriffs, may be learned by consulting the laws contained under that title. The principles of common law, as collected from the decisions of the courts, are applicable alike to all Civil Officers.

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THE

MAINE CIVIL OFFICER.

SHERIFFS.

- A. Their appointment, qualification, tenure of office and *duties* on receiving their commissions.
- B. Their disabilities, privileges, liabilities and obligations.
- C. Their general power and duty in serving processes.
- D. The service of writs of attachment and original summons, and of foreign attachment.
- E. The service of writs of Habeas Corpus, writs for replevying a person and replevying personal property.
- F. Of their authority and duty in regard to bail in civil actions.
- G. Levy of executions on personal and real estate, and the offset of executions.
- H. The levy of executions upon shares of debtors in incorporated companies, and upon corporate property.
- I. Levy of executions issued in trustee or foreign attachment process, executions in favour of the State and on recognizances.
- K. Their power and duty in the preservation of the peace, in suppressing riots, in requiring aid in apprehending criminals and executing sentences.
- L. Their power and duty in relation to nuisances and highways.
- M. Their power and duty in relation to public health.

- N. Their duty in seizing articles intended to be exported contrary to the Inspection Laws.
- O. Their duty in relation to elections and juries.
- P. The fees of Sheriffs and Constables.*

A. Their appointment, qualification, tenure of office, and *duties* on receiving their commissions.

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| <p>§ 1. Their appointment, qualification and tenure of office.</p> <p>2. Their duties or excise.</p> <p>3. Appointment of deputies and proportion of fees.</p> <p>4. Making, filing and approval of their bonds.</p> | <p>§ 5. Renewal of Bonds.</p> <p>6. Forfeiture for neglect.</p> <p>7. Renewal for insufficient security and forfeiture.</p> <p>8. To notify Coroners of appointment.</p> |
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§ 1. Sheriffs are nominated and appointed by the Governor, by and with the advice and consent of the council; and before they enter on the discharge of the duties of their office, they are to take and subscribe the oath or affirmation which is required of other State Officers; and which is administered by a member of the council, or by a magistrate appointed to qualify civil officers. The tenure of their Office, is for the term of four years, (unless sooner removed by the Governor and council), when they may be re-appointed. Their commission must be in the name of the State, signed by the Governor, attested by the secretary or his deputy and be under the seal of the State. *Const. of Maine. ch. 257.*

2. Every Sheriff is required within sixty days from his being qualified to pay into the treasury of his county or of the State the following *duties*, viz; Each Sheriff of the counties of York, Cumberland, Lincoln and Kennebec shall

* For the power and duty of Sheriffs in the collection of taxes, see title, Collectors of Taxes.

For their power and duty in relation to jails, see title, Jailer.

pay fifty dollars, and of every other county twenty-five dollars; and in case of failure shall forfeit and pay the sum of five dollars for every official act. *ch. 102, s. 1, 2. ch. 103, and ch. 104, s. 1.*

3. Deputy Sheriffs receive their appointment from the Sheriffs, to whom they give their bonds for the faithful discharge of their official duties, and take the same oath of office, administered in the same manner as is required of Sheriffs.

The appointment of a Deputy must be in writing and under the hand of the Sheriff, and must be recorded in the Clerk's office for the County for which such Deputy is appointed; and whenever a Sheriff dismisses a Deputy or Jailer, he shall deliver him a written discharge and lodge a copy thereof in the Clerk's office to be recorded. And no appointment or discharge of any Deputy or Jailer shall be valid unless such appointment or discharge is so lodged or recorded, except discharges by operation of law or by vacancy in the office of Sheriff. *ch. 445, s. 7.*

No Sheriff shall demand or receive of any of his Deputies more than at the rate of twelve per cent. on the amount of fees for travel and service, and other emoluments of office; nor any part of the amount of fees for levying and collecting executions issued by any Justice of the Peace, wherein the debt or damage does not exceed twenty dollars. *ch. 445, s. 2.*

4. Every person appointed to the office of Sheriff within this State, shall within sixty days from the receipt by him of his commission, make and execute a bond with at least three sufficient sureties, residing within this State, in a sum not less than twenty-five thousand dollars for such

person as shall be appointed Sheriff in either of the Counties of York, Cumberland, Lincoln and Kennebec ; in a sum not less than fifteen thousand dollars in either of the other counties, to the treasurer of the State, and his successors in office, conditioned for the faithful performance of the duties of their office, and to answer for the neglect and misdoings of their deputies, which bond the Sheriffs, within said time, shall file within the office of the Clerk of the Court of County Commissioners for the county in which they are commissioned ; and said bond shall be presented at the term of the Court of County Commissioners which shall be next held in such county, to be by said court approved, and when the same shall have been adjudged sufficient, the clerk shall make record thereof, and certify the same on the bond, and a copy thereof being taken by the clerk, he shall deliver the original to the Sheriff who shall file the same in the office of the treasurer of the State, within twenty days after the same shall have been approved. *ch. 91, s. 1.*

5. It is made the duty of county attorney, at the term of the Court of County Commissioners which shall be held in each county on or after the third Tuesday of June annually, to move the said court to consider the security given by the Sheriffs in their respective counties, and they shall cause a record to be made of such determination by the clerk, who shall certify the same to the treasurer within thirty days thereafter, and if such security shall be adjudged insufficient, said clerk shall also within ten days certify the same to the Sheriff, who shall within twenty

days after such notice, give a new bond with sufficient sureties, to be filed and approved as aforesaid, and any county attorney or clerk who shall neglect his duty in this particular, shall forfeit one hundred dollars to the use of the State for each neglect. s. 2.

6. If any Sheriff shall neglect to give the security required by this act, and file the same in the office of the treasurer of the State, or shall neglect to give the new security which may be required and file the same as aforesaid, he shall forfeit and pay to the use of this State, the sum of one hundred and fifty dollars for each month's neglect, to be recovered by action of debt in any court proper to try the same; and it shall be the duty of the attorney general to prosecute for the same, and the name of such Sheriff neglecting to give or renew his security as aforesaid shall be certified by the Court of County Commissioners held in his county to the Governor and council, and also to the attorney general, and the Governor with the advice of council, shall thereupon remove such Sheriff from his office, and appoint some other person in his stead, unless reasonable cause to the satisfaction of the Governor and council, shall be assigned for said neglect; and unless said Sheriff, whose name and neglect shall be certified as aforesaid, shall give or renew his security, as the case may be, to the satisfaction of the Governor and council within twenty days after the said certificate shall be made. *ch. 91, s. 3.*

7. It shall be the duty of the treasurer of the State, on the first Wednesday of January annually to make out a statement of the account of all warrants in favour of the State, any other

sums of money or balances that may be in the hands of, and due from the several Sheriffs in the State, and lay them before the Governor and council for their inspection, and shall also certify the names of the sureties on their respective bonds, that in case they or any of them shall have become insufficient, or have moved out of the State, others may be required, and whenever for either of the reasons, it shall be deemed necessary by the Governor and council, a new bond shall be given by any Sheriff thereto required, within sixty days after notice given him for that purpose, to be filed as aforesaid; and on neglect thereof, the office of such Sheriff shall become vacant, and the Governor with advice of council shall appoint some other person thereto. *ch. 91, s. 4.*

8. Each Deputy of the respective Sheriffs, shall at all times keep a true and exact account, with the items thereof, of all fees for travel and service, and other emoluments of office, which have accrued or shall be due him by virtue of the same. And it shall be the duty of each Deputy aforesaid, within twenty days next after the first day of December annually, to return under oath to the Sheriff, a true copy of said account up to the time of said return, with the items thereof. *Provided however,* That this duty shall not extend to any part of such account, which shall have been so returned previous to the time aforesaid. *ch. 145, s. 3.*

9. It shall be the duty of the Sheriffs of the several counties of this State, within ten days next after the twentieth day of December annually, to make up from the accounts returned as aforesaid, by all their said Deputies, a true and

exact account of the amount of fees for travel, for services, and for other emoluments of their office, specifying the different classes of items thereof, which have accrued or shall be due them from their Deputies; and also of the amount of said fees and other emoluments specified as aforesaid, which have accrued or shall be due them, in their said office, besides the amount accruing from their Deputies, within one year next before the time of their so making up the same, and including the whole of the accounts of their Deputies, after the said account of the Sheriff was so made up in the year preceding; and said Sheriffs shall within said ten days, make a true return under oath of their said account to the Treasurers of their respective counties. And the Sheriff of each county, after deducting from the sum total of his account aforesaid, the sum hereinafter limited for the Sheriff of each county respectively, and also after deducting from said sum total the amount of said account which has accrued and become due to him, otherwise than from his Deputies, shall pay over the residue of said sum total to the Treasurer of his county, for the use and benefit of such county. *ch. 445, s. 4.*

10. The Sheriffs of York, Cumberland and Kennebec are limited in their compensation to seven hundred dollars each; the Sheriff of Penobscot to six hundred; the Sheriffs of Oxford and Somerset to five hundred; the Sheriffs of Hancock, Washington and Waldo to four hundred; the Sheriff of Piscataquis to three hundred and fifty. *ch. 445, s. 5. ch. 404, s. 1.*

11. When the office of Sheriff in any county is vacant, the several coroners are authorised to

execute the duties of Sheriffs until they have notice that another Sheriff for such county has been appointed and legally qualified; it is therefore the duty of every person who may be appointed Sheriff of any county, and legally qualified to execute said office to give notice thereof as soon as may be, to the respective coroners of the same county. *ch.* 93, s. 1.

B. Their disabilities, privileges, liabilities, and obligations.

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| <p>§ 1. Cannot hold other offices.
 2. Liable to impeachment and removal for cause.
 3. Not liable to arrest.
 4. To be removed for non-payment of execution against them.
 5. Answerable to their successors for prisoners.
 6. When removed executions to issue against their bodies.
 7. Bonds may be sued for neglect of Sheriff or deputy.
 <i>ib.</i> After Sheriff's death or resignation.
 8. Executions on said judgment.
 9. Not obliged to plead specially.</p> | <p>§ 10. Limitations of actions against.
 11. Not to act as attorneys.
 12. Not to bring demands for collection, directly or indirectly.
 13. To pay costs and fines to treasurers.
 14. Not to permit convicts to escape.
 15. To produce receipts to courts for fines.
 16. District Court to settle their accounts.
 17. Power to adjourn courts.
 18. Exempted from being jurors.</p> |
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§ 1. No person holding the office of Sheriff, or his deputy, shall be a member of the legislature; nor shall be capable of holding or exercising, at the same time, within this State, the office of Justice of the Supreme Judicial Court, or of any inferior court, attorney general, county attorney, treasurer of the State, adjutant general, judge of probate, register of probate, register of deeds, or clerk of the judicial courts; and if elected to, and accepting a seat in the congress of the United States, such person

shall thereby vacate his office. *Const. Art. 9. Sec. 2.*

2. Every Sheriff is liable to impeachment by the House of Representatives, before the Senate: and on conviction may be removed from office, and disqualified to hold or enjoy any office of honor, trust, or profit under this State. He is also removable by the Governor and Council, on the address of both branches of the legislature. But before such address shall pass either house, the causes of removal shall be stated and entered on the journal of the house in which it originated, and a copy thereof served on him, that he may be admitted to a hearing in his defence. *Const. Art. 4, p. 1, s. 8, and p. 2, s. 7.*

3. No Sheriff shall have his body arrested upon mesne process, or upon an execution awarded upon a judgment consequent upon a civil action, and where judgment shall be rendered against any Sheriff either in his official or private capacity, for any sum of money, the execution shall issue against his goods, chattels and lands; but not against his body. *ch. 92, s. 4.*

4. If any execution issued against the goods, chattels, and lands of a Sheriff, shall be returned not satisfied, the creditor may file before the Governor and council an attested copy of such execution and return, and also serve such Sheriff with a copy of such copy filed, attested by the secretary together with a notice under the hand of the secretary, of the day of filing such copy. And if such Sheriff shall not, within forty days next after his being served with copy and notice, pay the creditor the full of his debt, together with reasonable costs of the copies and notice aforesaid, the Governor, with the advice

of council, shall remove such Sheriff from his office, and shall appoint some other person to the same. *ch. 92, s. 4.*

5. Such Sheriffs shall be held answerable for the delivery over to their respective successors, of all prisoners which may be in their custody at the time of their removal, and for that intent shall retain the custody of the jail or jails in their counties, and the prisoners therein, until their successors shall be appointed and qualified. *ib.*

6. When a Sheriff shall be removed from his office, the clerk of the court from whence executions have been issued and returned not satisfied, shall be empowered as soon as another Sheriff shall be appointed and legally qualified, to make out alias executions in common form as well against the body as the goods, chattels and lands of such person so removed. *ib.*

7. Any person aggrieved at the neglect or misdoings of any Sheriff or his deputy, or of any coroner, and having first ascertained the amount of his damages by judgment against said Sheriff or coroner, shall be entitled to a certified copy of such Sheriff's or coroner's bond, and shall have a right to commence and prosecute to final judgment and execution for his own benefit, any action thereon in the name of the treasurer, the writ being first endorsed by the party for whose benefit such action is brought, or his agent or attorney, which endorser shall be answerable for all costs, and judgment be rendered accordingly against said party. *ch. 91, s. 6.*

All actions on Sheriffs' bonds shall be brought in the county where such Sheriff was commissioned to act. *ib.*

The defaults or misfeasances in office of any jailer or deputy sheriff, after the resignation of any Sheriff by whom he was appointed, shall be adjudged a breach of the condition of the bond given by such Sheriff, and actions for the malfeasance or misfeasance of any Sheriff, or of any of his deputies, may be sued against the executors or administrators of such Sheriff, in the same manner as if the cause of action survived at common law. *ch. 92, s. 2.*

8. When judgment is rendered on any Sheriff's bond, execution shall be awarded for the sum found due to the party for whose benefit the action was brought; and being part of the penalty forfeited. And the execution shall express the name of said party, who may cause said execution to be levied on any personal or real estate of the debtor, which levy shall enure to such party's sole use and benefit. *ch. 91. s. 7.*

9. In all actions against Sheriffs and deputy sheriffs wherein his defence may be that the act for which he is sued may be done in the execution of his office, he may plead the general issue and give the special matter in evidence, upon filing a brief statement of such special matter of defence within such time as the court shall order, of which statement the plaintiff shall be entitled to a copy, or he may plead specially, at his election. *ch. 59, s. 52.*

10. All actions against Sheriffs, for the misconduct and negligence of their deputies, shall be commenced and sued within four years next after the cause of action. *ch. 62, s. 16.*

11. No Sheriff or deputy sheriff shall be suffered to appear in any court, or before any Justice of the Peace, as attorney to, or in behalf of,

or assisting or advising to any party in a suit ; nor shall any Sheriff or his deputy be allowed to draw, make, or fill up any plaint, declaration, writ or process, or to draw or make any plea for any other person ; but all such acts done by either of them shall be void. *ch. 89, s. 5.*

12. If any sheriff or deputy sheriff shall directly or indirectly, loan or advance any sum of money or shall forbear, or give day of payment, or shall promise to do it, with intent to procure any note or demand and for the purpose of making profit from the fees, by writ, or do any act whatever with the aforesaid intent, he shall forfeit not more than five hundred nor less than twenty dollars to be recovered by indictment for the use of the State, or by action, one half to the prosecutor and the other half to the county. *ch. 20.*

Any person who with such intent shall be concerned directly or indirectly in purchasing notes for gain or profit, he shall be liable to the like pains and penalties. *ch. 256.*

13. All Sheriffs, coroners and constables who may receive any fines, forfeitures or bills of cost in pursuance of the judgment or sentence of the Supreme Judicial or District Court as well where such fines or forfeitures accrue to the State as to the county, except debts and costs received upon executions in favor of the State, shall forthwith pay the same to the treasurer of the county in which they shall be received ; and if any sheriff or other officer shall neglect to pay the same for the space of ten days after receipt thereof, he shall forfeit and pay double the amount thereof to such county treasurer, one third to his use and two thirds to the State. *ch. 82, s. 3.*

Hereafter it shall be the duty of Sheriffs and

other officers who are now required by law to pay moneys into the county treasuries for the use of this State, to pay them into the State treasury, and it shall be the duty of such officers to close and settle their accounts with the State treasurer every year in the month of December, on or before the fifteenth day thereof. *ch. 188, s. 1.*

All fines and forfeitures imposed by the Supreme Judicial Court, or District Court, to the use of the State, and all bills of cost allowed by said courts, accruing to the State, shall be paid into the Treasury of the county to the use of the State in the manner prescribed in the act to which this is in addition; (*ch. 82.*) and all the provisions of said act, applicable to the payment of such fines and bills of cost, shall be, and hereby are declared to be in full force; and the provisions of the act entitled "an act respecting the payment of moneys into the State Treasury, and relating to the duties of the Treasurer of the State, and the Treasurers of the several counties," passed *Jan. 30, 1822, (ch. 188),* shall not be considered as applicable to the payment of fines or bills of cost in criminal prosecutions. *Feb. 24, 1825.*

14. If any Sheriff or other officer, shall permit any person who may be sentenced to pay any fine, forfeiture, or bill of cost, and committed to such Sheriff or other officer or jailer, till such sentence be performed, to go at large without payment unless by order of law, and shall not pay the same costs, to the county treasurer, within twenty days, he shall be held to pay double the sum thereof to the said treasurer to the same use. *ch. 82. s. 3.*

15. Every Sheriff and other officer aforemen-

tioned, shall be held to produce to said courts, at every session thereof in their county, receipts in full from the county treasurer for all fines, forfeitures and costs imposed by said courts, respectively, received and paid previous to the sitting of such courts, or to assign the cause why they have not received or paid the same in order that the court may order a prosecution against delinquents. *ch. 82, s. 3.*

16. Whenever it shall so happen that no justice of the Supreme Judicial Court, or District Court, shall attend at the time and place by law appointed for holding either of said courts, the Sheriff of the county, or in his absence the clerk of the court may adjourn said courts from day to day, until a justice shall attend, and shall post public notification thereof in writing, on the door of the court-house; and in case of necessity may adjourn said Supreme Judicial Court without day; and by such adjournment all the business pending in said Court shall be considered as continued to the next term. *ch. 193, s. 2, & 219, s. 8.*

17. Sheriffs and deputy sheriffs are exempted from serving on juries. *ch. 84, s. 1.*

C. Their general power and duty in serving processes.

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| <p>§ 1. To serve all lawful writs and precepts.</p> <p>2. In case of vacancy of office.</p> <p>3. To have custody of jails.</p> <p>4. Process from S. J. Court.</p> <p>5. From District Court.</p> <p>6. From Justices of the Peace.</p> <p>7. From Judges of Probate.</p> <p>8. Service of Subpœnas and notifications for taking depositions.</p> <p>9. Notifications for taking poor debtors' oath.</p> <p>10. Petitions to the Legislature.</p> | <p>§ <i>ib.</i> Process from Court of County Commissioners.</p> <p>11. No civil process to be served on Lord's day.</p> <p>12. Property exempt from attachment.</p> <p>13. Arms and uniform exempt.</p> <p>14. Militia exempt from arrest while on duty.</p> <p>15. All citizens exempt, — on what days.</p> <p>16. Penalty for arresting dead bodies.</p> |
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§ 1. The Sheriff of each county in this State shall have power, and it shall be his duty, and the duty of each of his deputies, to serve and execute within his county, all writs and precepts to him or them directed and committed, issued from good and lawful authority; including all writs and processes in which towns of which they are inhabitants are parties or interested. *ch. 92, s. 1.*

2. All Sheriffs when removed from their office, as well as their deputies, shall have power to execute all such precepts as may be in their hands at the time of their removal from office; and in every case of a vacancy in the office of Sheriff in any county, by death, resignation, removal, or otherwise, every deputy sheriff in office under such Sheriff, having any writ or precept in his hands at the time of such vacancy, shall have the same authority, and shall be under the same obligation to serve, execute and return such writ or precept, as if such Sheriff had continued in office. *ch. 92, s. 1.*

3. The Sheriff of each county shall have the custody, rule and charge of the jail or jails therein, and of all prisoners within such jail or jails, and shall keep the same himself personally, or by his deputy, for whom he shall be answerable. *ch. 92, s. 1.*

4. All writs and processes of the Supreme Judicial Court shall be in the name of the State of Maine, bear test of the first justice, who is not a party to the suit, and shall be under the seal of the said court and signed by the clerk. *ch. 54, s. 3.*

5. All writs and processes issuing from the District Court shall be in the name of the State,

and shall bear the test of one of the justices of said court; and such writs and processes shall be under the seal of said court and signed by the clerk thereof, in the county where the writ or process may be returnable; and shall have force and be obeyed and executed in every county in the State. *ch. 373, s. 3, Feb. 1839.*

6. All sheriffs, constables and other officers are directed and empowered to serve any warrant issuing from a Justice of the Peace. *ch. 76, s. 6.*

And writs returnable before Justices of the Peace shall be duly served by the proper officer to whom they may be directed, seven days at least before the day therein set for trial. *s. 8.*

7. All Sheriffs, Constables and other officers are required duly to serve and execute all legal warrants, or other process to them directed by any judge of probate. *ch. 51, s. 1.*

8. Sheriffs, deputy sheriffs, and constables are empowered to serve subpœnas and notifications to take depositions; the service of such notifications to be by leaving an attested copy thereof at the last and usual place of abode of the adverse party or his attorney, allowing time for his attendance, not less than at the rate of one day, Lord's exclusive, for every twenty miles travel. *ch. 59, s. 38, & ch. 85. s. 2.*

9. A notification for taking the oath of a poor debtor in prison shall be served on any creditor, if he live within this State, and if such creditor live out of this State, upon his agent or attorney, by an attested copy delivered in hand, or by leaving the same at the last and usual place of abode of such creditor, agent or attorney, at least fifteen days before the time appointed for

the taking the oath or affirmation; provided that if any creditor or creditors live out of the State, and have no agent or attorney living in the same such notification shall be left with the clerk of the court or the justice by whom the execution was signed, at least fifteen days before the intended caption. *ch. 717, s. 9.*

10. Petitioners to the Legislature, may notify interested persons if known, by causing them to be served with a true and attested copy of the petition sixty days at least before the commencement of the session of said Legislature, by any Sheriff, deputy sheriff, constable or coroner, who shall make due return thereof. *ch. 166, s. 1.*

Sheriffs, constables, &c. are also required to serve orders of notice and other processes issuing from the Court of County Commissioners.

11. No person shall serve or execute any civil process, from midnight preceding to midnight following the Lord's day, but the service thereof shall be void, and the person serving the same shall be as liable to the party aggrieved, as if he had done the same without any civil process. *ch. 9, s. 9.*

12. The wearing apparel, beds, bedsteads, bedding, and household utensils of any debtor necessary for himself, his wife and children; the tools of any debtor necessary to his trade or occupation; the bibles and school books which may be in actual use in his or her family; all cast iron stoves and stoves made of sheet iron, used exclusively for the purpose of warming buildings; one cow, and one heifer or calf, until such heifer or calf shall become three years old, or shall have had a calf; two swine, one of which

shall not exceed in weight one hundred pounds; ten sheep, with the wool which may be shorn from them, and thirty hundred of hay for the use of said cow, and two tons for the use of said sheep, shall be exempted from attachment, execution and distress: Provided, that not more than one stove to each building, owned or occupied by the same person or family shall be so exempted; and that the beds and bedding so exempted shall not exceed one bed, bedstead, and necessary bedding for two persons; nor the household furniture the value of fifty dollars. *ch. 95, ch. 478.* All produce of farms, while standing and growing and until harvested, and corn and grain necessary for the sustenance of a debtor and his family, not exceeding thirty bushels; all the debtor's interest in one pew in any meeting-house where he and his family statedly worship, *ch. 341*; all potatoes raised or purchased by any person for the consumption of himself and family, *ch. 394*; all firewood conveyed to any person's house for his family's use, *ch. 513*; the interest of any debtor in any family burying ground, *ch. 670*; one boat not exceeding two tons burthen, usually employed in the fishing business and belonging entirely to citizens of this State, *ch. 694*; one plough of the value of ten dollars, one cart of the value of twenty-five dollars, one harrow of the value of five dollars, one cooking stove of the value of thirty-five dollars, *ch. 307, Feb. 1838*; all anthracite coals and all bituminous coals, and all charcoal conveyed to the house of any person for the use of himself or family, not exceeding five tons or chaldrons of bituminous or anthracite coals, and fifty bushels of charcoal, and that only when used for domes-

tic purposes, *ch. 358, Jan. 1839*; and one pair of bull or steer calves, raised by the debtor from his own cows or purchased by him when under one year old, so long as they shall remain the property of the debtor raising or purchasing the same as aforesaid, *ch. 413, March, 1839*, are exempt from attachment, execution or distress.

13. Every citizen enrolled, and providing himself with the arms, ammunition, and accoutrements required by law, shall hold the same exempt from all suits, distresses, execution or sale for debts, or for the payment of taxes. *U. S. stat. May 8, 1792. Rev. stat. ch. 164, preamble.*

Every officer, non-commissioned officer, and private, shall hold his uniform exempted from all suits, distresses, executions or sales for debts or taxes. *ch. 643, s. 14.*

14. No officer, non-commissioned officer, nor private shall be arrested on any civil process, during his going unto, or returning from, or his performance of military duty; nor during his going unto, remaining at, or returning from any place, at which he may be ordered to meet for the election of any officer. And no officer shall be arrested on any civil process, while going unto, serving upon, or returning from any court martial, court of inquiry, or board of officers, upon which it may be the duty of such officer to attend. *ch. 643, s. 14.*

15. No person shall be arrested on the fourth day of July, or on the day of any State election, on mesne process or execution founded on any civil suit or contract. *ch. 754, s. 1.*

16. If any sheriff, coroner or constable, shall take the body of any deceased person, by virtue of any writ, or mesne process, or execution,

upon conviction of such offence before the Supreme Judicial or District Court, within the county in which the offence shall have been committed, he shall be fined, not more than five hundred dollars, or imprisoned for a time not exceeding six months. *ch.* 16.

D. The service of writs of attachment and original summons, and of foreign attachment.

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| <p>§ 1. Mode of serving writs of attachment and summoning defendants.</p> <p><i>ib.</i> When shares in corporations are attached.</p> <p>2. Service of writs of summons.</p> <p>3. Where the defendant is not an inhabitant of the State.</p> <p>4. In real actions.</p> <p>5. Service upon joint obligors when out of the State.</p> <p>6. Service on towns, parishes, &c.</p> | <p>7 & 8. On other corporations.</p> <p>9. Service of foreign attachment, or trustee writs.</p> <p>10. The same before Justices of the Peace.</p> <p>11. Attachment of hay or stock.</p> <p>12. Process against forcible entry and detainer, how served.</p> |
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§ 1. When the goods or estate of any person shall be attached at the suit of another in any civil action, a summons in form prescribed by law, shall be delivered to the party whose goods or estate are attached, or left at his or her dwelling house, or place of last and usual abode, fourteen days before the day of the sitting of the court where such attachment is returnable; and, if the defendant was not at any time an inhabitant or resident within this State, or has removed therefrom, then such summons shall be left with his tenant, agent or attorney, and such service shall be made by the officer to whom the writ may be directed, who shall return the same according to the precept thereof: and if such defendant shall not have a tenant, agent, or attorney within the State, and his goods and es-

tate shall be attached as aforesaid, the officer shall return the writ with his doings thereon. *ch. 59, s. 1.*

When any shares or interest in corporations shall be attached on mesne process, or taken on execution without such previous attachment, an attested copy or copies of such writ of attachment or execution, shall, by the officer holding the same, be left with the clerk, treasurer or cashier of such company. *ch. 60, s. 1.*

2. In all suits wherein the process is by original summons, as against executors, administrators or guardians in ejectment, dower, *scire facias*, error, review, and all other civil actions wherein the law does not require a separate summons to be left with the defendant, the service thereof by the proper officer shall be good and valid in law, either by his reading the writ or original summons to the defendant, or by leaving a certified copy thereof at his or her house or place of last or usual abode, fourteen days before the same is returnable; and in all real actions, where the defendant or defendants in review live out of the State, so that the writ of review cannot be served upon him or them, the service of such writ upon the tertenant or person in possession shall be deemed a good and sufficient service. *ch. 59, s. 2.*

3. In all actions wherein the process shall be by original summons as aforesaid, and the defendant was at no time an inhabitant or resident within this State, or has removed therefrom, then the service thereof shall be in like manner by the proper officer's reading the same to, or leaving a like copy duly attested with the tenant,

agent or attorney of the defendant, the like number of days before the sitting of the court whereto the same process shall be returnable. *ch.* 59, *s.* 3.

4. In actions of dower and other real actions, wherein the possession of land or buildings is not demanded in the writ of the tenant in the actual possession or occupancy thereof, in addition to the service on the defendant in the writ or summons as aforesaid, there shall be a service on such tenant the like number of days before the day of the sitting of the court, by the proper officer's reading to him or her the same writ or original summons, or leaving a like certified copy at his or her dwellinghouse or place of usual abode on the premises, which shall also be certified by the proper officer. *s.* 4.

5. When two or more are jointly obligated by act of law or agreement, and one or more of them is without the State, having property or estate, but no tenant, agent, trustee, or attorney within the same, the property or estate of those so without the State, may be attached, and the summons being left by the officer serving the writ, with those within the State, shall be deemed a legal service on those without the same. *s.* 5.

6. When a suit shall be brought against any town, parish, or against the proprietors of any common or undivided lands or estate, the plaintiff shall cause the clerk of such town, parish, or proprietors, or one or more of the selectmen of such town, or assessors of such parish, to be served with a copy of the writ of summons, at least thirty days before the day of the sitting of the court to which the service shall be returnable. *s.* 6.

7. The franchise and all the rights, privileges and immunities of any turnpike, bridge, canal or other company incorporated by law with power to receive toll, so far as relates to the right of demanding and receiving toll as well as all other corporate property, either real or personal, shall be liable to attachment on mesne process; and when such attachment shall be made or other service of a mesne process shall be made on any of the corporations aforesaid, the officer serving the same shall leave an attested copy of said process, and his return thereon with the clerk, treasurer, or some one of the directors of said corporation, thirty days at least before the day of the sitting of the court to which the same may be returnable. *ch. 60, s. 2.*

8. In all suits against the inhabitants of a county, the writ or other process may be served by leaving an attested copy thereof by the proper officer, with one of the County Commissioners or the treasurer of such county, thirty days before the return day thereof; in all suits against a school district, the same may be served by leaving an attested copy thereof with the clerk of such district, or if there be no such clerk, by posting up such copy on the outer door of the school house of such district, thirty days before the return day; and in all suits against any corporations, other than those above mentioned and those corporations where a mode of service is now prescribed by law, the same may be served by leaving an attested copy thereof with the clerk, cashier, or secretary, or any other officer or agent having charge of the business of such corporation, thirty days before the return day. And if there be no such offi-

cer found within the county, such copy may be left with any member of such corporation. *ch.* 368, s. 2, *Feb.* 1839.

9. The officer to whom a writ of foreign attachment may be directed shall serve the same by attaching the goods and estate of the principal of the value required, if so much can be found in his precinct, by reading the said writ to him, or by leaving an attested copy thereof at his last and usual place of abode, if he had been an inhabitant or resident within this State, at any time within three years next before the suing out such writ, and by reading the same to each of the trustees, or by leaving an attested copy thereof at such trustees' usual place of abode; and in case the principal has not been an inhabitant or resident as aforesaid, a service made on the supposed trustee or trustees, in manner aforesaid, shall be deemed a sufficient service. *ch.* 61, s. 1.

10. The officer to whom trustee actions, returnable before a Justice of the Peace, are directed, is to serve the same in the same manner as other writs of attachment issued from Justices are served, and the writ shall be returnable to said Justice. *ch.* 275, s. 1.

11. When hay in a barn, sheep, horses, or neat cattle are attached on mesne process at the suit of a bona fide creditor, and are suffered by the officer making such attachment to remain in the possession of the debtor, on security given for the safe keeping or delivery thereof to such officer, the same shall not by reason of such possession of the debtor be subject to a second attachment to the prejudice of the first attachment. *ch.* 60, s. 34.

12. Any Justice of the Peace and of the quorum, upon a complaint being made to him of any unlawful and forcible entry into any lands or tenements, and detainer, or of any unlawful or forcible detainer of the same after a peaceable entry, shall make out his warrant under his hand and seal directed to the Sheriff of the county or his deputy, or to any constable of the town in which the party complained of may dwell, commanding him to summon the said party to appear and shew cause, if any he have, why judgment should not be rendered and a writ of possession should not issue against him for possession of the lands and tenements aforesaid, with costs of suit. Which summons shall be served upon the party complained against, by leaving a copy thereof at his last and usual place of abode, or delivering to him such copy seven days, at least, before the day appointed for the trial.

E. The service of writs of Habeas Corpus, writs for replevying a person and replevying personal property.

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| <p>§ 1. Writs of habeas corpus, how awarded.</p> <p>2. Mode of serving said writ.</p> <p>3. Penalty for disobeying it.</p> <p>4. Writs for replevying a person, when and how to issue.</p> <p>5. If from S. J. Court plaintiff to recognize.</p> | <p>§ 6. If from District Court plaintiff to give bond.</p> <p>7. Writ of withernam and taking bail.</p> <p>8. Service of writ for replevying cattle and other property.</p> |
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§ 1. The Supreme Judicial Court, or one judge thereof in term-time or vacation, upon complaint that any person is imprisoned or restrained of his personal liberty, are authorised and required to award a writ of habeas corpus,

directed to the officer or person imprisoning or restraining the complainant, returnable forthwith to such court or judge, or to any other judge of said court ; (with some exceptions) and such writ when awarded by the court, shall be signed by the clerk, tested by the first justice, not a party, and sealed with the seal thereof ; but when awarded by any judge in the vacation shall only be under the hand and seal of such judge, and shall direct the place to which the complainant shall be brought. *ch. 64, s. 1, 2.*

2. When any person shall bring and offer such writ of habeas corpus to the officer or person to whom the same shall be directed, he shall receive the same ; and upon payment or tender of such charges for bringing the complainant from the place of imprisonment, as the Court or Judge who grants the writ shall order, if the person complaining be confined in a common jail, or under the custody of an officer, otherwise without such payment or tender to the place mentioned in the writ, such officer or person shall have the body of the complainant before the Court or Judge before whom the writ is made returnable (unless committed and detained for some one or more of the causes aforesaid,) at the place therein mentioned within three days, if within twenty miles of the place of imprisonment ; if more than twenty, but within one hundred miles, then within ten days ; if above one hundred miles, then twenty days after the receipt thereof, and shall then return the same and certify thereon the true and all the cause or causes of his or her taking and detaining. *ch. 64, s. 3.*

3. If any officer or person, to whom any writ

of habeas corpus shall be directed shall refuse to receive the same, or after the receipt thereof shall refuse or neglect to yield obedience thereto as required, (the complainant performing the conditions required,) unless prevented by the sickness of the prisoner, or other necessity, he, for such refusal or neglect, in each and every particular shall forfeit to the party grieved, the sum of four hundred dollars; and for any false return to such writ shall be further liable to the action of the party. And the court or judge respectively may further punish every disobedience to such writs as for a contempt, and compel obedience thereto by process of attachment. s. 9, 10.

4. When the writ for replevying a person who stands committed by lawful authority, issues from the Supreme Judicial Court, it shall be made returnable in the same county where the imprisonment happens, and unto the next court to be there held; but if the plaintiff is held without order of law, from the District Court of the county wherein he is held, returnable fourteen days at least from the day of the date. *ch. 66, s. 2.*

5. Where the plaintiff is delivered by a writ returnable to the Supreme Judicial Court, having been committed for any offence, and from which commitment he is repleviable, he shall, before he is delivered, recognize before the Sheriff of the county in person, with sufficient surety or sureties in a reasonable sum for his appearance at the same court to answer, abide and perform the order and sentence of the same; which recognizance shall be returned into court by the Sheriff. *ib.*

6. When the plaintiff shall be delivered by a

writ returnable to the District Court, he shall, before his deliverance, give bond to the use of the defendant with sufficient surety or sureties, at the discretion of the Sheriff, to appear at the court to which the writ is returnable, and there to prosecute his replevin against the defendant, to have his body there ready to be re-delivered as the court shall order, and to pay all damages and costs that may be awarded against him; and the Sheriff shall be answerable if the sureties shall prove insufficient, unless they are such as the defendant agrees to. *ib.*

7. If the Sheriff shall return upon the writ for replevying a person, issuing from the District Court, that the defendant elained the plaintiff's body so that he cannot deliver him, then the plaintiff shall, on motion to the court, have a *capias* in *withernam* to take the defendant's body, and to keep the same until he shall produce the plaintiff to be delivered according to the commandment of the original writ: provided nevertheless, that if the defendant shall give full and sufficient bail for his appearance at the court whereunto the writ is returnable, then and there to traverse the return of the Sheriff upon the writ of replevin, that the Sheriff shall take such bail, and if the defendant cannot procure such bail he may be committed by the Sheriff; and if the suit is decided against him, the court shall order him into the custody of the Sheriff, and shall issue an alias writ of *withernam* to hold him, until he produce the body of the plaintiff, or can prove that he is dead. *ch. 66, s. 4.*

8. In the service of a writ for replevying cattle impounded, or for other personal property, the Sheriff is commanded to deliver the proper-

ty to the plaintiff, unless the same be detained for the reasons expressed in the writ, and to summon the defendant for his appearance at court; upon condition that the plaintiff give bond to the defendant with sufficient surety or sureties in a sum equal to double the value of the property, to prosecute his writ of replevin to final judgment, and to abide the order and judgment of the court in the action. *ch.* 63, s. 9, and *ch.* 80.

F. Of their authority and duty in regard to bail in civil actions.

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| § 1. Officer to return bail bond with the writ.
2. Duty to notify bail.
<i>ib.</i> Fees to be paid by bail.
3. Principal may be delivered to Sheriff, &c. by Justice. | § 4. Justice to deliver mittimus.
5. Officer to receive principal.
6. Their power and duty in serving mittimus.
7. Officer's certificate necessary evidence of avoidance. |
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§ 1. When bail is given in any civil action for the appearance of the party to answer the suit and to abide the order and judgment of the court thereon, the officer who served the writ shall return the bail bond taken by him, with the original writ, to the court or justice before whom the same may be returnable. *ch.* 67, s. 1.

2. The officer who may receive the execution shall notify the bail personally, or by leaving a written notice signed by said officer at the usual places of abode of the bail, if living within the county in which said officer lives, at least fifteen days before the expiration thereof, certifying that he cannot find the principal debtor, nor whereof to satisfy said execution, for which notice said officer shall have a right to demand, recover and receive of and from said bail the usual fees for service of writs with travel from

the officer's dwellinghouse to that of the bail, calculated on the road most usually travelled, and shall minute in said notice the amount of said fees, which the bail shall pay in twenty days, unless the bail shall at least one day before the execution is returnable, produce and deliver to the officer the principal debtor for whom bail was given. *ib.*

3. If the bail taken on mesne process in any civil action, triable before any Justice of the Peace shall at any time before the final judgment upon the original suit is rendered against him, or upon the return of *scire facias*, and before judgment thereon shall be rendered against him, bring his principal before such Justice, and shall procure the Sheriff of the county, or his deputy, or any constable of the town wherein such Justice may reside, to attend and receive him, said Justice shall thereupon order him into the custody of such officer. *ch. 67, s. 5.*

4. When any principal, surrendered as aforesaid, shall be ordered into custody, the said Justice shall make out and deliver to the officer receiving him, a warrant or mittimus. *s. 6.*

5. It shall be the duty of any officer as aforesaid, upon the request of such person or persons being bail as aforesaid, to repair to the said Justice's court, in order to receive the principal as aforesaid; and such officer shall be allowed and paid by the bail for his receiving and committing said principal on said warrant or mittimus, the same fees as are provided by law for committing any defendant to prison on mesne process. *s. 7.*

6. All and every such officer or officers, shall have the like power and authority, and be under the like obligations in all respects and regards

whatsoever, to execute and return such warrant or mittimus, issued by such Justice, upon the surrender as aforesaid, as he or they may by law have and are under to execute and return any writ or execution whatever; and shall be subject and liable to all the like action or actions, for any fraud or falsehood and neglect of their duty, as is provided by law in other cases. s. 7.

7. No return of *non est inventus* made by any officer on any execution shall be considered as evidence of the debtor's avoidance, so that the bail may be rendered liable on *scire facias*, unless such officer shall certify on such execution, that he has had the same in his hands at least thirty days before the expiration thereof. *ch.* 67, s. 2.

G. Levy of executions on personal and real estate, and the offset of executions.

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| <p>§ 1. Goods and chattels taken on execution to be sold in four days.</p> <p>2. Appropriation of proceeds.</p> <p>3. Liable to 30 per cent. interest for not paying over money.</p> <p>4. Return. Penalty for fraud.</p> <p>5. Levy upon real estate, and appointment of appraisers.</p> <p><i>ib.</i> Appraisement and delivery of seizin.</p> <p>6. Levy upon estate held in common.</p> <p><i>ib.</i> Return and recording of executions.</p> | <p>§ 7. Extent upon rents and attornment of tenants.</p> <p>8. Levy upon mills, &c. which are not to be divided.</p> <p>9. Levy upon estate of deceased persons.</p> <p>10. Seizin of dower.</p> <p>11. Levy upon equity of redemption.</p> <p>12. Notice of sales.</p> <p>13. Adjournment and return of surplus.</p> <p>14. Possessory titles may be sold.</p> <p>15. Setting off of executions.</p> |
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§ 1. When any goods or chattels shall be taken to satisfy an execution issuing upon a judgment obtained, such goods and chattels shall be safely kept by the officer at the expense of

the debtor for the space of four days next after they are so taken; and if within that time the owner shall not redeem the same by otherwise satisfying the execution, such goods and chattels shall be sold at public vendue to the highest bidder, having been first advertised, by posting up notifications of the time and place of sale, forty-eight hours before the expiration of the four days, in the town or place where the sale is to be. *ch. 60, s. 5.*

2. The money arising upon such sale shall be applied to the paying charges and the satisfying the execution, and the officer shall return the overplus, (if any there be,) to the debtor. *ib.*

3. If any Sheriff or his deputy shall unreasonably neglect or refuse to pay to any person any money received by him upon execution to the use of such person, upon demand thereof being made, he shall forfeit and pay to such person five times the lawful interest of such money, so long as he shall so unreasonably detain the same after such demand is made. *ch. 92, s. 3.*

4. The officer who is possessed of the execution shall make return of the same with his doings therein, particularly describing the goods taken and sold, and the sum for which each article was struck off, and if any officer shall be guilty of any fraud in the sale or in the return, he shall be liable to the debtor to pay him five times the sum defrauded, to be recovered by action of the case. *ch. 60, s. 5.*

5. When any person shall obtain judgment in any court within this State for any sum of money, and the person or persons against whom the judgment is, does not satisfy such judgment

and the creditor can find no personal property to his acceptance, wherewith to satisfy his execution, and shall think proper to levy his execution upon the debtor's real estate, then the officer to whom the execution was delivered, shall cause three disinterested and discreet men being freeholders in the county, one to be chosen by the creditor or creditors, one by the debtor or debtors, whose land is to be taken, if they see cause, and a third by the officer; and in case the debtor or debtors shall neglect or refuse to choose as aforesaid, after being duly notified by the officer, if the debtor be living in the county in which such land lies, the officer shall appoint one for such debtor or debtors, to be sworn before one of the Justices of the Peace of the same county, faithfully and impartially to appraise such real estate as shall be shown to them, who shall appraise the same, to satisfy said execution with all fees, and shall set out such estate with metes and bounds, and the officer shall deliver possession and seizin thereof to the creditor or creditors, his or their attorney. *ch. 60, s. 27.*

6. When the real estate of the debtor or debtors shall be held in joint tenancy, in coparcenary or tenancy in common, with the real estate of other persons, then the said officer may extend execution on such debtor or debtor's real estate held as aforesaid, or part thereof, describing the same with as much precision as the nature and situation thereof will admit of, and give the creditor or creditors, his or their attorney, seizin and possession of such debtor or debtor's real estate held as aforesaid, or part thereof, to hold in common with the said other persons; which exe-

cution being returned with the doings thereon into the clerk's office, and before such return into the clerk's office, or afterwards and within three months, the same shall be recorded in the registry of deeds in the county where the land lies, shall make a good title to such creditor or creditors, his or their heirs and assigns, as the debtor had therein. *ib.* And it shall be the duty of every officer who shall levy an execution on real estate to cause the same to be recorded by the register of deeds of the county where such land lies, within three months after such levy. *ch.* 309.

7. When it so happens that the real estate extended upon cannot be divided and set out by metes and bounds, as before prescribed, or by the description before mentioned, then execution shall be extended upon the rents of such real estate, and the officer shall give seizin thereof to the creditor or creditors his or their attorney; and also in case of extending execution on rents as aforesaid, shall cause the person in possession and improvement to attorn and become tenant of such creditor or creditors, and to pay the rent to him or them accordingly; and upon refusal thereof to turn the person so refusing out of possession and give seizin and possession of the same to the creditor, to hold and enjoy the same until it shall be redeemed. *ch.* 60, *s.* 28.

8. Whenever a creditor in execution shall think proper to extend and levy the same on any sawmill, gristmill, or other mill, factory or mill-privilege, or other real estate which cannot be divided without prejudice to or spoiling the whole, and where the whole is not necessary for the satisfying of such execution, the same may be extended and levied in manner before prescribed

upon the same or upon any undivided part thereof, which shall be sufficient to satisfy such execution; and in case the estate is so situated that the same cannot be set off by metes and bounds, the return upon the execution shall describe the whole estate with as much precision as the nature of the case will admit, which execution being returned and recorded, in manner before prescribed, shall vest in such creditor in execution, as good and valid a title thereto as the debtor had therein, when the same was attached on mesne process, or taken in execution. *ch. 60, s. 29.*

9. The real estate of any testator or intestate is liable to be taken and levied upon by any execution issued upon judgments recovered against executors and administrators in such capacity, being the proper debts of the testator or intestate and the method of levying, appraising, and recording shall be the same as is provided respecting other real estate taken in execution. *ch. 52, s. 24.*

10. Upon rendering judgment for any woman to recover her dower in any lands, tenements, or hereditaments, a writ of seizin shall be directed to the Sheriff of the county or his deputy who shall cause her dower in such estate to be set out to her by three disinterested freeholders of the same county, who shall be under oath to set out the same equally and impartially, without favour or affection, as conveniently as may be. *ch. 40, s. 2.*

Where no division can be conveniently made by metes and bounds, dower shall be assigned in a special manner, as of a third part of the rents or profits to be computed and ascertained in manner as aforesaid. *s. 3.*

11. All rights in equity of redeeming real estate mortgaged, shall be liable to be taken in execution upon judgment for the payment of the just debts of the mortgagor or owner, and the officer having such execution is authorised to make sale of the same at public vendue, and to make, execute, acknowledge and deliver to the highest bidder good and sufficient deed or deeds of any estate so sold. *ch. 60, s. 17.*

12. The officer shall give notice in writing, of the time and place of sale, to the debtor in person, or by leaving the same at, his last and usual place of abode, and public notice of said time and place of sale, by posting up notifications thereof in two or more public places in the town or plantation in which such mortgaged estate is situated, and also in one or more public places in two adjoining towns, thirty days at least before the time of sale; and further shall cause an advertisement of the time and place of sale to be published three weeks successively before the day of sale, in some public newspaper printed in the county in which such real estate lies, if any such newspaper shall be there printed. *ch. 60, s. 17.*

The notifications aforesaid, being given or posted up within the space of thirty days after judgment given, whereon such execution shall issue, the attachment shall hold the equity attached as aforesaid, until the levy of such execution can be completed. *ib.*

13. In case the estate notified for sale as aforesaid shall not be disposed of at the time and place appointed, the officer shall adjourn the vendue, not exceeding three days, and so from time to time until the sale shall be complet-

ed. And the surplus moneys, (if any there be,) arising from such sale, beyond satisfying the debt, costs and necessary intervening charges, the officer shall return to the debtor. *ib.*

14. When the estate, right, title and interest which any debtor has by virtue of a bond or contract in writing, to the conveyance of real estate, shall be seized and sold on execution, such notice shall be given and such proceedings had in every respect as are required by law in the sale of an equity of redemption. *ch. 431, s. 1.*

15. The estate, right, title or interest of any person, owned, held or claimed in virtue of a possession or improvement, as expressed in "an act for the settlement of certain equitable claims arising in real actions," shall be liable to be taken by attachment on mesne process, and by execution. And when such estate is seized and sold on execution, such notice shall be given and proceedings had, as in the sale of an equity of redemption; and the debtor shall have the same right to redeem his interest. *ch. 60, s. 19.*

16. Whenever it shall happen that any Sheriff, coroner or other officer authorized by law to serve executions, shall at the same time have several executions wherein the creditor in one execution is debtor in the other, any such officer is hereby empowered and directed to cause one execution to answer and satisfy the other so far as the same will extend; provided, this shall not extend to judgments wherein the creditor in one execution is not in the same capacity and trust debtor in the other; and also shall not affect or discharge the lien which any attorney may have upon any judgments or executions for his fees and disbursements, or to affect the rights of any

person to whom or for whose benefit the same judgments or executions, or the original cause of action thereof may have been assigned, *bona fide*, and without fraud. s. 4.

H. The levy of executions upon shares of debtors in incorporated companies, and upon corporate property.

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| <p>§ 1. When such shares are attached, a copy of the writ to be left with the clerk, &c.</p> <p>2. May be sold at auction.</p> <p><i>ib.</i> Copy of return to be left with Clerk, &c.</p> <p>3. Mode of notifying sale of shares.</p> <p>4. Vendue may be adjourned — disposal of surplus.</p> <p>5. Franchise of corporations may be sold on execution.</p> <p>6. Mode and effect of such sale.</p> <p><i>ib.</i> Officer to give possession.</p> <p>7. Warrants of distress to be served as executions.</p> <p>8. Real estate of banks may be sold on execution.</p> | <p>§ 8. Mode of giving notice.</p> <p>9. Sale may be adjourned.</p> <p><i>ib.</i> Proceedings where to be had.</p> <p>10. Mortgaged estate of banks may be sold in same manner.</p> <p>11. Debt of Mortgagor to pass.</p> <p><i>ib.</i> Officer to request copy of note, &c.</p> <p>12. Surplus in officer's hands to be applied to pay other executions.</p> <p>13. To be held subject to prior attachment or seizure by a coroner.</p> <p>14. Real estate of manufacturing corporations may be sold.</p> |
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§ 1. The share or shares, or interest of any person in any turnpike, bridge, canal, or other company incorporated, with all the rights and privileges appertaining to such shares may be attached on mesne process and taken on execution, and the attachment of such shares or interest on mesne process shall hold the same and also all dividends growing due after such attachment to respond the final judgment which may be rendered thereon, until the expiration of thirty days after rendition of judgment. And when any such shares or interest shall be attached on mesne process or taken on execution without such previous attachment an attested copy or

copies of such writ or execution shall by the officer holding the same be left with the clerk, treasurer, or cashier of such company. *ch.* 60,

s. 1.

2. The attested copy of the execution left with the clerk, treasurer or cashier of the corporation, and an advertisement of the time and place of sale within said thirty days after judgment, shall be deemed as taking such shares or interests in execution, pursuant to the attachment; and so many of said shares, or so much of said interest may be sold on said execution at public vendue to the highest bidder, as shall be sufficient to satisfy the same, and the charges of sale after notice shall have been given of the time and place of sale, in manner as hereinafter provided; and in case the officer making the sale, or the purchaser or purchasers of any such shares or interests, do cause an attested copy or copies of such execution, and the officer's return thereon to be left with such clerk, treasurer, or cashier within fourteen days after the sale is completed, and pay for the recording of the same, such purchaser or purchasers shall thereby be entitled to such shares and interest, with all the privileges appertaining thereto, and the income and dividends which may have accrued or been made on the same subsequent to the attachment thereof on mesne process; and it shall be the duty of the proper officers of such corporation, to issue to the purchasers, such certificates as by the by-laws thereof are the evidences of the shares or interest of a proprietor therein. *s.* 6.

When a share or part of a share in an aqueduct company, is sold on execution, an attested copy thereof and of his return must be left with

the clerk within ten days after said sale. *ch.* 140, s. 9.

3. In making sale of any such shares or interests the officer holding the execution shall give notice in writing of the time and place of sale to the judgment debtor, by leaving the same at his last and usual place of abode, if within the county in which the said officer dwells, and public notice by posting up notifications thereof in one or more public places in the town or plantation where the sale is to be made, and also in one or more public places in the two adjoining towns, thirty days at least before the time of sale, and further shall cause an advertisement expressing the time and place of sale, and against whom execution shall have issued, on which such shares or interests shall have been taken, to be published three weeks successively before the day of sale, in some public newspaper printed in the county where the sale is to be made, if any such be therein printed, and in case no such paper is therein printed, then such advertisement shall be published in some public newspaper in the nearest county where a newspaper shall be published; and in case the judgment debtor has at no time resided, or does not then reside in such county, the posting up such notifications and publishing such advertisements in manner aforesaid shall be deemed sufficient notice of such sale. *ch.* 60, s. 7.

4. In case the shares or interest so notified for sale, shall not for want of purchasers, be disposed of at the time appointed for the sale, the officer shall adjourn the sale for a time not exceeding three days, and from time to time until the sale shall have been completed; and the

surplus moneys, (if any there be,) arising from such sale, beyond satisfying the contents of the execution and necessary intervening charges, the officer shall pay the debtor, or deposit the same with the treasurer or cashier of the corporation, for the benefit of the debtor and subject to his order. *ch. 60, s. 7.*

5. Whenever any judgment may be recovered in any court of law against any turnpike, bridge, canal or other company incorporated by law with power to receive toll, the franchise of such corporation with all the privileges and immunities thereof, so far as relates to the right of demanding and receiving toll, as well as all other corporate property, whether real or personal, shall be liable to the satisfaction and payment of such judgment, and may be taken and sold on execution at public vendue, the officer first giving notice of the time and place of sale, by posting up a notification in any town or plantation in which the clerk, treasurer or any of the directors in said corporation may dwell, thirty days at least before the time of sale, and also by causing an advertisement, expressing the name of the creditor, the amount of said execution, and the time and place of sale, to be inserted three weeks successively in some public newspaper published in any county in which either of the aforesaid officers of said corporation may dwell, (if any such newspaper shall be there printed,) the last publication to be at least four days before the day of sale. *ch. 60. s. 9.*

6. In the sale of such franchise any person who will pay and satisfy said execution and all legal fees and expenses thereon, in consideration of being entitled to receive, to his own use

for the shortest period of time, all such toll as the said corporation may by law be entitled to demand and receive, shall be considered as the highest bidder, and the same shall be struck off to him accordingly; and the officer's return on said execution shall transfer to the purchaser all the privileges and immunities which by law belonged and appertained to said corporation so far as relates to the right of demanding and receiving toll; and the said officer shall immediately after such sale be authorized and empowered to deliver said purchaser possession of all the toll-houses and gates belonging to said corporation, in whatever county the same may be situated; and the said purchaser shall thereupon be entitled to demand and receive to his own use all the toll which may accrue within the time limited by the terms of his purchase, in the same manner and under the same regulations as the said corporation was before authorized to demand and receive the same, subject however to a right of redemption in three months from the time of the sale. s. 10.

7. Whenever any damages may be assessed to any person or body politic, either by the report of a committee or the verdict of a jury, for any injury sustained in his or their property by the doings of any of the corporations aforesaid, and the said damages shall remain unpaid for the space of thirty days after the final acceptance of such report or verdict, such person or body politic, upon petition to any court, by which such report or verdict was accepted, shall be entitled to a warrant of distress against said corporation for the damages so assessed and the interest thereon, together with his or their reasonable

costs; and the officers to whom such warrant of distress may be delivered, may proceed to execute the same in the same manner as is herein before provided for the levying and satisfaction of executions. *ch.* 60, *s.* 11.

8. The lands, tenements or hereditaments of any bank incorporated by law, may be taken in execution, and sold at public vendue to the highest bidder; and in every such case, the officer who shall levy such execution shall be empowered to execute to the purchaser a good deed or deeds thereof, having first given notice of the time and place of sale at least fourteen days previous thereto, in two or more public places, in the town or place where such lands or tenements lie, as also in two adjacent towns; and all deeds and conveyances thereof, duly executed as aforesaid, shall be good and effectual in law to transfer to the purchaser, his heirs and assigns forever, all right, title and interest therein which belonged to such corporation. *s.* 13. — Sec. 19 of *ch.* 519 provides, that notice of such sale shall be given in two or more public places in the town or place where such tenements lie, and also in some newspaper printed in the county; and if there be no newspaper printed in the county, then in some newspaper printed at the seat of government.

9. The officer who may levy any execution or warrant of distress by virtue of the 9th, 10th, 11th, and 13th sections of this act, shall be authorized to adjourn the vendue from time to time, not exceeding ten days at any one time, until the sale shall be completed. *ch.* 60, *s.* 12.

10. All the right, title, claim and interest of any bank in any real estate mortgaged for secu-

urity of debt to such bank, shall be liable to be seized on execution and sold at public auction in the same manner as the real estate of such banks. s. 15.

11. Any debt secured by such mortgage shall pass by the officer's deed of the estate, and be vested in the purchaser, who may in his own name maintain an action for the debt or possession of the estate; and a certified copy of the deed by the register shall be evidence of the deed and obligation; and it shall be the duty of the cashier, or clerk of such bank, on reasonable request to furnish such officer, who shall serve such execution, or the judgment creditor, with a certified copy of such note or obligation, together with a copy of all the endorsements thereon, and a statement of such payments as shall have been made thereon by the debtor; and when the debtor shall pay the purchaser the amount due on such obligation, he shall be forever discharged therefrom, and no transfer of such note or mortgage by such bank, after notice of such seizure on execution shall have any validity or effect against such purchaser under such sale at auction. *ch.* 60, s. 15, 16.

12. When an officer shall have in his hands any money arising from the sale of the shares or interest aforesaid, or from the sale of any equity of redemption or personal property, more than sufficient to satisfy the execution or executions on which such shares or interests, equity of redemption, or personal property were taken and sold, such officer shall apply the same surplus money, or such part thereof as may be necessary, to the payment of any other execution he may have in his hands unsatisfied against the

same debtor, or which may be delivered to him before he shall have paid over said surplus money: provided however, if such share, or interest, equity of redemption, or personal property, shall before such sale have been attached on mesne process, other than that on which such execution shall have issued, or shall have been taken on some other execution, and the said officer is duly notified thereof, he shall hold such surplus moneys subject to such attachment or execution, and shall apply the same to the payment of the execution which may issue on the judgment that may be rendered on such mesne process, and delivered to him within thirty days of the rendition of such judgment, or to the payment of the execution by which such shares or interest, equity of redemption, or personal property had been taken according to the priority in regard to time of such attachment or taking in execution. s. 20.

13. When any Sheriff or deputy sheriff shall sell any such interest or property, which had previously been attached, or taken on execution by a coroner and is duly notified thereof in writing, he shall hold such surplus subject to such attachment or execution, in the same manner as if he were authorized to serve the execution; and after being duly notified thereof in writing by said coroner and of the time of such attachment or taking on execution, and of the whole amount, including fees due thereon, shall pay over to the coroner the same or so much thereof as remains after satisfying all executions in his own hands on which the same had been attached or taken prior to the seizure by the coroner. *ch.* 60, s. 21, 22.

14. The real estate of any manufacturing corporations may be taken in execution, and sold at public auction in the same manner as the real estate of banks, and the officer is empowered to make and deliver deeds thereof to the purchaser. *ch. 221, s. 2.*

I. Levy of executions issued in trustee or foreign attachment process, executions in favour of the State and on recognizances.

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| § 1. Trustee executions against principal and trustee. | § 4. Notification of sale, how given. |
| 2. Delivery, appraisement and sale of specific articles. | 5. Service of executions on recognizances. |
| 3. Executions in favor of State, lands may be sold at auction. | |

§ 1. When in the process of foreign attachment, the plaintiff shall recover judgment against the principal, and there shall be any trustee summoned who shall not have come into court and discharged himself upon oath, and against whom suit shall not be discontinued: the court shall award execution against the goods, effects and credits of the principal, in the hands and possession of every such trustee as well as against the body, goods, and estate of the principal which the officer may return unsatisfied if he cannot find sufficient property of the principal, or the trustee does not expose sufficient goods, effects, or credits of the principal. *ch. 61, s. 8, 9.*

2. In every case where it shall appear, by the answer of the trustee, that he was at the time of the service of the summons on him, held or bound to deliver to the principal at a future day, any specific article or articles whatsoever, such trustee is authorized, on demand made by the

officer having any execution in his hands, issued upon any judgment, recovered by virtue of the trustee act, to deliver to him such specific articles or so much thereof as may be necessary to satisfy such execution with the legal fees thereon; the value of such articles, as between the principal and trustee to be estimated and ascertained by the appraisal of three disinterested and discreet men, one to be chosen by the trustee, one by the officer, and one by the principal, if he see cause; or if he neglect or refuse, then the officer shall appoint two of the appraisers, who shall be sworn before a Justice of the Peace in and for the county where such articles are to be delivered, faithfully and impartially to appraise the same; and the said Justice and appraisers shall make, on such execution, a certificate of their respective doings; provided, that in all cases whereby the terms of the contract between the principal and trustee, any mode is pointed out for ascertaining the value of such specific articles, the principal and trustee, or either of them, may have the value thus ascertained and estimated; and in either case, the officer shall proceed to sell such articles and conduct in the sale thereof as in other cases of sales of personal property on execution; the overplus moneys, after satisfying the execution and his fees, he shall pay over to the principal, if within the precinct of the officer, otherwise to the trustee. *ch. 61, s. 13.*

3. Upon any judgment in any court of law in this State, in the name and for the use and benefit of this State, for any sum of money, a writ of execution in common form shall issue, and be directed to the proper officer, and the lands of such judgment debtor may be taken on such

execution and sold at public vendue to the highest bidder. And in every such case, the officer who shall levy such execution, may and shall execute to the purchaser a good deed of any lands so by him sold. *ch. 60, s. 33.*

4. Every officer, before he shall proceed to sell any lands in manner above described, shall give notice in writing of the time and place of sale to the debtor in person, or by leaving the same at his last and usual place of abode, if he be an inhabitant of this State, twenty days before such sale, and shall also give public notice of the time and place of sale by posting up notifications in two or more public places in the town, plantation, or township, within which such lands may lie, thirty days at least before the time of sale, and shall likewise cause an advertisement of the time and place of sale to be published three weeks successively in the newspaper employed by the State to publish the laws, and in a newspaper printed in the county where such land may lie, if any such there be, the last publication to be not less than six days before the time of sale. And the officer may, if he deem it necessary, adjourn such vendue not exceeding ten days at any one time, until the sale of such estate shall be completed; and the judgment debtor shall have the same right to redeem the same as debtors have to redeem real estate set off on execution. *ch. 60, s. 33.*

5. Executions on recognizances before Justices of the Peace may be directed to any proper officer or officers in any county in this State, who are required to execute the same according to the precept thereof, and are liable for any malfeasance or misfeasance of which they may be guilty in relation thereto. *ch. 77, s. 2.*

K. Their power and duty in the preservation of the peace, in suppressing riots, in requiring aid in apprehending criminals and executing sentences.

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| <p>§ 1. To disperse rioters.
 2. Penalty for obstructing the laws or intimidating officers.
 3. To assist Justices in preserving the peace.
 4. May require aid therein and in executing his office.
 <i>ib.</i> Penalty for refusal.
 5. May serve warrants in any county in the State.
 6. Criminals to be carried to jail and not removed, except.
 7. To deliver copy of warrant to prisoner.
 8. To secure property obtained by theft or robbery.
 9. To prosecute breaches of the Sabbath.
 10. Penalty for disturbing public worship.</p> | <p>§ 11. Sheriffs, &c. to apprehend offenders against.
 12. May require aid therein.
 13. To serve mittimus of overseers of the poor.
 14. Their duty in the execution of sentences in prisons.
 <i>ib.</i> To make rules and report to Court of County Commissioners.
 15. The Sheriff may dispose of poor convicts for service, or liberate when confined for cost.
 16. May liberate convicts confined for fines and costs, upon condition.
 17. To execute warrants issued on sentence of death.</p> |
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§ 1. If any number of persons of twelve or more shall be unlawfully, riotously or tumultuously assembled, and shall not immediately disperse themselves, after having been by any Sheriff, deputy sheriff, or Justice of the Peace of any county, or any constable of any town, commanded so to do, in the name of this State, each and every person of such assembly shall be punished by solitary imprisonment, not exceeding one year, and afterwards be confined to hard labor, for a term not exceeding one year, or fined in a sum not exceeding five hundred dollars, to the use of this State; any or all of the above punishments according to the aggravation of the offence. *ch. 17, s. 1.*

2. If any person or persons shall disguise himself or themselves, with intention to obstruct the execution of the laws of this State, or to intimidate or intercept any Sheriff, deputy sheriff, sur-

veyor or other person, in the legal discharge of any office or appointment under the laws of this State, every such person so disguised shall, on conviction, be fined in a sum not exceeding five hundred dollars, or be imprisoned, not exceeding one year, or both, according to the aggravation of the offence. *s. 2.*

3. Each Justice shall have authority to command the assistance of every Sheriff, deputy sheriff, constable and all other persons present at any affray, riot, assault or battery, and may fine any person refusing such assistance in a sum not exceeding six dollars. *ch. 76, s. 4.*

4. Any Sheriff, deputy sheriff or constable, being in the execution of his office, for the preservation of the peace, or for the apprehending or securing any person or persons for breach of the same, or for any other criminal cause, shall have authority to require suitable aid and assistance therein. And if any person, being required by any Sheriff, deputy sheriff, or constable in the name of the State, to aid and assist him in the execution of his office, as aforesaid, shall neglect and refuse so to do, and shall be thereof convicted, before any court proper to try the same, such offender shall be fined to the use of the county where the offence shall be committed, not less than three dollars, nor more than fifty dollars, according to the circumstances of the case; and if any such offender shall be unable, or shall not forthwith pay the said fine, such court may punish him by imprisonment not exceeding thirty days. *ch. 92, s. 7.*

5. Whenever a warrant against any person shall be duly issued by a Justice of the Peace for any supposed offence committed within his

county, or in pursuance of the provisions of law respecting the maintenance of bastard children, and the person complained of shall, either before or after the issuing such warrant, escape or go out of said county, the Sheriff, or any deputy thereof, to whom the same warrant may be directed, shall have power and authority to pursue the person complained of, and to apprehend him in any county in this State, and to convey him into the county in which the act complained of may have been committed, that such proceedings may there be had as the law of the case may or shall require. *ch. 214, s. 1.*

6. Every person ordered to be committed for any criminal or supposed criminal matter, shall be carried as soon as may be, and confined in some common jail and not elsewhere, (except persons sent to the work house or house of correction for due cause,) and shall not be delivered from one officer to another, except for the more speedy conveyance of the prisoner to such jail, nor to be removed without his consent from one county to another, except by habeas corpus, or some other legal writ, under penalty of forfeiting for every offence, to the party grieved, the sum of four hundred dollars. *ch. 64, s. 11.*

But whenever any Sheriff or deputy sheriff, coroner or constable, shall have arrested any person or persons in any county, by virtue of any precept from competent authority, for the purpose of committing said person or persons to the prison of said county, it shall be and hereby is declared to be lawful for said Sheriff or deputy sheriff, coroner or constable, to convey said person or persons to said prison by the most convenient and suitable road, or route, notwith-

standing said road, or route, may pass through a part of one or more counties other than that in which said prison is situated. *ch.* 566.

7. If any officer, in whose custody any prisoner shall be, shall not, within six hours after demand made, deliver such prisoner a true copy of the warrant or process by which he stands committed, such officer shall forfeit to the party grieved, the sum of two hundred dollars. *ch.* 64, s. 6.

8. It shall be the duty of any Sheriff or other officer who shall be charged with, or lawfully employed in, apprehending and arresting any person accused of the crime of larceny or robbery, or as accessory therein, to seize and secure the money, goods or articles alleged to be stolen or to have been obtained by such larceny or robbery, and which shall be found in the possession of such accused person, or which shall be waived by him or her in flying from justice. And of the money, goods, or other articles, which shall be so found and secured, a true inventory, or schedule, shall be made in, or annexed to the return of such Sheriff, or other officer, upon the warrant or process which shall have been issued for the arrest of any person accused as aforesaid; and such Sheriff or other officer shall be accountable for the money, goods or other articles thereby seized and secured. *ch.* 7, s. 17.

9. It is the duty of Sheriffs and constables to cause the act providing for the due observation of the Lord's day to be put in execution, and they shall be held to take due notice and prosecute all breaches thereof. *ch.* 9, s. 12.

10. If any person or persons, either on the Lord's day or at any other time, shall wilfully interrupt or disturb any assembly of people met

for the public worship of God, within the place of their assembly or out of it, he or they shall severally pay a fine not exceeding thirty-three, nor less than three dollars. *ch. 9, s. 8.*

11. It shall be the duty of all Sheriffs, deputy sheriffs, constables, grand jurors and tything-men, who shall or may be present at the public worship of any religious society, which may be interrupted or disturbed, as mentioned in the act aforesaid, to apprehend any and every such person, so offending, and take him or them as soon as conveniently may be, before some Justice of the Peace of the county wherein such offence shall have been committed, in order that the person or persons so offending, may be dealt with according to law. *ch. 270, s. 2.*

12. Such officers are authorized to call to their aid any person or persons who may be present at said meeting, to assist them in the exercise of their duty, and it is the duty of such persons to assist, under the pains and penalties provided in the act defining the general powers and duties of sheriffs and constables. *s. 4.*

13. The board of overseers of the poor or house of correction in any town, may commit to the house of correction any common drunkard, &c. And it shall be the duty of any Sheriff, Deputy Sheriff, constable, or any other person to whom such mittimus may be given by said overseers, forthwith to apprehend, and convey such person to the house of correction or poor house, and deliver him to the keeper thereof; and for such service, he shall be allowed such fees for travel and service, as are by law provided for the service of warrants. *Stat. 1825, Feb. 22.*

14. It shall be the duty of the Sheriff in each county to oversee the execution of all sentences to solitary imprisonment and confinement to hard labor, which any court in this State or of the United States may order to be executed, in the common jail or house of correction in the county in which the offence shall have been committed, and to make such rules and regulations, from time to time, as may best effect the purposes of this act, and to cause the same to be duly executed: and all such rules and regulations shall be reported to the Court of County Commissioners of the county within which the jail or house of correction is situated, and they may be altered or repealed by said court, as they shall see fit. *ch. 30, s. 1, 2.*

15. Where any person shall have been convicted of any crime, either before a Justice of the Peace or the District Court, or in the Supreme Judicial Court, and imprisoned three months for costs of prosecution only, the Sheriff of the county where the person has been imprisoned may dispose of such convict in service to any person whomsoever, for a term not exceeding two years, for payment of the costs for which he has been imprisoned as aforesaid; and if such disposal cannot be made, the Sheriff may liberate such convict, on such terms or on such conditions as he may think most beneficial to the State and county, when the said convict shall have been imprisoned thirty days for costs of prosecution only, and detained for no other cause. *ch. 83, s. 1, & ch. 190, s. 1.*

16. The Sheriff of said county may liberate from prison any poor convict who shall have been committed to prison by order of any Jus-

tice of the Peace, or of said District Court, or of the Supreme Judicial Court within said county, when he shall have lain in prison for the term of thirty days for fine and costs only, and is detained for no other cause, and has not estate sufficient to pay said fine and costs; upon condition however that said convict give his own note for the amount of said fine and cost, payable to the treasurer of said county to the use of said county. And upon condition that before said Sheriff shall liberate such poor convict, he shall require of said convict a schedule in writing, signed by him or her, stating the particulars of the property by him or her owned, together with an oath in writing by him or her signed, that the schedule contains a true account of all property of which he or she is the owner in possession, reversion or remainder, to his or her knowledge or belief. And that he or she has not sufficient wherewith to support him or herself in prison or to pay prison charges. And has not directly or indirectly sold, conveyed or entrusted to any person since the sentence passed by which said convict was committed to prison, any goods, effects or credits, nor any real estate, with intent to evade the performance of the sentence against him or her. *ch. 83, s. 2, & ch. 190, s. 2.*

17. No person upon whom sentence or judgment of death shall be passed or given by the Justices of the Supreme Judicial Court, shall be executed in pursuance of such sentence or judgment, within one year from the time the same sentence or judgment was passed upon such person, nor until the whole record of such proceedings or case be certified by the Clerk of said Court, under the seal thereof, to the Su-

lowing; — the officer who shall be duly authorized by said court, shall make application to the selectmen of two or more disinterested towns in said county, who shall draw out of the jury-box of their respective towns so many jurors as such officer shall require, not exceeding nine from any one town. s. 1.

7. If by accident or challenge, there should happen not to be a full jury, said officer shall fill the panel *de talibus circumstantibus*, as in other cases. And such officer shall make return of his own travel and attendance and that of each juror. *ib.*

M. Their power and duty in relation to public health.

§ 1. Persons from infected places may be removed by warrant.

2. Sick persons may be removed, and houses, &c. impressed.

3. To impress men to secure baggage, &c. infected.

§ 4. Sheriff to remove such property.

5. May break houses.

6. May require aid.

ib. Penalty for disobedience.

§ 1. Any person coming from any place out of this State, where the small pox or other malignant distemper is prevailing, into any town within this State, shall, if not disabled by sickness, within the space of two hours after warning given to him by the selectmen of such town for that purpose, depart from this State, in such manner, and by such road, as said selectmen shall direct, and in case of refusal, it shall be lawful for any Justice of the Peace in the county where such town may lie, by warrant directed to a constable or other proper officer, or other person whom the Justice shall judge proper, to cause such person to be removed into the

State from whence he may have come. *ch.* 127, *s.* 2.

2. Any two Justices of the Peace may make out a warrant directed to the Sheriff of the county or his deputy, or constables of the town or place where any such sick person or persons may be, requiring them in the name of the State, with the advice and direction of the selectmen of the same, to remove each infected person or persons, or to impress and take up convenient houses, lodgings, nurses, attendance and other necessities, for the accommodation, safety, and relief of the sick. And such Sheriff, his deputy or constable are authorized and required to execute such warrant accordingly. *s.* 4.

3. Whenever there shall be brought into any town within this State, either from any other town therein, or from parts without the State, any baggage, clothing, or goods of any kind whatsoever, and it shall be made to appear by the selectmen of the town to which such baggage, clothing, or other goods shall be brought, or by the major part of such selectmen to the satisfaction of any Justice of the Peace, that there is just cause to suspect baggage, clothing or other goods to be infected with the plague, small-pox, pestilential fever, or other malignant contagious distemper; it shall be lawful for such Justice, and he is required in such case, by warrant under his hand and seal, directed to the Sheriff or his deputy, or any constable of the town in which such baggage, clothing or other goods shall be, requiring him to impress so many men as said Justice shall judge necessary to secure such baggage, clothing or other goods, and said men to post as a guard and watch over the house or

other place or places where such baggage, clothing or other goods shall be lodged ; which guard and watch are hereby required to take effectual care to prevent such baggage, or other goods being removed or intermeddled with, by any persons whatsoever, until due inquiry be made into the circumstances thereof ; requiring likewise the said Sheriff, his deputy, or the constable aforesaid, if it shall appear necessary, with the advice and direction of said selectmen, to impress and take up convenient houses or stores, for the receiving, lodging and safe keeping of such baggage, &c. until the same shall be sufficiently cleansed in the opinion of the selectmen from infection. *ch. 127, s. 5.*

4. In case it shall appear highly probable to the said Justice, that such baggage, clothing or other goods are infected as aforesaid, he is empowered and directed to issue his warrant in manner as aforesaid, requiring said Sheriff, his deputy, or any constable, or other person therein specially named, to remove said baggage, &c. to some convenient place where there shall be the least danger of the infection spreading ; there to remain until the same shall be sufficiently aired, and freed from infection, in the opinion of the selectmen. *ib.*

5. The said Sheriff, deputy sheriff or constable, in the execution of said warrants, are empowered and directed, if need be, to break up any house, warehouse, shop or other place particularly mentioned in said warrant, where such baggage, clothing or other goods shall be. *ib.*

6. Such officers are empowered, in case of opposition, to require such aid as shall be necessary to effect the execution of said warrants,

and repel such opposition : and all persons are hereby required at the commandment of either of said officers, having either of the warrants aforesaid, under the penalty of ten dollars, to be recovered before any Justice of the Peace in the county where such opposition may happen, to assist such officer in the execution of the same warrant against any opposition as aforesaid ; and the charges of securing such property, and of airing and transporting the same, shall be borne and paid by the owners thereof, at such rates and prices as shall be set and appointed by the Selectmen of such town ; to be recovered by action of debt, by any person or persons who may have been employed in the business aforesaid, in any court of record proper to try the same. *ib.*

N. Their duty in seizing articles intended to be exported contrary to the Inspection Laws.

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| § 1. Sheriffs, &c. to seize beef and pork not inspected.
<i>ib.</i> May require aid.
2. To seize butter and hog's lard.
3. May seize fish not inspected. | § 4. May seize hops not inspected.
5. Tobacco to be seized.
6. Similar powers as to flaxseed.
7. The same duties in relation to nails. |
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§ 1. It shall be lawful for any Justice of the Peace upon information given of any beef or pork being put on board any vessel, not inspected and branded as required by law, to issue his warrant, directed to the Sheriff or his deputy, or to a constable, requiring them respectively to make seizure of any such salted beef or pork not marked or branded, and to secure the same in order for trial ; and said officers are required and empowered to execute the same. And

it shall be the duty of every person when required, to give the necessary aid for that purpose, on pain of forfeiting five dollars for his refusal. *ch.* 148, *s.* 16.

2. Sheriffs, deputy sheriffs and constables are required and empowered by a similar warrant to seize butter and hog's lard attempted to be exported, and not inspected and branded; and may require the like aid. *ch.* 149, *s.* 6.

3. If any pickled or barreled fish, or smoked fish shall be attempted to be exported, not being inspected, the Sheriff or his deputy, or the constable of the town where the boat, vessel, or carriage of conveyance may be, are required by a warrant from a Justice of the Peace to seize and secure said fish, and carry the same to the nearest inspector for his inspection. And it is the duty of persons required, to aid such officers on penalty of five dollars to be recovered by any person who will prosecute. *ch.* 150, *s.* 9.

4. The inspector of hops or his deputies are empowered to issue a warrant, directed to the Sheriff or his deputy, or to a constable, requiring them to make a seizure of any hops intended to be exported, not being inspected and marked, and to secure the same for trial, which officers are required and empowered to execute the same, and to require necessary aid. *ch.* 152, *s.* 6.

5. Such officers have the like powers and duties in making seizure of tobacco, shipped for exportation and not marked, in order for trial. *ch.* 54, *s.* 3.

6. Similar duties are required of such officers in the seizure of flaxseed, shipped for exporta-

tion, not being marked according to law, *ch.* 155, s. 4.

7. The same duties are required in relation to nails put on board any vessel, wagon or carriage for transportation from this State, not inspected and marked as required by law. *ch.* 157, s. 7.

O. Their duty in relation to elections and juries, and removal of the poor.

§ 1. Sheriffs to distribute precepts for elections.
2. Their compensation.
3. Penalty for neglect of duty.
4. Sheriffs to distribute venires for jurors.

§ 5. Sheriffs may return jurors *de talibus circumstantibus*.
6. To serve summons on towns for removal of poor persons.

§ 1. It shall be the duty of the several Sheriffs of the several counties of the State on receiving copies of the act prescribing the mode of electing members of Congress, or any precept from the Governor for such election, to transmit the same seasonably to the selectmen of the several towns, and assessors of the several plantations, within their respective counties, to whom such copies or precepts may be respectively directed. *ch.* 590, s. 6.

2. The several Sheriffs shall, for the said service, be entitled to receive out of the treasury of the State fifty cents for each of the copies and of the precepts, so by them distributed, to the selectmen of the towns, and assessors of the plantations;—Provided, that no Sheriff who shall neglect reasonably to transmit all and every of the copies and precepts by him received in manner aforesaid, shall be entitled to any compensation for distributing any of such copies and precepts. *ib.*

3. Any Sheriff who shall neglect to perform the duties which by this act he is directed to perform, shall for each neglect, forfeit and pay a sum not exceeding two thousand, nor less than two hundred dollars, for any such neglect ; to be recovered by indictment to the use of the State. s. 7.

4. The Sheriff of each county, as soon as he shall receive the venires for jurors from the clerk of either Court, shall, without any delay, forward the same to the constables of towns to whom they shall be directed. *ch.* 84, *s.* 5.

5. When, from challenges or otherwise, there shall not be a jury to determine any civil or criminal cause, which may be called on for trial, the Sheriff or his deputy, or in case of an interest or relationship in him to a party in the suit, a coroner, or such other disinterested person as the Court shall appoint, shall, by order of the Court, return jurymen *de talibus circumstantibus*, sufficient to complete the panel:—Provided, no person shall be considered as competent to be returned whose name shall not, to the satisfaction of the Court, appear to be contained in the jury-box, unless the parties consent ; and also provided, that there shall be seven at least on the panel of the jurors returned by the venires. s. 8.

6. When complaint is made to any Justice of the Peace, by the overseers of the poor in any town, that persons are chargeable or likely to become chargeable to said town, such Justice shall make out and annex thereto a summons, directed to the Sheriff, or his deputy, of the county wherein the town to be summoned is ; and such officer shall serve and return the same,

his being an inhabitant of the town to be summoned notwithstanding, for the same fees as for other writs of summons. *ch.* 122, s. 15.

P. The fees of Sheriffs, Jailers and Constables.

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| <p>§ 1. For service of original summons.</p> <p>2. For service of <i>capias</i> or attachment.</p> <p><i>ib.</i> Special service.</p> <p>3. Fees for copy.</p> <p>4. Fees for bail bond.</p> <p>5. Serving writ of possession.</p> <p>6. Fees for costs on same.</p> <p>7. Serving a warrant.</p> <p>8. Aid in criminal cases.</p> <p>9. Summoning witnesses in same.</p> <p>10. Attending court and keeping prisoners.</p> <p>11. Levying execution in personal actions.</p> <p>12. Travel for service of precepts.</p> <p><i>ib.</i> Fees to be endorsed.</p> <p>13. Execution for partition of real estate and dower.</p> | <p>§ 14. For attending grand jury.</p> <p>15. For attending traverse jury.</p> <p>16. For dispersing <i>venires</i>, treasurer's warrants and proclamations.</p> <p>17. Fees of appraisers of real estate.</p> <p>18. Officer's attending courts.</p> <p>19. Sheriff's attendance.</p> <p>20. Constable's for service of <i>venires</i>.</p> <p>21. Summoning jury of inquest.</p> <p>22. Officer's fees on commitment or distress for taxes.</p> <p>23. For levying execution on equity of redemption.</p> <p>24. On right of possession.</p> <p>25. On real estate and recording.</p> <p>26. Jailer's fees.</p> |
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§ 1. For the service of an original summons or *scire facias*, either by reading the same, or by copy, on one defendant, *twenty-five cents*; if on more than one defendant, then for each other defendant so served, *twenty-five cents*. *ch.* 445, s. 1.

2. For the service of a *capias* or attachment on one defendant with summons, *twenty-five cents*; if served on more than one defendant, then *twenty-five cents* for each defendant so served. And if the officer, by the written direction of the plaintiff or plaintiffs, his or their agent or attorney, shall make a special service of any such writ, either by attaching property, or taking the body therefor, for such special service on each defen-

dant on whom such writ shall be so served, the Sheriff shall be allowed *fifty cents. ib.*

3. Where the officer is by law directed to leave a copy in order to complete the service, or shall give a copy of any precept upon demand thereof, he may charge at the rate of *twelve cents a page. ch. 105, s. 1.*

4. For a bail bond, and writing the same, including principal and sureties, to be paid by the person admitted to bail, and taxed for him if he shall prevail, *twenty cents. ch. 445, s. 1.*

5. Serving a writ of possession, exclusive of fees for collecting the costs, *one dollar and ten cents*; if on more than one piece of land, *seventy-five cents* for each piece of land after the first. *ch. 105, s. 1.*

6. The fees for collecting the costs on a writ of possession the same as on executions in personal actions. *ch. 445, s. 1.*

7. Serving a warrant *fifty cents. ib.*

8 Sheriff's aid in criminal cases, to each person for twelve hours attendance, including expenses, *one dollar*, and so in proportion for a greater or less time; and *four cents* for each mile's travel, going out and returning home. *ch. 105, s. 1.*

9. Summoning witnesses in criminal cases, *twenty-five cents* for each witness, and travel as in civil causes. *ch. 228, s. 2, 1836.*

10. For the Sheriff's or constable's attending the Court, and keeping the prisoner in criminal cases, *seventy-five cents* for every twelve hours; and so in proportion for a greater or less time. *ch. 105, s. 1.*

11. Levying executions in personal actions, for the first one hundred dollars, *three cents*;

for every dollar above that and not exceeding two hundred dollars, *two cents*; and for all above two hundred dollars, *one cent* for every dollar. *ch. 445, s. 1.*

12. Travel for the services of such execution, and also of mesne process, or warrant to him directed, *four cents* a mile; the travel to be computed from the place of service to the Court or place of return, by the usual way; only one travel shall be allowed for one writ, execution or warrant, and if the same be served on more than one person, then the travel shall be computed from that place which may be most remote from the place of return, with all further necessary travel in serving such execution, writ or warrant; but if the travel from the place of service to the place of return be more than fifty miles, then only *one cent* a mile shall be allowed for all travel exceeding that distance. The travelling fees and fees of service shall be endorsed by the officer serving the same, otherwise they shall not be allowed. *ch. 105, s. 1.*

13. Serving an execution upon a judgment of Court for partition of real estate, or assigning of dower, *one dollar* a day, and *four cents* a mile, out from the place of his abode. *ib.*

14. To the officer attending the grand jury, for each day's attendance, *seventy-five cents*. *ch. 105, s. 1.*

15. The officer attending the traverse jury, for every cause, to be paid with the jury fees, *twenty-five cents*. *ib.*

16. For dispersing venires for jurymen, treasurer's warrants, and proclamations of all kinds, *eight cents* each. *ib.*

17. To each appraiser of real estate for ex-

tending execution or assigning dower, *one dollar* a day, and travel at the rate of *four cents* a mile going out and returning home. *ib.*

18. For every deputy sheriff or constable who shall attend the Supreme Judicial Court, or Court of County Commissioners or District Court by their order, *one dollar and fifty cents* a day, to be paid out of the county treasury. *ib.*

19. To the Sheriff, for each day's attendance on the Supreme Judicial Court or District Court, *three dollars* ; and *two dollars* per day for attending the Court of County Commissioners, and at the rate of *two dollars* for every ten miles' travel from his place of residence to the Court. *ib. & ch. 408, s. 1.*

20. (To constables) for the service of venires, *twenty-five cents* and *four cents* a mile for travel to the clerk's office, to be paid out of the county treasury. *ib.*

21. To the constable for his attendance and expenses in summoning a jury of inquest, *ninety cents* a day. *ib.*

22. In case of distress or commitment for the non-payment of taxes, the officer concerned therein, shall be entitled to the same fees which Sheriffs by law are or may be entitled to, for levying executions ; saving that the travel in case of distress, shall be computed only from the dwellinghouse of the officer making such distress, to the place where the distress may be made. *ch. 116, s. 55.*

23. In addition to the fees already given by law to the officer for levying executions, he shall be entitled to the fees following : viz. for advertising a right in equity of redeeming real estate, mortgaged, in a public newspaper, such

sum as he shall pay to the printer, for such advertisement. For writing and posting up notifications, in case of a sale of such equity, in the town where the land lies, and two adjoining towns, *one dollar and fifty cents*. For making out a deed, and return of the sale of such equity, *one dollar and fifty cents*. Stat. 1825, Feb. 25.

24. When the estate, right, title, or interest of any person held or claimed, in virtue of a possession or improvement, as expressed in "an act for the settlement of certain equitable claims, arising on real actions," shall be seized and sold upon execution, by any officer, he shall be entitled to the same fees, as are above given in case of sale of an equity of redemption. *ib*.

25. For causing appraisers to be sworn, and making return of levy, *fifty cents*. And it shall be the duty of every officer, who shall levy an execution on real estate, to cause the same to be recorded by the register of deeds of the county where such land lies, within three months after such levy. Stat. 1825, Feb. 25.

26. Turning the key for each prisoner committed or discharged, *twenty cents*. Dieting each prisoner, such sum weekly as the Court of County Commissioners shall from time to time judge reasonable. *ch. 105, s. 1*.

For each person taken up in the night, under the statute for keeping watches and wards, and committed to be secured only until the next day, *twenty-five cents*, and no more. *ch. 125, s. 7*.

JAILERS.

- A. The power and duty of a Sheriff or Jailer in the superintendence of a prison, and in the custody of prisoners.
- B. Escape of prisoners, and the duty and liability of Sheriffs and Jailers in relation thereto.
- C. The duty of Jailers and other officers in admitting prisoners to the poor debtor's oath.

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- A. The power and duty of a Sheriff or Jailer in the superintendence of a prison, and in the custody of prisoners.

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| <ul style="list-style-type: none">§ 1. The Sheriff or his deputy to keep the Jails.2. Jailer to continue in office on the death of a Sheriff, until the appointment of Sheriff or Jailer.3. Such Jailer to give bonds.4. To have custody of prisoners of United States.5. To reside in the county house.<i>ib.</i> Penalty for neglect.6. To keep a calendar of prisoners.7. Warrants, &c. to be safely kept and filed.8. To return a list of prisoners to court.9. To cause Jails and prisoners to be kept cleanly. | <ul style="list-style-type: none">§ 10. Debtors and minors to be kept separate from felons and notorious offenders.11. Not to allow spiritous liquors to criminals unless sick.12. Their duty in regard to poor debtors' using spirits.13. Penalty for violating 7th and 8th sections.14. Expenses of criminals, how paid.<i>ib.</i> Accounts to be rendered on oath.15. Rate of pay for supporting poor debtors.16. To bury debtors dying in prison.17. To obey warrants of commitment to State prison. |
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§ 1. The Sheriff of each county shall have the custody, rule, and charge of the Jail or Jails therein, and of all prisoners within such Jail or Jails, and shall keep the same himself personally, or by his deputy, for whom he shall be answerable. *ch.* 92, s. 1.

2. In case of a vacancy in the office of Sheriff, in any county, by resignation, removal or otherwise, any Jailer by him specially appointed, shall continue in the office of Jailer, and shall exercise all the powers and be subject to all the duties and liabilities, until a successor to such Sheriff shall be appointed and qualified, in the same manner as a Jailer, in case of the death of the Sheriff of any county, is by law authorized to act, or is subject to. And the defaults or misfeasances in office of any such Jailer, during any such vacancy in the office of sheriff, shall be adjudged a breach of condition of the bond given by any such Sheriff. *ch. 461. s. 1.*

3. In case of a vacancy in the office of Jailer, during the vacancy in the office of Sheriff, the County Commissioners, or a major part of them, within and for the county where such vacancy may happen, are hereby authorised and empowered to appoint a Jailer, and the Jailer so appointed shall give such bonds, and in the same manner as is required of a Sheriff for the faithful performance of the duties of his office, and shall continue in office, if said appointment shall be confirmed by said court, at the then next term thereof, during the vacancy in the office of Sheriff, and until a new Jailer shall be appointed or until the Governor, by and with the advice of the Council, shall remove such Jailer and appoint another person, which removal and appointment the Governor, by and with the advice of Council, is authorised to make. *s. 2.*

4. The keepers of the several Jails within this State, shall, under the penalties which by law are provided for the custody and safe keeping of the prisoners thereof, take custody of, and

safely keep all prisoners committed under the authority of the United States, until they shall be discharged by due course of the laws thereof: provided, that nothing contained in this act shall be so construed as to authorise the keepers of the said Jails to take custody of, and keep within said Jails any prisoners committed by any other authority than the Judicial authority of the United States. *ch.* 110, s. 15.

5. It shall be the duty of every keeper of a county Jail within this State, or their respective deputies, to reside constantly with their families, if any they have, within the several houses provided for such keepers or their deputies, in the respective counties, where good and sufficient buildings are provided for that purpose, in the opinion of the Court of County Commissioners for the county within which such buildings are located; and if any such Jail-keeper or his deputy shall refuse or neglect to make such house the place of his permanent residence for himself and his family, if any he have, he shall forfeit and pay for not so residing therein, or afterwards changing his residence to any other place than the county house aforesaid, a sum not exceeding three hundred, nor less than one hundred dollars; to be recovered by action of debt, one half to the person who may sue, and the other half to the county. *ch.* 277.

6. The Sheriff of the respective counties shall keep a true and exact calendar, or register, of all prisoners committed to any prison under his care, and the same shall be kept in a large bound book, provided and kept for that only purpose; and in the same book shall be distinctly and fairly registered the names of all

prisoners who shall, from time to time be committed to prison, with their names, places of abode, additions, the time of their commitment, for what cause, and by what authority committed; and for such as are committed for criminal offences, a description of their persons; and also from time to time, as any prisoner shall be liberated, the Sheriff shall also register in the same book, the name and description of the person as aforesaid, the time when and the authority by which such liberation took place; and if any prisoner escapes, the time and manner of the escape shall be noted in the said book. *ch. 110, s. 2.*

7. All warrants, mittimuses, writs and instruments of any kind, or the attested copies of them, by which any prisoner shall be committed, enlarged or liberated, shall be safely kept, regularly filed in their order of time, and together with the said calendar, or register, shall be safely kept in a suitable box for that purpose; and upon the death or removal of any Sheriff, shall be delivered to his successor in office, on penalty of two hundred dollars, to be paid by the Sheriff removed or his executors or administrators in case of the death of the Sheriff; to be recovered by any person, who shall prosecute therefor, in any Court proper to try the same. *s. 3.*

8. Every Jailer or prison keeper, at the opening of the Supreme Judicial Court or the District Court, within the county where he keeps the Jail, shall return a list of prisoners in his custody, therein certifying the cause for which, the persons by whom they were committed, and the names of all persons who shall be committed during the sitting of either of the said courts,

with the cause of their commitment, that the Justices of the same Courts respectively may take cognizance thereof, and as well for the State, as the parties, may proceed to make deliverance of such prisoners according to law, for the crimes proper to the jurisdiction of the same Courts respectively; and also shall have the said calendar or register of prisoners ready to be inspected by the said Courts; and if any Jailer shall make default herein, he shall be fined at the discretion of the Court. *ch. 110, s. 4.*

9. It shall be the duty of the Sheriffs of the several counties within this State, to see that the Jails in their respective counties are kept in as clean and healthy condition as may be, and cause the walls thereof to be whitewashed with lime in April or May in every year, and as often as the Court of County Commissioners shall order the same, at the expense of the county; they shall also see that strict attention is paid to the personal cleanliness of the prisoners as far as may be. *s. 6.*

10. It shall be the duty of every Jailer or prison keeper to keep prisoners committed for debt, separate and apart from felons, convicts, and prisoners committed upon charge of felony or other infamous crimes. And he shall also keep all minors who are committed to prison upon conviction or charge of any crime, and all prisoners in his custody upon a first conviction or charge of any crime, as separate and distinct from those who are notorious offenders, or who have been convicted more than once for any felony or other infamous crime, as the construction and state of their respective prisons will admit. *ch. 110, s. 7.*

11. No prisoner who is confined within any jail within this State, either upon conviction and sentence for any crime, or upon charge of any crime before conviction, shall be allowed to have or drink any ardent or spiritous liquor, or any mixed liquor part of which is spiritous, unless the physician, who is authorized to attend upon the sick in such prison, shall certify in writing that the health of such prisoner requires it; in which case he shall be allowed the quantity prescribed by such physician and no more. s. 8.

12. No person committed to jail on execution or mense process, who shall apply to the overseers of the poor for relief, shall be permitted to have and use any spiritous liquors, without the consent of said overseers. And if the keeper of any jail, or other person shall give, sell or deliver to any such prisoner, or to any other person for his use, any spiritous liquors without the consent in writing of the said overseers, or one of them, first had and obtained he shall forfeit and pay for each offence a sum not less than five, not more than ten dollars, to be recovered by complaint to any Justice of the Peace for the same county; one moiety to him who shall prosecute for the same, the other moiety to the use of the poor of the town where the jail is situated. And it is made the duty of the Sheriff, Jailer and overseers of the poor to prosecute for all offences which may come to their knowledge against the provisions of this section. ch. 110, s. 9.

13. Any Jailer or prison keeper who shall wilfully, negligently or unnecessarily cause or suffer prisoners of different descriptions to be confined and kept together in the prison under his

care, contrary to the provisions of the seventh section of this act, or shall voluntarily or negligently suffer any prisoner in his custody upon conviction of any crime, to have or drink any spiritous liquor, or mixt liquor part whereof is spiritous, contrary to the provisions of the eighth section of this act, shall in each case forfeit the sum of twenty-five dollars for the first offence, to be recovered by an action of debt by any person who will sue for the same, to his own use, in any District Court, or by indictment in the same court; in which case the forfeiture shall be for the use of the county. And for a second offence such Jailer or prison keeper shall forfeit the sum of fifty dollars, to be recovered in manner and to the uses aforesaid; and shall also be removed from office, and be rendered and become incapable of holding the office of Sheriff, Deputy Sheriff or Jailer, for the term of five years. *ch. 110, s. 10.*

14. The charges of supporting prisoners, committed by due process of law, unable to support themselves, who may be confined in any Jail, upon charge or conviction of crimes and offences committed against the State, shall be made the proper charge thereof, provided, that in no case shall there be allowed by the State, more than at the rate of one dollar a week for any such prisoner, or more than the actual charges incurred for his support, being less than that sum: and the said charges shall be examined, allowed and paid as follows, viz: The Jail keeper of each Jail in the State, shall render on oath, to the Court of County Commissioners of the county, at each term thereof, an account of the charges incurred for the support of prisoners in

the respective Jails, committed as aforesaid, stating therein the time when each prisoner was committed, for what offence, how long held, and when discharged, (if discharged) and shall exhibit the warrants of commitment and discharge, and leave copies thereof within the said court: and in the same account the Jail keeper shall credit all moneys and effects whatever, received or to be received of the prisoner, or of any person on his account, and the said Court shall examine the said account and inquire what part thereof the prisoner may be able to pay: and for such part as he shall be unable to pay, the said Court shall make a reasonable allowance to the said Jail keeper to be paid out of the county treasury. *ch. 82, s. 8.*

15. Whenever the keeper of any prison, when any person may be committed on mesne process or execution, shall require of the creditor, his agent or attorney, security for the payment of the expense of supporting such debtor, in case he shall claim relief as a pauper, it shall be the duty of the keeper to discharge such debtor from prison on such commitment, unless satisfactory security is given within eight days after such request, or money advanced for the support of such debtor, while he shall remain in close confinement. And in case of any dispute about the price of any articles furnished a prisoner in confinement, the County Commissioners may determine the same. *ch. 717, s. 15.*

16. When any person imprisoned for debt, or any other cause shall die in any county in this State, it shall be the duty of the Sheriff or deputy Jailer to deliver the body of such deceased person to his friends, if they shall request it;

and if no application be made for such body, it shall be the duty of the Sheriff, or deputy Jail-er, to bury the same in the common burying ground; and the expenses thereof shall be paid by the town in which such person had a legal settlement, if such person had been an inhabitant of this State; otherwise the expenses aforesaid shall be paid out of the treasury of this State. *ch. 92, s. 5.*

17. Criminal convicts, who may be sentenced to confinement to hard labour for life or any other term, or to solitary imprisonment and hard labour, shall and may be imprisoned, restrained and employed in and within the precincts of the State prison, situate in Thomaston, in the county of Lincoln; and the Court before whom such conviction may be, is authorized and empowered by warrant under its seal, directed to the warden of said prison, to cause such convicts as soon as conveniently may be, after sentence, to be removed from any Jail in the respective counties of the State to the State prison; and the said warden and all Sheriffs and keepers of the Jails aforesaid, are authorized to observe and obey the directions contained in any such warrant; and it shall be the duty of the clerk of any such court to make out such warrant as soon as may be, and to deliver the same to the Sheriff of the county where conviction may be, who is directed to cause the same to be transmitted and delivered to said warden, who shall by himself or such person as he may appoint for that purpose, forthwith cause the same to be executed and returned, pursuant to the precept thereof. *ch. 282, s. 1.*

B. Escape of prisoners, and the duty and liability of Sheriffs and Jailers in relation thereto.

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| <p>§ 1. Penalty for assisting prisoners to escape.</p> <p>2. Punishment in case of actual escape.</p> <p>3. Punishment of Jailer for suffering a <i>voluntary</i> escape.</p> <p>4. Penalty for suffering a <i>negligent</i> escape.</p> | <p>§ <i>ib.</i> Proviso, if retaken on fresh pursuit.</p> <p>5. Sheriff liable for escape thro' insufficiency of Jail.</p> <p>6. May sue for indemnity of the county.</p> <p>7. Mode of proceeding in the suit and collection of debt.</p> |
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§ 1. If any person shall directly, or indirectly, without the knowledge or privity of the keeper, convey any instrument, tool, or other thing whatsoever, to any prisoner, or into any prison, whereby any prisoner might break the prison, or work himself unlawfully out of the same, every person so offending shall forfeit and pay such fine as by the discretion of the Court shall be imposed, not exceeding three hundred dollars, according to the nature of the cause of the prisoner's commitment; or suffer such corporal punishment, not exceeding forty stripes, as the Court shall inflict. *ch.* 110, s. 13.

2. If it shall so happen that any prisoner shall make his escape by means of any instrument, tool, or other thing so conveyed, the same shall be liable to pay all such sums of money as the prisoner stood committed for; and shall have inflicted upon him all such punishment as the escaped prisoner would be liable unto, if he had been convicted of the charge for which he stood committed, unless such prisoner would have been liable to capital punishment, in which case the person assisting in such escape shall be punished by fine, imprisonment or sitting on the gallows, with a rope about his neck, or by solitary imprisonment, for a term not exceeding three

months, and confinement to hard labor for a term not exceeding five years, or any one or more of the said punishments, as the Court shall think proper to inflict. *ib.*

3. Every Jailer or prison keeper that shall voluntarily suffer any prisoner committed unto him to escape, shall suffer and undergo the like pains, punishments and penalties, as the prisoner, so escaping, should by law for the crime or crimes wherewith he stood charged, if he had been convicted thereof. s. 11.

Every Jailer or prison keeper, that shall voluntarily suffer any prisoner committed unto him, to escape, charged with a capital felony, on due conviction thereof, before the Supreme Judicial Court, shall be punished by fine not exceeding one thousand dollars, and by confinement to hard labor in the State prison, for a term not less than five years, and not exceeding fifteen years, as the said Court may sentence and order: provided however, that when such voluntary escape shall be suffered after conviction of a capital crime, such Jailer or prison keeper, shall, on due conviction thereof, before said Court, in addition to the fine aforesaid, be sentenced to hard labor in the State Prison for life. *ch. 430, s. 6.*

4. If any Jailer or prison keeper shall, through negligence, suffer any prisoner accused of any crime to escape, he shall pay such fine as the Justices of the Court before whom he is convicted, shall in their discretion inflict, according to the nature of the offence, for which the escaped prisoner stood convicted: provided, that if any person who stands committed for debt shall escape from prison, and the Sheriff, Jailer or prison keeper shall, within three months next after

such escape recover the prisoner so escaped, and return him back to prison again, the Sheriff shall be liable to nothing further than the cost of any action that may have been commenced against him for such an escape; and all fines arising upon the breach of this act, excepting the 9th and 10th sections thereof, shall be applied to the use of building and repairing the Jail or Jails in the county where the offence is committed, and shall be paid to the treasurer of the county, for that purpose. *ch. 110, s. 12.*

5. Where the escape of any prisoner shall happen through the insufficiency of the Jail, or the negligence of the Sheriff or Jailer, the Sheriff of the county in which the escape happens, shall stand chargeable to the plaintiff, creditor, or other persons, at whose suit or for whose debt he was committed, or to whose use any forfeiture was adjudged against such prisoner. *s. 14.*

6. In case the escape shall happen through the insufficiency of the Jail, the Court of County Commissioners in the county shall have power and authority to assess the sum or sums upon the polls and estate of the county, and to order the county treasurer to pay the same over to the Sheriff of the county; and if the Court of County Commissioners shall not make such assessment, and if the treasurer shall not pay such sum or sums within six months next after the demand shall be laid before the Court of County Commissioners, then the Sheriff of the county may bring his action against the inhabitants of such county to be heard and tried either in that or one of the next adjoining counties at his election. *ch. 110, s. 14.*

7. An attested copy of the writ being left thirty days before the sitting of the Court, with the county treasurer shall be held and adjudged to be sufficient notice of the suit ; and the County Commissioners shall have full power to appoint an agent or agents to appear and defend against such action ; and when it shall so happen, that the suit shall be commenced in another county, and no Court of County Commissioners shall be held within the county sued, between the time of the service of the writ, and the sitting of the Court before which the action is brought, the cause shall be continued one term ; and all advantages shall be saved to the defendants, as though they had appeared at the first term ; and if judgment shall be given against the county the debt may be levied by execution upon the goods, chattels or lands of any inhabitant or inhabitants of the county, who shall thereupon have his or their action, jointly or severally, in like manner against the county, to recover the moneys so levied of him or them. *ch.* 110, s. 14.

C. The duty of Jailers and other officers in admitting prisoners to the poor debtor's oath.

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| <p>§ 1. Jailer to cause creditors to be notified.
 <i>ib.</i> Notification how served.</p> | <p>§ 2. Jailer to liberate on certificate of the oath.
 3. Persons committed for taxes may swear out of Jail.</p> |
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§ 1. When any person committed to prison by force of any execution, shall make written complaint to the keeper of the jail where he is committed, that he has not estate sufficient to support him in prison, the keeper shall thereupon ap-

ply to a Justice of the Peace of the County, who shall make out a notification under his hand and seal, to the creditor, of such prisoner's desire to take the privilege and benefit of the oath or affirmation authorized by this act, and the time and place of the intended caption, which may be served by any sheriff, deputy, or constable, (not a party) on any creditor, if living within the State, or if not, on any agent or attorney, by an attested copy delivered in hand, or left at the last and usual place of abode of such creditor, agent or attorney, fifteen days at least before the time appointed for taking the oath or affirmation, that he may be present, if he see cause : Provided, That if no creditor, agent or attorney live within the State, the notification shall be left with the Clerk of the Court, or Justice from whom said execution issued, at least fifteen days before such intended caption. *ch. 717, s. 9.*

2. The oath or affirmation being administered by two Justices of the quorum, and taken by such prisoner, and a certificate thereof made under the hands and seals of the Justices, administering the same, to such Jailer or prison keeper, he shall thereupon set such prisoner at liberty, if he or she is committed for no other cause, and the body of such prisoner shall not be held in prison any longer upon such execution. *s. 10.*

3. Any person committed to prison by virtue of any warrant for the collection of any tax shall stand in the same relation to the assessors of the city, town, plantation or parish as the debtor shall to the creditor and the same proceedings shall be had. *s. 15.*

CORONERS.

- A. Their appointment, qualification, security and payment of duty.
- B. Their power and duty in the service of writs and precepts.
- C. Their power and duty in taking inquisitions.
- D. Fees of Coroners.

A. Their appointment, qualification, security and payment of duty.

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| § 1. Their appointment and tenure. | § <i>ib.</i> Subject to like liabilities as Sheriffs. |
| 2. Qualification and bonds. | |

§ 1. Coroners are appointed by the Governor and council, and hold their office for the term of four years, subject however to removal by the Supreme executive, with the advice of council. *Cons. & L. M. ch. 257.*

2. Before they enter upon the duties of their office, they shall be qualified in the same manner as Sheriffs are required to be; and likewise give to the State treasurer a bond with sufficient sureties, to the satisfaction of the Court of County Commissioners for the faithful performance of the duties of their office. And the same proceedings in all respects shall be had respecting coroners' bonds and sureties; and they shall be liable to the same forfeiture for like causes, to be recovered in like manner; and subject to removal from office in the same way, and to be proceeded against in the same manner.

in all respects, as are provided in the act [*ch.* 91.] with regard to Sheriffs. And all actions on Coroner's bonds shall be brought in his county. *ch.* 91, s. 4, 5. *ch.* 93, s. 1, & *ch.* 104.

B. Their power and duty in the service of writs and precepts.

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| <p>§ 1. To serve writs when Sheriff is party.</p> <p>2. To serve all precepts when Sheriff's office is vacant.</p> <p><i>ib.</i> To have notice thereof.</p> <p>3. To return jurors when Sheriff is interested.</p> | <p>§ 4. To hold money on executions subject to prior attachments.</p> <p>5. To serve treasurers' warrants against delinquent Sheriffs.</p> |
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§ 1. Every Coroner within the county for which he is appointed, shall serve all writs and precepts, when the Sheriff or either of his deputies is a party; notwithstanding the towns or plantations of which they are inhabitants are parties. *ch.* 93, s. 1, 4.

2. When the office of Sheriff in any county may be vacant by death, resignation, removal, or otherwise, the several Coroners of such county are respectively authorized and empowered to execute and return all writs and precepts, which are by law appointed to be executed and returned by the Sheriff, until another Sheriff for such county shall be appointed and duly qualified; of which it is their duty to give such Coroners notice. s. 1.

3. Coroners shall, when present in Court, return jurors *de talibus circumstantibus*, in all cases where the Sheriff of the county shall be interested or related to either party. *ib.* & *ch.* 84, s. 8.

4. When any Coroner shall make sale of any

property which shall before have been attached on mesne process or taken on execution by a Sheriff or deputy sheriff, such Coroner shall be subject to the same duties and requirements in relation to such Sheriff or deputy sheriff, as [by this act, s. 21, 22,]* a Sheriff is, in like case subject to, in relation to a Coroner. *ch.* 60, s. 23.

5. Coroners are required to serve warrants of distress, issued by treasurers against Sheriffs, or deputy sheriffs, for not accounting for, and paying over moneys collected of deficient constables or collectors, or for not making return of their doings therein in reasonable time. *ch.* 117, s. 45.

C. Their power and duty in taking inquisitions.

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| <p>§ 1. To take inquests of violent and casual deaths.</p> <p>2. To issue warrants to summon jurors.</p> <p>3. Penalty for juror's neglect.</p> <p>4. To swear the jurors.</p> <p>5. Charge to jury to inquire the manner of the death.</p> <p><i>ib.</i> Proclamation to be made.</p> <p>6. May send for witnesses.</p> <p>7. To recognize witnesses for trial.</p> | <p>§ 8. Jury to deliver verdict to Coroner.</p> <p>9. Coroner to return inquisition to S. J. Court.</p> <p>10. To notify Justices of the Peace of the persons killing.</p> <p>11. To bury bodies of strangers.</p> <p><i>ib.</i> Expenses how paid.</p> |
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§ 1. Coroners shall take inquests of violent deaths committed, and of casual deaths happening within their respective counties. *ch.* 93, s. 1.

2. Each Coroner shall, as soon as he shall be certified of the dead body of any person, supposed to have come to his death by violence or casualty, found or lying within his county, make out his warrant, directed to the constable of the town where the dead body is found, or lying, or

* See Sheriff, H. § 13. page 45.

to the constables of one or more of the three or four next adjacent towns, requiring them forthwith to summon a jury of good and lawful men of the same town or towns, sufficient to make up nine in all, to appear before him at the time and place in such warrant mentioned and expressed. *ch. 93, s. 2.*

3. Every person summoned as a juror, as aforesaid, that shall fail of appearance without having a reasonable excuse therefor shall forfeit seven dollars, which forfeitures shall be recovered by action of debt, before any court that can take cognizance of the same, and shall be applied to the use of the county. *ib.*

4. The Coroner shall swear six or more of the jurors that shall appear, and shall give the foreman, by him appointed, his oath upon view of the body, and shall also swear the other jurors. *ib.*

5. The jurors being sworn, the Coroner shall give them a charge upon their oaths to declare of the death of the person, whether he died of felony, or mischance, or accident; and if of felony, who were principals, and who were accessories, with what instrument he was struck or wounded, and so of all prevailing circumstances which may come by presumption; and if by mischance or accident whether by the act of man, and whether by hurt, fall, stroke, drowning, or otherwise; to inquire of the persons who were present, the finders of the body, his relations and neighbors, whether he was killed in the same place where he was found, and if elsewhere by whom, and how he was brought from thence; and of all circumstances relating to the said death. And if he died of his own felony, then

to inquire of the manner, means, or instrument, and of all circumstances concerning it. And the jury being charged shall stand together, and proclamation shall be made for any person that can give evidence, to draw near, and that they shall be heard. *ch.* 93, s. 2.

6. Every Coroner is further empowered to send out his warrant for witnesses; commanding them to come before him to be examined, and to declare their knowledge concerning the matter in question, and he shall administer an oath to them. *ib.*

7. The evidence of such witnesses shall be in writing, subscribed by them: and if they relate to the trial of any person concerned in the death, then shall the Coroner bind such witnesses by recognizance, in a reasonable sum, for their personal appearance at the next Supreme Judicial Court, to be held within and for the same county, there to give evidence accordingly, and to commit to the common jail of the county, such witness or witnesses as shall refuse to recognize as aforesaid. *ib.*

8. The jury having viewed the body, heard the evidence, and made all the inquiry within their power, shall draw up and deliver, unto the Coroner their verdict upon the death under consideration, in writing, under their hands and seals. *ib.*

9. The Coroner shall return to the next Supreme Judicial Court, for the same county, the inquisition, written evidence, and recognizance by him taken. *ib.*

10. Upon inquisition found before any Coroner of the death of any person, by the felony or misfortune of another, he shall speedily in-

form one or more of the Justices of the same county thereof, to the intent that the person killing, or being any way instrumental to the death, may be apprehended, examined and secured in order for trial. *ch. 93, s. 2.*

11. Every Coroner within the county for which he is appointed, shall, after the return of an inquisition of the jury, upon the view of a dead body of any stranger, bury said body in a decent manner; and the expenses thereof, together with all the expenses of said inquisition and the Coroner's fees shall be paid to said Coroner out of the treasury of this State, an account of said expenses being first examined and allowed by the legislature, in the same manner that accounts for State paupers are allowed: provided, the Coroners who shall return the inquisition, shall certify under oath, that the person found dead, was a stranger not belonging to this State, according to the best of his knowledge and belief: otherwise the expenses of taking up and burial, shall be paid to such Coroner, -by the town where such dead body was found, and repaid to them by the town to which said stranger belonged, if an inhabitant of this State; and the expenses of said inquisition shall be paid to the Coroner, by the county in which the inquisition shall be taken. *s. 3.*

D. Fees of Coroners.

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| § 1. For service and travel.
2. Bail bond and trials.
3. Warrant and inquisition.
4. Jurymen and Constables. | § 5. Officers to specify fees.
6. Penalty for taking unlawful fees. |
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§ 1. For serving a writ, summons or execution, and for collecting the moneys due thereon, and for travel in returning precepts and inquisition, the same allowance as is by this act allowed to Sheriffs for similar services. *ch. 445, s. 1.*

2. For a bail bond—*twenty-five cents*; every trial where the Sheriff is concerned—*twenty-five cents*; and the same for attending the jury therein. *ib.*

3. Granting a warrant and taking an inquisition on a dead body—*one dollar*; if more than one at the same time, and who come to their death by the same means—*twenty-cents* for each one after the first. *ib.*

4. Travel and expense for taking an inquisition—*one dollar* a day to each of the jurymen, for their travel, if above four miles out, *three cents* a mile each way; and for their services *seventy-five cents* per day, including time and expenses; the constable for his attendance and expenses in summoning a jury, *ninety-cents* a day. And all the aforesaid charges of the inquisition shall be paid out of the county treasury. *ib.* See page 89, § 11.

5. Every officer upon receiving such fees as are stated in this act shall, if required by the person paying the same, make out a particular account of such fees, in writing, specifying for what they accrued, upon pain of forfeiting to the party paying such fees, treble the sum by him or them so paid, to be recovered with costs, by an

action of debt, in any court proper to try the same. *ch.* 105, *s.* 4.

6. If any person shall wilfully and corruptly demand and receive any greater fee' or fees for any of the services aforesaid than are by this act allowed and provided, he shall forfeit and pay not less than five dollars, nor more than thirty dollars for every offence, to be recovered with costs, either by presentment in the Supreme Judicial Court or District Court, in which case the forfeiture shall accrue to the State; or by action of debt to the use of the person who may sue for it, *s.* 5.

CONSTABLES.

- A. Their election, qualification, exemptions, and duty to notify town officers and town meetings.
- B. Their power and duty to serve writs and processes, and their obligation to give bonds, and to collect taxes,
- C. Their duty in the service of venizes for jurors, and coroner's warrants for a jury of inquest.
- D. Their power and duty relative to watches and wards.*

A. Their election, qualification, exemptions, and duty to notify town officers and town meetings.

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| <p>§ 1. The election of Constables.</p> <p>2. To notify Constables and other officers to take the oath.</p> <p>3. Penalty for neglect to take the oath.</p> <p><i>ib.</i> Exemption from fine; and from serving.</p> | <p>§ 4. Constables to make return of warrant, on penalty.</p> <p><i>ib.</i> Pay for services in town business.</p> <p>5. To notify town meetings.</p> <p>6. Exempted from being jurors.</p> |
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•§ 1. The inhabitants of towns qualified to vote in the election of town officers shall assemble in the month of March or April annually, in town meeting, and by a major vote choose one or more Constables, by ballot, or such other method as the voters may agree upon. *ch.* 114, s. 1.

2. After the choice of Constables and other town officers, the town clerk, or two of the se-

* Of the mode of serving writs and precepts, of executing warrants, their obligation to pay over fines, &c. and other duties, see title Sheriff; and for their powers and duties in the collection of taxes, see Collectors of Taxes.

lectmen, shall forthwith make out a list of the names of all those who shall be then chosen into office, of whom an oath is by law required, and deliver the same to some Constable or Constables of the same town, together with a warrant to him or them directed, who is required within three days after receiving such warrant, to notify and summon each of said persons to appear before the town clerk, within seven days from the time of such notice, to take the oath of the office into which they are severally chosen *ch. 114, s. 1.*

3. Every person who shall neglect to appear before the town clerk, within the said seven days and take the oath of office unto which he is chosen and summoned as aforesaid, unless he is by law exempted from serving in the office; which oath the town clerk is authorized to administer, shall forfeit and pay to him or them that will inform or prosecute therefor, the sum of five dollars, except for those officers for whom a different penalty is provided, two thirds for the use of the town, and the other third to the use of the prosecutor; provided, that any person who shall take the oath of office before a Justice of the Peace, and file a certificate thereof within the said ten days, shall be exempted from the said fine; and no person shall be obliged to serve in any town office two years successively. *s. 1.*

4. Every Constable shall, at the expiration of ten days from the time of receiving such warrant, make a return into the clerk's office of the same town, of the warrant to him committed as aforesaid, with his doings thereon, for neglect of which he shall forfeit and pay the sum of six

dollars, to the use of the town ; the Constable to be allowed such reasonable sum for his services upon this and other town business as the inhabitants shall agree upon. *ch. 114, s. 1.*

5. When there shall be occasion for a town meeting the Constable or Constables, or such other person as shall be appointed for that purpose by warrant from the selectmen, or the major part of them, shall summon and notify the inhabitants of such town, to assemble in such time and place in the same town as the selectmen shall order ; the manner of summoning the inhabitants to be such as the town shall agree upon ; and in case the selectmen unreasonably deny to call a meeting, a Justice of the Peace is authorized to issue his warrant under his hand and seal, directed to the Constable or Constables of the town, directing them to notify and warn the inhabitants to meet according to the direction of the warrant. *ch. 114, s. 5.*

6. Constables are excepted from the list of jurors to be prepared by the selectmen. *ch. 84, s. 1.*

B. Their power and duty to serve writs and processes, and their obligation to give bonds, and to collect taxes.

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| <p>§ 1. May serve process in personal actions for \$100.</p> <p>2. Must first give bonds.</p> <p>3. To serve warrants from Justices of the Peace.</p> <p>4. Process from Judge of Probate.</p> <p>5. Order of commitment from overseers of the poor.</p> <p>6. Warrant to return absconding servants, &c.</p> <p>7. May convey prisoners, &c. to the justice or jail.</p> <p>8. Service on the Lord's day void.</p> | <p>§ 9. To commit debtors to the nearest jail.</p> <p>10. To pay over surplus money to Sheriff or Coroner.</p> <p>11. To serve subpoenas and citations.</p> <p>12. Duty and pay for serving notice on petitions to the Legislature.</p> <p>13. To serve order of removal of poor persons.</p> <p>14. Their duty in collecting taxes.</p> |
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§ 1. Any Constable in any town or plantation within this State, hereby is authorized and empowered to serve upon any person or persons in the town or plantation to which he may belong, any writ, summons or execution, in any personal action, where the damage sued for or recovered shall not exceed one hundred dollars ; including all writs and processes to them duly directed, in which towns or plantations of which they are inhabitants, are parties or interested, and return thereof to make to the Court to which the same may be returnable. *ch. 92, s. 9.*

2. *Provided however,* That every Constable, after being chosen, and before he serve any writ or proceed to collect any execution, shall give to the Treasurer of his town, a bond in the sum of two hundred dollars with two sureties, sufficient in the opinion of the Selectmen and town Clerk, for the faithful performance of his duties and trust, as to all processes by him served or executed ; and for every process he shall serve or execute, before giving such bond, he shall forfeit and pay not less than twenty, nor more than fifty dollars, recoverable to the use of any person, who shall sue for the same. All persons suffering through the defaults or misdoings of such Constable, shall have the same remedies in law, on his bond, as are provided in respect to Sheriff's bonds, and the like proceedings in both cases shall be had, such changes being made, as will make the process effectual. *ib.*

3. All Sheriffs, Constables and other officers are directed and empowered to serve any warrant issuing from a Justice of the Peace. *ch. 76, s. 6.*

4. All Sheriffs, deputy Sheriffs, Coroners and Constables, are required duly to serve and execute all legal warrants or other process to them directed, by any Judge of Probate. *ch. 51, s. 1.*

5. Two or more overseers of any town provided with a workhouse are empowered to commit to such house, by writing under their hands, any person or persons liable to be sent thither: and an order of commitment from two or more overseers, directed to a Constable of the same town, shall by such Constable be obeyed and executed. *ch. 124, s. 6, & Stat. 1825, Feb. 22, s. 4.*

6. Where a Justice issues his warrant for returning an absconding servant or apprentice, the warrant for returning such servant or apprentice to the place of his or her duty, directed to any officer or other person by name, shall authorize him to convey any such servant or apprentice to such place, notwithstanding it may be in another county in the State. *ch. 170, s. 5.*

7. Any Constable of any town or plantation within this State, shall have authority, in the execution of the warrant, or writ to him directed by lawful authority, to convey as well any prisoner or prisoners, as things that they may have taken into their custody, either to the Justice issuing such warrant or writ or to the common jail or house of correction of the county where such Constable is an inhabitant, according as in the writ or warrant may be directed. *ch. 92, s. 10.*

8. No person shall serve or execute any civil process, from midnight preceding to midnight following the Lord's day: but the service thereof shall be void, and the person serving the same

shall be as liable to answer damages to the party aggrieved, as if he had done the same without any such civil process. *ch. 9, s. 9.*

9. Where there are two jails in the same county, every person committed for debt shall be committed to the jail which is nearest to the debtor's place of abode. *ch. 209, s. 3.*

10. Whenever any Constable shall make sale of any personal property which shall before such sale have been attached on mesne process, or taken on execution by a Sheriff or deputy sheriff, or by a coroner, such Constable shall be subject to the same duties and requirements in relation to such Sheriff, or deputy sheriff, or coroner, as by the 21st and 22d sections of this act, a Sheriff is, in like case subject to, in relation to a coroner. *ch. 60, s. 24.*

11. Constables and other officers are empowered to serve subpoenas, notifications for taking depositions, and on creditors of imprisoned debtors, and on those interested in petitions to the legislature.

12. Every Sheriff, deputy sheriff, Constable or Coroner, who may serve a notice on a petition to the legislature, shall be allowed and paid by the petitioners, four cents a mile for his actual travel in making the service, twelve cents a page for each copy of the petition, and thirty cents for each service thereof; and after service shall, on demand, deliver the petition with his return thereon to the petitioners. *ch. 166, s. 2.*

13. Upon judgment of removal of a poor person, by a Justice of the Peace, such Justice may issue his warrant of removal directed to, and to be executed by any Constable of the town from whence the person is to be removed, and to any

particular person by name, requiring him to deliver such person to the overseers of the poor of the town to which he belongs; and such overseers shall be obliged to receive and provide for such person accordingly; and said Justice may also award execution for damages and costs; and may tax in costs a reasonable sum for removal; and the execution may be issued to, and may be executed by a proper officer in the county where the town is, against which it issues. *ch. 122, s. 15.*

14. If the collector or collectors of taxes chosen by any town, shall refuse to serve, or if no collector shall be chosen, then the Constable or Constables of such town shall collect and gather such rates and taxes. *ch. 116, s. 2, 3*.*

C. Their duty in the service of venires for jurors, and coroner's warrants for a jury of inquest.

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| <p>§ 1. To notify town meeting to draw jurors.
 2. Manner of notifying.
 3. To notify jurors and return <i>venires</i>.
 4. To notify additional jurors.
 5. To notify certain jurors to attend immediately.</p> | <p>§ 6. Fine for neglect of duty.
 7. Coroner's warrant for jury of inquest.
 8. Constable's duty thereupon.
 9. Penalty for neglect.</p> |
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§ 1. The Sheriff of each county shall, without any delay, forward venires for Jurors to the Constables of the towns to whom they shall be directed; and the Constables of their respective towns, on the reception thereof, shall, in the usual form, notify the freeholders and other inhabitants, in their towns, qualified to vote in the election of Representatives, and particularly the se-

* See title Collectors of Taxes.

lectmen and town clerk, to assemble and be present at the drafts and selection of the jurors called for ; which meeting shall be held at least six days, and not more than twenty days, before the sitting of the court to which the venire shall be returnable. *ch.* 84, s. 5.

2. The manner in which Constables, upon the receipt of venires for jurors, shall notify the inhabitants of their respective towns to assemble, and to be present at their drafts as aforesaid, shall, unless otherwise ordered by said towns respectively, be the same as has been or shall be established therein for notifying and warning their annual town meetings. But if any town shall, at a legal town meeting, have ordered that the notifications shall be by the Constables giving notice to the selectmen or the major part of them, and the town Clerk, or by any other mode, such notification shall be sufficient. *ch.* 84, s. 18.

3. It shall be the duty of the Constable to notify the persons designated to serve as jurors four days at least before the sitting of the Court on which they are to attend, either by reading to them the venire, with the minutes of their having been drafted as aforesaid, thereon ; or by leaving at their usual abode, a written notification of their having been so drawn, and also of the time and place of the sitting of the Court, and when they are to attend. And he shall make a seasonable return of the venire, to the Court to which it is returnable, with his doings thereon. s. 7.

4. It shall be in the discretion of the Courts respectively to direct their clerk, when they shall issue their venires, to require that a second draft

shall be made. And the Constables shall also notify these jurors four days before the sitting of the Court, of their being drawn as provisional jurymen, in the same manner as is provided for the notification of the first set of jurors. *ch.* 84, *s.* 14.

5. When, by a deficiency of either of the grand or traverse jurors of any Court, it cannot conveniently proceed in its business, it may cause writs of *venire facias* for the drawing and returning so many jurors as shall be deemed necessary, to be forthwith issued, and directed to the Constables of such towns in the county as the Court, under existing circumstances, shall judge most proper; and the jurors so drawn, shall be notified by the Constables to attend on the Court immediately. *s.* 8.

6. Any Constable, who, having no justifiable cause therefor, shall neglect to discharge the duties incumbent on him by this act, by means whereof there shall be a failure of the jurors called from his town, shall be subjected to a fine not exceeding twenty dollars, at the discretion of the Court. *ch.* 84, *s.* 20.

7. Each coroner shall make out his warrant directed to the Constable of the town where the dead body of any person supposed to have come to his death by violence or casualty, is found or lying, or to the Constables of one or more of the three or four next adjacent towns, requiring them forthwith to summon a jury of good and lawful men of the same town or towns, sufficient to make up nine in all, to appear before him at the time and place in such warrant mentioned and expressed. *ch.* 93, *s.* 2.

8. Every Constable to whom such warrant

shall be directed and delivered, shall forthwith execute the same, and shall repair to the place where the dead body is, at the time mentioned, and make return of the warrant with his doings thereon, unto the coroner that granted the same. *ch. 93, s. 2.*

9. Every Constable failing unnecessarily of executing such warrant, or of returning the same as aforesaid, shall forfeit the sum of ten dollars. *ib.*

D. Their power and duty relative to watches and wards.

§ 1. To warn and attend watch and ward.

ib. To carry a badge of office.

2. To charge the watch in regard to their duty.

3. Authority and duty of the watch.

§ 4. Regulation of watch ordered by County Commissioners.

ib. Officer's badge of office and watchmen's staff.

5. Forfeiture for neglect of duty.

6. To attend and obey Justices and selectmen.

§ 1. The Justices of the Peace and the selectmen of any town may order a suitable watch to be kept nightly in such town, and also a ward to be kept in the day time and evenings; and appoint the number of persons, the places and the hours for keeping the same; and give orders in writing accordingly, signed by a major part of such justices and selectmen, directed to any Constable or Constables of the town, empowering and requiring him or them from time to time, to warn such watch or ward, and to see that all persons so warned by him or them, do attend and do their duty in such a manner as shall be required; and in warning thereof to take care that some able householders, or other sufficient persons be joined in each watch or ward. And

each Constable, when attending such watch or ward, shall carry with him the usual badge of his office. *ch.* 125, *s.* 2.

2. Such Constable or Constables shall charge the watch to see that all disturbances and disorders in the night be prevented and suppressed; and to examine all persons whom they shall see walking abroad in the night after ten o'clock, and whom they shall have reason to suspect, of any unlawful intention or design, of their business abroad at such season, and whither they are going; and in case they give no reasonable satisfaction therein, then to secure by imprisonment or otherwise, all such suspicious persons to be safely kept until morning; then to carry them before one of the nearest Justices of the Peace to be examined and proceeded against according to the nature of their offences, as is by law directed. *s.* 2.

3. Such watchmen shall walk the rounds in and about the streets, wharves, lanes and principal inhabited parts within such town, to prevent any danger by fire, and to see that good order is kept, taking particular observation and inspection of all houses and families of evil fame, and shall strictly observe the charge to be given them as aforesaid. *s.* 2.

4. Where a watch shall be ordered by the Court of County Commissioners on the application of any town, the number and qualifications of the persons whereof it shall also consist shall be agreed upon by said town; and one sober, discreet, able bodied householder shall be appointed officer of the watch by said commissioners and selectmen, to take the charge and command of such watch, who, as the badge of his office,

shall carry a quarter pike with a spire on the top thereof; and every watchman as well in this as in a Constable's watch, shall carry a staff with a bill fastened thereon as is usual. And the powers and duties of said officer and watchmen shall be the same as are before prescribed in the case of a Constable's watch. *ch. 125, s. 3, 4.*

5. If any person liable to watch or ward,* being duly warned by the officer of the watch, Constable, or by a person appointed by them shall neglect to attend to his duty by himself or another person in his stead, and be thereof convicted before a Justice of the Peace either by the oath of the Constable, officer or other sufficient testimony without a just and reasonable excuse, he shall forfeit one dollar with costs to the use of the town, to be levied by distress, or be committed to prison until paid. And if any Constable or officer of the watch shall neglect or refuse to observe the orders he shall from time to time receive, he shall forfeit and pay to the use of the town, a sum not exceeding ten dollars, to be levied as aforesaid. *s. 5.*

6. When the justices and selectmen shall think fit to walk by night to inspect the order of the town such of the Constables and watchmen shall attend them as shall be required, and obey their lawful commands. *s. 6.*

* Male persons of the age of eighteen, being able of body or having estate sufficient to hire, shall be liable to watch and ward, either in person, or by another sufficient person when duly warned, except all who live more than two miles from the place, and except ministers of the gospel. *ch. 25, s. 1.*

COLLECTORS OF TAXES.

- A. Choice of Collectors, their authority, and giving bonds.*
- B. Their power and duty to distrain, commit and sue for taxes.
- C. The duty of Collectors and other officers in the commitment and discharge of tax debtors, the liability of discharged debtors' property, and of Collectors.
- D. Their power and duty in the collection of taxes assessed on real estate.
- E. Their power to require aid in the execution of their office.
- F. Their duty to exhibit accounts to Selectmen or Assessors, to settle and deliver up their bills in case of removal, and their liability for default.
- G. Proceedings where towns appoint their Treasurer a Collector of Taxes.
- H. Proceedings in case of Constable's or Collector's insanity, infirmity, arrest on Treasurer's warrant, or decease.
- I. The power and duty of Sheriffs in serving warrants of distress and collecting taxes, when towns or plantations neglect to choose assessors, and when assessors are deficient.
- K. The power and duty of Sheriffs to serve warrants and executions against Constables and Collectors, and to collect taxes where no Constable or Collector is chosen.
- L. Mode of serving and returning warrants of distress and executions, and the liability of Sheriffs.

* For their qualification, exemption from serving, and liability for refusing to take the oath, see Constables.

A. Choice of Collectors, their authority and giving bonds.

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| § 1. Their election, and the authority of Collectors and Constables to collect taxes.
2. May have new warrant when original is lost.
3. Bonds may be required.
4. Choice by plantations.
5. To collect taxes in school districts. | § 6. Parishes may choose collectors.
7. May collect taxes after new ones are chosen.
8. Collector to settle his bills before removal.
<i>ib.</i> New collector to be chosen.
9. When collectors are arrested new ones to be chosen. |
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§ 1. The qualified voters of any town, at the time they choose Constables, may, if they see cause, likewise choose some meet person or persons, to be Collector or Collectors of the rates or taxes that shall be assessed upon such town, and agree upon what sum shall be allowed and paid unto such Collector or Collectors, for his or their services; but if such Collector or Collectors so to be chosen, shall refuse to serve, or if no Collector shall be chosen, then the constable or constables of such town shall collect and gather such rates and taxes; and every Collector of taxes or Constable, shall have a warrant from the Selectmen or Assessors, empowering him to collect such rates or taxes as shall be committed to him to collect, and he shall pay in the same according to the directions in such warrant. *ch. 116, s. 23.*

2. Whenever it shall be made to appear to the assessors by any Constable or Collector of taxes, that an original or other warrant, issued and delivered to him for the collection of any tax committed to him, hath been lost or destroyed by accident, they are empowered to issue a new warrant to such Constable or Collector for collecting the same, which shall have the same force and effect as the original warrant *ch. 116, s. 19,*

3. Such assessors are hereby authorized to require of every such Collector or Constable a bond in such sum and with such sureties, to the treasurer of such town, conditioned for the faithful discharge of his duty as Collector, before they proceed to deliver to such Collector or Constable a warrant for collecting rates or assessments, and on his neglecting or refusing to procure such bond, he shall be considered as refusing to accept such office s. 23.

4. Plantations which are ordered by the Legislature to pay public taxes are fully vested with all the powers of towns so far as relates to the choice of Constables and Collectors of taxes and requiring bonds of the same. *ch. 116, s. 24.*

5. When money is assessed on school districts, the assessors shall make a warrant, directed to one of the Collectors of the town or plantation empowering him to collect and pay the same to the treasurer. And such Collector in collecting such taxes shall have the same powers and be held to proceed in the same manner, as is by law provided in collecting town taxes. *ch. 117, s. 9.*

6. Parishes are authorized to choose Collectors with the like powers and duties. *ch. 135, s. 3.*

7. When the Constables or Collectors be anew chosen and sworn, in any town, plantation or parish, before the former Constables or Collectors have perfected their collection of any State or other tax or assessment to them committed to collect, such former Constables or Collectors are hereby fully empowered and required to perfect all such collections, and shall and may exercise the same powers and authority for the

collecting and enforcing the payment thereof, as by this act they might have done before other Constables or Collectors were chosen and sworn. *ch. 116, s. 27.*

8. Where any Constable or Collector in any town, plantation or parish within this State shall have had any rates or assessments committed to him to collect, and has removed, or in the judgment of the selectmen, assessors or treasurer of the said town, or the committee or treasurer of the parish (as the case may be) is about to remove out of this State; before the time set in his warrant or warrants to make payment to the several Treasurers therein mentioned, or the time of payment be elapsed, and the treasurer or treasurers has thereupon issued his or their warrant or warrants of distress, that in either case it shall and may be lawful for the selectmen of such town, assessors of such plantation, or committee of such parish, on their own motion, or at the request of their respective assessors or treasurers, to call a town, plantation or parish meeting, in due form of law, setting forth in their warrant the cause of such meeting, and requiring the voters qualified by law at the said meeting, if the said voters shall think it proper, either by themselves or such person or persons as they shall appoint, to settle with the said Constable or Collector, who is under either of the abovementioned circumstances, and who has or is about to remove as aforesaid, for the money he has received on the rate bill or bills that have been delivered to him, and demand and receive his said bill or bills and give him a discharge therefor; and at the said meeting may proceed to the choice of another Constable or

Collector. And the assessors shall make out a new warrant under their hands, in due form of law, and shall deliver the warrant, together with the same bill or bills to the person chosen as aforesaid, to collect and levy what shall be remaining due thereon, and the person so chosen, is hereby vested with the same authority to levy and collect what shall then remain due on the same bill or bills, as the Constable or Collector was, to whom they were first committed. *ch.* 116, s. 38.

9. Whenever a Constable or Collector of any town, plantation or parish shall be taken on execution by virtue of this act, the same town, plantation or parish may proceed to the choice of another Collector at any other time besides the annual meeting in March or April, to finish the collection on the assessments, who shall be sworn to the faithful discharge of his office; and the assessors for the time being, on receiving the assessment of the former Collector shall make and deliver to the Collector chosen and sworn as aforesaid, a warrant or warrants for finishing the collections in form prescribed, with necessary alterations; and the same Collector shall proceed to finish such collections in the same manner as Constables or other Collectors are to proceed in collecting like species of rates and taxes. *ch.* 116, s. 48.

B. Their power and duty to distrain, commit and sue for taxes.

§ 1. May distrain on non-payment.

ib. Notice and sale of distress.

ib. Overplus to be restored.

2. When he may commit.

3. May levy the whole when persons are about to remove.

§ 4. May distrain or commit persons who have removed.

5. Restriction of power to distrain and imprison.

6. May sue in cases of decease, removal or intermarriage.

§ 1. If any person shall refuse to pay the sum or sums which he shall be assessed as his proportion to any rate or tax in the list committed to any Constable or Collector, under the hands of the assessors of such town or plantation, or the major part of them, upon demand thereof made by such Constable or Collector by virtue of the warrant to him given, it shall and may be lawful to and for such Constable or Collector, and he is hereby authorized and required in such case to distrain the person so refusing by his goods or chattels, and the distress so taken to keep the space of four days, at the cost and charge of the owner thereof; and if the owner do not pay the sum or sums of money so assessed on him, within the space of four days, then the said distress shall be openly sold at public auction by the said officer for the payment of the said money, notice of such sale being posted up in some public place in the same town or plantation, forty-eight hours next before the sale and expiration of the four days aforesaid; and the overplus arising by such sale, if any, over and above the charge of taking and keeping the said distress, to be immediately restored to the former owner with an account in writing, of the sale and charges. *ch. 116. s. 26.*

2. If any person assessed as aforesaid, to the

State or other tax, shall refuse or neglect to pay the sum or sums so assessed, by the space of twelve days after demand thereof, and shall neglect to show the Constable or Collector sufficient goods or chattels, whereby the same may be levied, in every such case he may take the body of the person so refusing, and him commit unto the common jail of the county, there to remain until the same be paid, or he therefrom be discharged by due order of law: *Provided nevertheless*, That in all cases where there are, in the opinion of the assessors, or a major part of them, just grounds to fear that any person or persons, assessed as aforesaid, may abscond before the expiration of the said twelve days, in such cases it shall be in the power of the Constable or Collector to demand immediate payment, and on refusal, to commit as aforesaid. s. 26.

3. When any State or other rate or tax shall be made payable at two or more several times or days of payment, and any person, being an inhabitant of any town or plantation within this State at the time of making such rate or tax, and being assessed thereunto, shall be about to remove from thence before the time that shall be prefixed for the payment of the same, it shall and may be lawful for the Constable or Collector of the same town or plantation, to demand and levy the whole sum which such person may be assessed in his list or lists, notwithstanding the time for collecting the second part of such rate or tax may not then have arrived, and in default of payment to distrain for the same, or to take such other course for the obtaining thereof as is herein before provided. *ch.* 116, s. 27.

4. When any person shall remove from any town or place, where he lived or had his residence at the time of making the list of any State, town, county, plantation or parish tax or assessment, not having before paid the respective sum or sums set upon him by such lists, it shall and may be lawful for the Constable or Collector, to whom any such tax or assessment shall be committed, with a warrant to collect, and he is hereby authorized and empowered to demand the sum or sums assessed upon such person, in what town or place soever within this State, he may be found; and upon refusal or neglect to pay the same, to distrain the said person, by his goods and chattels as aforesaid, and for want of such distress, to commit the party to the common jail of the county where he shall be found, there to remain until payment be made. s. 28.

5. Whenever a Constable or Collector of any town, plantation or parish, shall be taken on execution by virtue of this act, and another Collector shall be chosen to finish the collection of assessments, the Collector chosen to finish the collections, on averment of payment by the person or persons assessed to the Constable or Collector, taken as aforesaid, and denial of payment to the Collector for finishing the said collections, shall not proceed to distrain or imprison any person unless a vote of such town, plantation, or parish, is first had therefor, and certified to the same Collector by the Clerk of such town, plantation, or parish. *ch.* 116, s. 48.

6. Where any person duly rated in any town, parish or plantation, hath died or shall die before the payment of the same rates, and where any person duly rated as aforesaid, hath removed or

shall remove out of the town or plantation in which such person lived at the time such rates were or may be assessed, before the payment of such rates; and where any unmarried woman, being duly rated as aforesaid hath intermarried or shall intermarry before the payment of such rates; in all such cases, it shall and may be lawful for the Constables or Collectors of such town, parish or plantation, to sue for such rates, and they shall have the like remedy for the recovery thereof, as other creditors have for recovering their proper debts. s. 29.

C. The duty of Collectors and other officers in the commitment and discharge of tax debtors, the liability of discharged debtors' property, and of Collectors.

§ 1. To leave a copy of the warrant and certificate with the Jailer.

§ 2. Collectors liable for taxes unless committed within a year.

§ 1. When any officer appointed for collecting any rates or assessments by virtue of any warrant, shall, for want of goods or chattels whereof to make distress, take the body of any person and commit him to prison, he shall give an attested copy of his warrant unto the keeper of the prison, and thereupon certify under his hand the sum such person is to pay as his proportion to the assessment, with the cost of taking and committing: and that for want of goods or chattels whereon to make distress, he has taken his body; and such attested copy with the certificate thereon under the hand of the officer, shall be a sufficient warrant to require the prison keeper to receive and keep such person in cus-

tody until he shall pay his rate or assessment as aforesaid, and charges of imprisonment, with thirty-three cents for the copy of the warrant.
ch. 116, s. 52.

2. When any person who shall be imprisoned for the non-payment of the proportion of any tax, shall be discharged from confinement by virtue of an act, entitled "an act for the relief of poor prisoners confined in jail for taxes," the Collector or Constable making such imprisonment, shall not be discharged of the proportion which was due from such person, but shall be held to pay the same, unless such imprisonment shall be made within one year next after the commitment of such tax to such collector or Constable, or unless the inhabitants of such town or place, in legal town meeting, shall see fit to abate the same to such Collector or Constable.
ch. 116, s. 54.

D. Their power and duty in the collection of taxes assessed on real estate.

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| <p>§ 1. Must notify agents of non-residents two months before sale.</p> <p>2. Collector's affidavit evidence of notice.</p> <p>3. May distrain or commit non-resident owners of <i>improved lands living in the State.</i></p> <p>4. May sue after two months' notice.</p> <p>5. May sell such real estate.</p> <p>6. Officer not to sell after two years.</p> | <p>§ 7. To advertise the names of non-resident <i>proprietors of unimproved lands</i>, and of <i>improved lands living out of the State.</i></p> <p>8. When the owner is not known.</p> <p>9. Mode of publishing, &c.</p> <p>10. To sell at auction if not paid.
 <i>ib.</i> May adjourn sale and give deeds.</p> <p>11. What shall be legal evidence of notice.</p> |
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§ 1. Where any non-resident proprietor of any lands in any town or plantation within this State, shall have authorized in writing, any person residing and dwelling in any such town or

plantation as his attorney, to pay the taxes imposed upon such lands, and such written authority shall have been lodged with or recorded by the Clerk of such town or plantation, which such Clerk is hereby required to do, upon application of such attorney, and payment of twenty-five cents, for filing or recording the same: no Constable or Collector of taxes in any such town or plantation, shall proceed to advertise the sale of any lands of any such non-resident proprietors for non-payment of any taxes, committed to them to collect, without first notifying and demanding payment of such tax of such attorney, either personally or by written notice and demand left at his dwellinghouse, nor till after the expiration of two months from and after such notice. *ch. 116, s. 32.*

2. And in case such Collector shall have occasion after said two months, to advertise such lands for sale upon neglect of payment of the taxes, his affidavit made before a Justice of the Peace, and recorded by the Clerk of such town or plantation, (who is hereby required, upon request of such Constable or Collector, to record the same) before any sale be made that such personal or written notice was given, and expressing the time of giving the same, shall be admitted as legal evidence thereof. *ch. 116, s. 32.*

3. Where the owners of improved real estate living within this State, but not in the town in which such real estate lies, shall be taxed to any State, county or town taxes, and shall neglect for the space of six months after the same have been committed to an officer to collect, to pay and discharge the same, it shall and may be

lawful for such officer to distrain such person by his goods or chattels, and for want of such goods, to commit him to the common jail of the county where he shall be found. *ch. 116, s. 31.*

4. Or such officer may, after giving two months notice in writing to such owner, sue him for such taxes in action of debt. *ib.*

5. Or such officer may after such notice as aforesaid, proceed to sell such real estate, or so much thereof as may be necessary to pay such taxes and charges of selling the same, conforming in all respects to the provisions contained in the thirtieth section of this Act. And if the improved real estate taxed as above mentioned, shall consist of a saw mill, grist mill, mill factory, mill privilege, or other real estate which cannot be divided without prejudice to the whole, and where the whole of the same is not necessary to be sold to satisfy the taxes on the same, the officer, having such taxes to collect, may sell such undivided part of the same as may be sufficient to satisfy such taxes and charges of selling. *ib.*

6. No officer to whom any warrants for the collection of taxes may be committed, shall be authorized to sell any improved or unimproved land, as mentioned in the thirtieth and thirty-first sections of this act, after the expiration of two years from the date of such warrants. *ib.*

7. Where no person appears to discharge the taxes on the unimproved lands of non-resident proprietors, or improved lands of proprietors, living out of the limits of this State, to the Collector thereof, he shall advertise in the public newspapers of the printer to the State for the time being, three weeks successively, the names

of all such proprietors, where they are by him known, with the sum of the taxes assessed on their lands respectively, and also the time and place of sale. *ch.* 116, *s.* 30.

8. And where they are not known, he shall, in the same manner, publish the sum of the taxes on the several rights, numbers of lots or divisions. *s.* 30.

9. And where the name of the place in which such lands lie have been altered by any act three years next preceding such advertisement, he shall express not only the present name, but the name by which the same was last known, and in either case shall post the same in some convenient and conspicuous place in the same town or plantation, as the case may be, where the said lands lie, for the term of three weeks previous to the time appointed for such sale; and also advertise the same in one of the newspapers printed in the county where said lands lie, or in the next adjoining county, if any such there be, for three weeks successively previous to the time of sale. *s.* 30.

10. And if no person shall appear thereupon to discharge the said taxes and all necessary intervening charges, then the Collector aforesaid shall proceed to sell at public auction to the highest bidder (after waiting two hours from the time appointed for said sale,) so much only of the said lands as shall be sufficient to discharge said taxes, and the necessary intervening charges, having first given notice of the intended sale thereof, and the time and place when and where the same will be made as aforesaid; and shall have power to adjourn from day to day (if necessary) to complete the said sale, not to exceed

three days, (waiting as aforesaid) and shall give and execute a deed or deeds, to the purchaser or purchasers, his or their heirs and assigns, expressing therein the cause of such sale; and saving to the aforesaid proprietor or proprietors, the right of redemption of any lands so sold, within any time for the space of two years from the time of such sale. *ch.* 116, s. 30.

12. The affidavit of any disinterested person, taken before a Justice of the Peace, of the posting notifications required for the sale of any land which shall be sold by any sheriff, constable, or Collector in the execution of his office, may be used in evidence of the fact of notice upon any trial of the validity of such sale: *Provided*, That such affidavit, made on one of the original advertisements, or on a copy of one of them, shall be filed and recorded in the Registry of Deeds of the county or district where the land lies, within six months. *ch.* 116, s. 62.

E. Their power to require aid in the execution of their office.

§ 1. May require aid if resisted.
ib. Penalty for refusing aid if necessary.

§ 2. May command aid in other towns.
 3. Penalty for refusing in such cases.

§ 1. If any of the Collectors of the State, county, town or parish rates and taxes, when in the execution of their office, shall be hindered or impeded in collecting the rates and taxes committed to them, it shall be lawful for such Collectors to require some meet person or persons to aid and assist them therein; and all persons so required who shall refuse their aid and assistance,

shall severally pay a fine to the town or plantation where the offence may arise, not exceeding six dollars, at the discretion of the justice before whom the conviction may be had, by complaint or information in writing according to the circumstances of the offence:—*Provided*, That it appears to the Justice, that the aid so demanded as aforesaid, was necessary; and on default of payment of the fine imposed, the Justice may order the offender to be committed to the common jail of the county for the space of forty-eight hours. *ch. 116, s. 33.*

2. When and so often as any constable or Collector of public taxes, shall have any list or assessment to him committed, in which list shall be named and legally assessed in any sum or sums, any person or persons not inhabitants of the town or plantation to which such constable or Collector belongs; in every such case it shall and may be lawful for any such constable or Collector to require and command any person or persons within the limits of their respective towns or plantations, to assist such constable or Collector in the collection of the taxes assessed, as aforesaid, on any of the inhabitants of any such adjacent lands; and such constable or Collector may, and hereby is also fully authorized to require and command any of the inhabitants of the aforesaid lands adjacent, to assist him in collecting any such assessment as aforesaid. *ch. 116, s. 34.*

3. If any person or persons, when thereunto required, shall refuse or neglect to aid and assist any Constable or Collector requiring such aid, he or they so refusing or neglecting, shall be, and hereby are made liable to, and shall pay

the same penalties, to be recovered and disposed of in the same manner, as is provided in case of refusing to assist Constables or Collectors when thereto required within the limits of their respective towns. s. 35.

F. Their duty to exhibit accounts to Selectmen or Assessors, to settle and deliver up their bills in case of removal, and their liability for default.

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| § 1. To exhibit accounts and vouchers every two months. | § <i>ib.</i> Fine for refusal. |
| 2. Forfeiture for neglect. | 4. Liable to towns for damages for his default. |
| 3. Towns to settle with collector when removing and demand his bills. | |

§ 1. The several Collectors of public taxes shall once every two months, at least, exhibit to the Selectmen, and where there are no Selectmen, to the Assessors of the respective towns or plantations to which they belong, a just and true account of all the moneys they have received on the several taxes committed to them, and produce the Treasurer's receipts for all the moneys by them respectively paid into the Treasury. *ch.* 116, s. 36.

2. If any Collector of public taxes shall neglect to exhibit his accounts in manner aforesaid, he shall forfeit and pay for every neglect, the sum of two and a half per cent. on the sum or sums committed to him to collect, to the use of the town or plantation of which he is or has been a Collector, to be recovered by such town or plantation in any court of law proper to try the same. s. 37.

3. Where any Constable or Collector in any town, plantation or parish, having any rates or assessments committed to him to collect, has re-

moved, or is about to remove out of this State, before the time set to make payment to Treasurers, or time of payment be elapsed, and the Treasurer or Treasurers has thereupon issued his or their warrant or warrants; a town, plantation or parish meeting may be called, and a person or persons appointed to settle with such Constable or Collector, and demand and receive his rate bill or bills: And if the Constable or Collector so removing or intending to remove himself out of this State, shall refuse to deliver the bill or bills of rates or assessments committed to him to collect, and all moneys collected by him thereon and remaining in his hands, when demanded by the Assessors or Selectmen, or the major part of them as aforesaid, to deliver the same, he shall pay a fine of two hundred dollars to the use of the town, plantation or parish of which he was Constable or Collector, to be recovered by such town, plantation or parish, in any action of debt to be brought in any Court of law proper to try the same, and shall remain liable to pay what shall remain due upon the bill or bills committed to him to collect, as is provided by this act. *ch. 116, s. 39.*

4. Any Constable or Collector failing of his duty, for whose default the town or plantation is answerable, shall, at all times afterwards, be liable to the action or suit of the inhabitants, in their corporate capacity, for all such sum and sums as were assessed upon the same through his defect, and for other damages occurring to them thereby. *s. 43.*

G. Proceedings where towns appoint their Treasurer a Collector of Taxes.

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| <p>§ 1. Towns may appoint Treasurer, Collector of Taxes.
 <i>ib.</i> Collector may appoint deputies.
 2. Assessors to deposit assessments and warrant with Treasurer.
 <i>ib.</i> Mode of notification.
 3 & 4. Town may agree upon abatements on payments by instalments.</p> | <p>§ 5. Treasurer may issue warrant of distress.
 <i>ib.</i> Form and return.
 <i>ib.</i> May distrain immediately where probable loss.
 6. Duty of officers to execute Collector's warrants.
 <i>ib.</i> Fees for service.
 <i>ib.</i> Notice to be left with delinquent.</p> |
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§ 1. It may be lawful for the inhabitants of any town within this State at their meeting in the month of March or April annually, to appoint their Treasurer a Collector of taxes in their said towns; and the Treasurer so appointed shall be and he hereby is empowered to substitute and appoint under him, such number of deputies or assistants as may be necessary; which deputies or assistants, so appointed, shall give bonds for the faithful discharge of their duty in such sums, and with such sureties, as the Selectmen of such town shall think proper; and the said Collector and his deputies shall have the same powers as are vested in Collectors of taxes chosen for that purpose. *ch.* 116, s. 56.

2. The Assessors of any town, which shall at their annual meeting, regulate the collection of their taxes, agreeably to the provisions of this Act, shall assess their taxes in due form, and deposit the same in the hands of the Treasurer for collection, together with a warrant for that purpose, after he shall have been duly qualified, together with his deputy or deputies; and at the same time shall post up notifications thereof together with a copy of the fifty-seventh

section of this act, in one or more public places within said town. *ch.* 116, s. 59.

3. "SEC. 57. All such inhabitants of the said towns, who shall voluntarily pay the said Collector or his deputy within thirty days next after the delivery of their tax bills, the amount of their respective taxes, shall be entitled to an abatement of such sum as said town at their annual meeting may agree upon, on the amount of their said taxes; and such inhabitants as shall voluntarily pay their taxes to the said Collector or his deputy within sixty days after the delivery of their tax bills, shall be entitled to an abatement of such sum as may be agreed upon as aforesaid, on the amount of their said taxes; and all such inhabitants as shall voluntarily pay to the said Collector or his deputy, within one hundred and twenty days after the delivery of their tax bills shall be entitled to an abatement on the amount of their said taxes, of such sum as may be agreed upon as aforesaid."

4. Any town, plantation, parish or religious society, that shall appoint their treasurer, collector of taxes, may at any meeting at which they shall vote to raise any tax, agree, not only upon the abatements to be made to persons who shall voluntarily pay their taxes to the collector at certain periods; but likewise the periods at which any person by so paying his taxes may be entitled to such abatement. And a notification of such vote being posted up in one or more public places within said town, shall be sufficient in lieu of posting up a copy of the fifty-seventh section of the Act to which this is in addition. And when any town or other corporation aforesaid, shall not agree upon any abate-

ments to be made as aforesaid, it shall not be necessary to post up a copy of said fifty-seventh section as prescribed in said act. *ch. 337, s. 5.* •

5. It may be lawful for any town treasurer who may also have been chosen a Collector as well as treasurer, as is provided for in this act, to issue his warrant to the Sheriff of the county or his deputy, or to any Constable of the same town, directing them to restrain the person or property of any person or persons who may be delinquent in the payment of taxes after the expiration of the time fixed for the payment thereof by any vote of such town; which warrants shall be of the same tenor with the warrant prescribed to be issued by selectmen or assessors for the collecting or gathering in of the State rates or assessments, *with necessary alterations.* And the said officers shall make a return of their warrants with their doings thereon to the said treasurer and Collector within thirty days from the date thereof: *Provided however,* That nothing in this act shall prevent the said treasurer and Collector whenever there may be a probability of losing a tax, from distraining the person or property of any individual, before the expiration of the time fixed by the votes of said town. *ch. 116, s. 60.*

6. It shall be the duty of said officers to execute all warrants they may receive from said treasurer and Collector, pursue the same process in distraining the persons or property of delinquents, as Collectors of taxes are authorized to do and perform: and for collecting the sum of money due on said warrant, receive the fees that are allowed by law for levying executions in personal actions: *Provided however,* Before the

said officers shall serve any warrant they shall deliver to the delinquent, or leave at his or her usual place of abode a summons from said treasurer and Collector, stating the amount due, and that unless the same is paid within ten days from the time of leaving said summons, into the town treasury with twenty cents for said summons, his or her property will be distrained according to law. *ch. 116, s. 61.*

H. Proceedings in case of Constable's or Collector's insanity, infirmity, arrest on Treasurer's warrant, or decease.

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| <p>§ 1. Becoming insane or infirm, new one to be appointed.
 2. Overplus to be repaid.
 3. Lists to be received and delivered to successor.
 4. In case of arrest, copies of assessments, &c. may be demanded.
 5. Credit to be allowed.
 <i>ib.</i> Liable for deficiency.
 6. Refusing copies, &c. to be committed.
 <i>ib.</i> New Collector to have duplicates and finish collection.</p> | <p>§ 7. Failure to satisfy warrants, assessors to assess deficiency and commit to another Collector.
 8. On decease before collection another to be appointed.
 9. Executors, &c. to settle accounts.
 10. Assessors to appoint Collector.
 11. Liability of executors, &c. for neglect.</p> |
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§ 1. When any Constable or Collector of any town, plantation or parish, who is already, or may hereafter become *non compos mentis*, and who hath, or may have a guardian duly appointed, or who hath already been, or may hereafter, by bodily infirmities, be rendered incapable of discharging the duties of his office, in the judgment of the assessors, before such insane or infirm Constable or Collector hath perfected his collection, the assessors shall thereupon procure and appoint in writing, under their hands, some suitable person a Collector to per-

fect such collection, and grant him a warrant for that purpose ; and the person so appointed shall have the same power and authority as were granted to such insane or infirm constable or Collector : *Provided nevertheless*, That no person shall be appointed to complete the collection of such infirm Collector unless he shall request the same. *ch. 116, s. 40.*

2. *And provided further*, That when it shall appear to the assessors, that such insane or infirm Constable or Collector shall have paid to the treasurer or treasurers, to whom he was accountable, a larger sum or sums of money than the amount of the moneys that he has collected from the persons borne on his list of assessment, the assessors, in their warrant to the Collector by them appointed, shall direct him to pay such sum as shall appear to them to be overpaid, as aforesaid, to the guardian of such insane Constable or Collector, or to such infirm Constable or Collector, as the case may be. *s. 40.*

3. In the cases aforesaid, and in case of the decease of any Constable or Collector of taxes before his perfecting his collection, the assessors for the time being shall have power to demand and receive the list or lists of assessments of and from such infirm Constable or Collector, or from the guardian of such Constable or Collector as shall be *non compos mentis*, or from the executors or administrators of any deceased Constable or Collector, or of and from any person in whose hands the same may be, and to deliver the same to the Collector newly appointed. *ib.*

4. Whenever a constable or collector of

any town, plantation or parish, shall be taken on execution by virtue of this Act, it shall be lawful for the Assessors of such town, plantation or parish, for the time being, if they see fit, to demand and receive of the constable or Collector, taken as aforesaid, a true copy of any or all the assessments which as constable or Collector aforesaid, he had in his hands unsettled, at the time of being taken as aforesaid, with the whole evidence of all payments on the assessments demanded as aforesaid. *ch. 116, s. 48.*

5. In case the said Constable or Collector, taken as aforesaid, shall upon being demanded thereto, deliver up to the said Assessors, all the assessments, which he as Constable or Collector as aforesaid, shall have in his hands unsettled, together with the whole evidence of all payments on the assessments demanded as aforesaid, then the said Constable or Collector shall receive such credit as the said Assessors, from an inspection of his assessments shall adjudge him entitled to; and the said Collector or Constable taken as aforesaid, shall be holden for the payment of such sum or sums of money, as shall be found deficient, after being credited as aforesaid. *s. 48.*

6. If any Constable or Collector taken as aforesaid, shall on demand as aforesaid, refuse to exhibit and deliver up his assessments, with the evidence as aforesaid, he shall forthwith, either by the officer taking him as aforesaid, or by warrant from some Justice of the Peace, be committed to the common jail of the county there to remain until he shall exhibit the same for the purpose aforesaid: And the assessors

of such town, plantation, or parish, are hereby empowered to take the duplicate or copies of the records of such assessments, if the same are recorded, and the same copies to deliver to the Collector chosen in his stead, who having received the same and a warrant therefor, shall proceed to finish the collection of the rates and taxes in the same assessments mentioned, of the persons who did not pay the same to the Constable or Collector taken as aforesaid. *ch.* 116, s. 48.

7. If any Constable or Collector, so failing as aforesaid, have no estate to be found whereon to make distress, and his person cannot be taken within the space of three months from the time a warrant of distress shall issue from the Treasurer of this State as aforesaid, or being taken and committed to jail, shall not within three months satisfy the same, in such case the town or plantation, whose Constable or Collector so fails of his duty, shall within three months from the expiration of the said three months first mentioned, make good to the Treasury the sum or sums due or owing the same from such deficient Constable or Collector; and the assessors of such town or plantation, having notice in writing from the Treasurer of the failure of any Constable or Collector as aforesaid, shall forthwith thereupon, without any other or further warrant, assess the sum the said deficient Constable or Collector is deficient, upon the inhabitants and estates of such town or plantation, in manner as the sum so committed to such deficient Constable or Collector was assessed, and commit the same to some other Constable or Collector with warrant to collect. *s.* 43.

8. In case any Constable or Collector of taxes decease before his perfecting the collection of any assessment committed to him to collect and pay into the State Treasury, the assessors for the time being of such town or plantation shall nominate and appoint, at the charge of such town or plantation, some other fit person or persons to perfect the same collection, and enable and empower such person or persons to collect the same by granting a warrant to him or them for that purpose. *ch.* 116, s. 23.

9. In case of the decease of any constable or Collector in any town, plantation or parish, before his having adjusted the accounts of his assessments to him committed to collect for such town, plantation or parish, the executors or administrators of such constable or Collector shall, within two months after his decease, settle and make up accounts with the assessors of the said town, plantation or parish, of such part of the assessments as was received and collected by the deceased constable or Collector, in his lifetime, with which such executors or administrators shall be chargeable in like manner as the deceased Constable or Collector should be, if living. s. 43.

10. And such assessors shall thereupon procure and appoint, in writing, some suitable person, a collector to perfect such collection; and the person so appointed, is accordingly hereby empowered and required to execute all such powers as were granted to the deceased constable or Collector. s. 43.

11. If the executors or administrators of any Constable or Collector so deceased, not having fully collected the assessment committed, shall

fail of making up and settling the account of what was received by the deceased as aforesaid, before the expiration of the time aforesaid, such executors or administrators shall be chargeable with the whole sum committed to their testator or intestate, in case there be sufficient assets, in the same manner the deceased constable or Collector should be if living. *ib.*

I. The power and duty of Sheriffs in serving warrants of distress and collecting taxes, when towns or plantations neglect to choose assessors, and when assessors are deficient.

- § 1. Their duty to distribute warrants of assessment.
- 2. Towns neglecting to choose assessors, Sheriff to collect State tax on Treasurer's warrant, after five months.
- ib.* Prevented by assessment in sixty days.
- 3. Neglecting to keep in office assessors to assess State and county tax, Sheriff to collect.

- § 4. Assessors neglecting to assess State taxes, Sheriff to distrain their property.
- ib.* If deficient to be imprisoned.
- 5. When estate of assessors is deficient, to collect of the inhabitants.

§ 1. The Treasurer of the State shall send such warrants as he shall be ordered to issue, for assessing any rate or tax, inclosed to the Sheriff of each respective county, who is required immediately to dispose of and transmit the same unto the assessors of the several towns and plantations in each county, according to the directions thereof. *ch.* 116, s. 4.

2. If the inhabitants, qualified to vote in town affairs, of any town or plantation in which any State or county tax shall be hereafter required, shall neglect for the space of five months after having received the warrant of the Treasurer

for assessing any State tax, to choose assessors to assess the same, and cause the assessment thereof to be certified as the law requires, to the treasurer of the State for the time being, and agreeable to his warrant directing the same, he is authorized and directed to issue his warrant under his hand and seal, directed to the Sheriff of the county or his deputy, requiring him to levy and collect, by distress and sale, the sum mentioned therein, of the estates real and personal of any inhabitant or inhabitants of such deficient town or plantation: which warrant the said Sheriff or his deputy is empowered and required to execute; observing the same rules and regulations as are by law provided for satisfying warrants against deficient Collectors of public taxes; and it shall be the duty of said Sheriff or his deputy, on receiving said warrant, forthwith to transmit an attested copy thereof to the Selectmen or Clerk of the town or plantation named therein: and if the assessors shall within sixty days from the receipt of such attested copy, deliver to the said Sheriff or his deputy, a certificate according to law, of the assessment of the tax or taxes required by said warrant, and pay the officer his legal fees, he shall forthwith transmit the same certificate to the said treasurer, and return the warrant unsatisfied. *ch. 116, s. 20.*

3. If the inhabitants qualified to vote in town affairs of any town or plantation from which any State or county tax shall hereafter be required, shall neglect to choose and keep in office, assessors to assess the same as the law requires, the treasurer of the State, or of the county, for the time being, is hereby authorized and

directed to issue his warrant, under his hand and seal, directed to the Sheriff of the county, or his deputy, requiring him to levy and collect the sum mentioned therein in manner aforesaid: And the said Sheriff or his deputy shall execute said warrant, observing all the rules and regulations and all the provisions mentioned in the 20th section of this act. *ch. 116, s. 21,*

4. The assessors of any town, chosen or appointed, failing of their duty required by such warrants as during the time of their office they shall receive from the Treasurer of this State, pursuant to any act or acts made and passed by the Legislature, for assessing and apportioning any rate or tax upon the inhabitants or estates within the town, whereof they are assessors, shall forfeit and pay the full sum in such warrant mentioned, to be by them assessed to the use of the State, which shall be levied by distress and sale of the estates real and personal, of such deficient assessors, by warrant from the Treasurer, directed to the Sheriff of the county, or his deputy, in which such town lies; and the Treasurer is authorized and required in such case, *ex officio*, to issue his warrant requiring the Sheriff or his deputy to levy said sums accordingly; and for want of estate to take the bodies of such deficient assessors, and imprison them until they pay the same; which warrant the Sheriff or his deputy is empowered and required to execute accordingly. *s. 5.*

5. If the inhabitants qualified to vote in town affairs, of any town or plantation, from which any State or county tax shall be hereafter required, shall choose assessors who shall neglect to assess the tax required by the warrant

issued to them, or to re-assess any tax on the failure of any Collector, and to certify the assessment as the law directs, and the estates of such assessors shall be found insufficient to pay the same tax in the manner already provided; then, and in every such case, the Treasurer of the State or the county, for the time being, is hereby authorized and directed to issue his warrant, under his hand and seal, directed to the Sheriff of the county, or his deputy, requiring him to levy and collect by distress and sale, so much of the sum mentioned therein, as the estates of the assessors shall be insufficient to pay, of the estates, real or personal, of any inhabitants of the deficient town or plantation; which warrant the said Sheriff, or his deputy shall execute; observing all the rules and regulations, and all the provisions mentioned in the 20th section of this act. *ch. 116, s. 22.*

6. If any plantation shall neglect to choose assessors, or if the assessors chosen by such plantation and accepting such trust, shall be remiss or neglect their duty, in every such case such plantation shall be subject to the same penalties, and be proceeded with in the same manner as by this act is provided in the case of deficient towns; and such deficient assessors shall be liable to the same penalties to be recovered by the same process as by this act is provided in the case of deficient assessors chosen by towns. *s. 7.*

K. The power and duty of Sheriffs to serve warrants and executions against Constables and Collectors, and to collect taxes where no Constable or Collector is chosen.

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| <p>§ 1. To serve warrant on Collector negligent as to State tax.</p> <p><i>ib.</i> For want of estate to be committed.</p> <p>2. Warrant to issue at request of Selectmen. &c.</p> <p>3. If deficiency not made up warrant to issue against assessors.</p> <p>4. Collectors deficient in county, town, plantation or parish taxes, Sheriff to levy warrant against.</p> | <p>§ 5. Same as to school district taxes.</p> <p>6. If no choice, Sheriff to collect.</p> <p>7. Deficient plantations and Collectors therein.</p> <p>8. Mode of collection by Sheriff.</p> <p><i>ib.</i> Fees if paid in 30 days.</p> <p><i>ib.</i> May distrain and commit.</p> |
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§ 1. If any constable or Collector to whom any tax or assessment shall be committed to collect, shall be remiss and negligent of his duty in not levying and paying unto the treasurer of this State, such sum and sums of money as he shall from time to time have received, and as ought by him to have been paid within the respective times set and limited by the assessors' warrant, pursuant to law, the treasurer of this State is hereby empowered, after the expiration of the time so set, by warrant under his hand and seal, directed to the Sheriff or his deputy, to cause such sum and sums of money to be levied by distress and sale of such deficient constable or Collector's estate, real and personal, returning the overplus if any there be; and for want of such estate, to take the body of such Constable or Collector and to imprison him until he shall pay the same, which warrant the Sheriff or his deputy is hereby empowered and required to execute accordingly. *ch.* 116, *s.* 41.

2. Whenever the time fixed by law for col-

lecting any tax shall have expired, the Treasurer of this State shall, and he is hereby authorized and empowered, at the request of the Selectmen or assessors of any town or plantation, to issue his execution against any Collector or Collectors of their respective towns or plantations without further order. *ch. 116, s. 48.*

3. If any Constable or Collector so failing and the towns do not make up the deficiency, and the Assessors do not assess the same upon the inhabitants; in default thereof the Treasurer of this State is directed and empowered to issue a warrant of distress against such deficient assessors for the whole sum which may remain due from such deficient Constable or Collector, which shall be executed in the same manner as is prescribed in this act for serving other warrants of distress which may be issued by such Treasurer. *s. 43.*

4. If the Constable or Collector of any town, plantation or parish within this State, to whom any county, town, plantation or parish rates or assessments shall have been committed to collect, shall be remiss in his duty, by neglecting to collect and pay in the same to the Treasurer of such county, town, plantation or parish, by the time fixed in the warrant to him directed, such Treasurer is empowered to issue his warrant, returnable in ninety days, under his hand and seal, directed to the Sheriff of the county or his deputy (who are hereby respectively directed and empowered to execute the same) to cause such sum or sums of money as such Constable or Collector hath not paid in, to be levied by distress and sale of his estate real and personal, returning the overplus, if any there be;

and for want of such estate to take the body of such Constable or Collector and him imprison until he pay the same. *ch. 116, s. 44.*

5. The Treasurer of any town or plantation who shall receive a certificate of the assessment of a district tax, shall have the same authority to enforce the collection and payment thereof, as of town and plantation taxes. *ch. 117, s. 10.*

6. Where any town shall neglect to choose a Constable or Collector, or if any plantation shall neglect to choose a Collector, to gather the rates or taxes granted by the Legislature, in such case, the Sheriff of the county or his deputy is empowered and directed to collect such rates or taxes, having received an assessment made of the proportion of the several persons rateable in such town or plantation, together with a warrant under the hands of such Assessors as shall be appointed by the Court of County Commissioners, in the county where such deficient town or plantation lies, or under the hands of the Assessors of such town or plantation, duly chosen by them respectively. *ch. 116, s. 49.*

7. If any of the plantations aforesaid shall neglect to choose Constables or Collectors as aforesaid, or if the Constables or Collectors chosen by any such plantation and accepting such trust, shall be remiss, or neglect their duty, in every such case, such plantation shall be proceeded with in the same manner as by this Act is provided in the case of deficient towns, and such deficient Constables or Collectors shall be and hereby are made liable to the same penalties, to be recovered by the same process as by this act is provided in the case of deficient Constables or Collectors chosen by towns. *s. 50.*

8. The Sheriff or his deputy, upon the receiving such assessment and warrant for collecting it, shall forthwith post in some public place of the town or plantation assessed, an attested copy of such assessment and warrant, and shall make no distress for any of the sums so assessed, till after thirty days from his posting it up; and any person or persons paying the sum or sums respectively assessed on him or them to the Sheriff, before the expiration of the aforesaid thirty days, shall pay at the rate of five per centum over and above the sum assessed to the Sheriff, for his fees, and no more; but all such as shall neglect to pay the sum or sums assessed, beyond the thirty days, after posting up the copy of the assessment as aforesaid, shall be proceeded against by the Sheriff by way of distress or commitment to jail in the manner Collectors are by this act directed and empowered to distrain or commit to jail; and the said Sheriff or his deputy, may require suitable aid for that purpose, and they shall each one pay the fees for the Sheriff's service and travel as in other cases where distress is made or the person committed. *ch. 116, s. 51.*

L. Mode of serving and returning warrants of distress and executions, and the liability of Sheriffs.

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| <p>§ 1. Sheriff's duty in service of warrants and executions.
<i>ib.</i> Treasurer may issue alias.
2. Treasurer's warrants on default of Sheriff.
<i>ib.</i> To be served by Coroner.</p> | <p>§ 3. Sale of personal property.
4. Levy on real estate.
<i>ib.</i> Mode of notifying sale.
5. Estate deficient, to be committed.</p> |
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§ 1. All executions or warrants of distress, that may be issued by the treasurer of this State,

or by the treasurer of any county, town, plantation or parish against any Constable or Collector, which hath been or may be hereafter delivered to the Sheriff of any county within this State or his deputy, such Sheriff or deputy shall make return of his doings thereon unto the treasurer who issued the same execution or warrant of distress, within a reasonable time after the return day in the same mentioned, with the money, if any, that he hath received and collected by virtue thereof; and where the same shall necessarily be returned unsatisfied, or satisfied in part only, such treasurer may issue an alias for such sum as may remain due on the return of the first, and so *toties quoties*; which reasonable time after the return day shall be computed at the rate of forty-eight hours for every ten miles distance from the dwellinghouse of the Sheriff or his deputy, to the place where the warrant may be returnable. *ch. 116, s. 45.*

2. Any Sheriff or Deputy Sheriff, that shall make default in accounting for and paying in the moneys he may have collected and received of any deficient Constable or Collector, by execution or warrant of distress as aforesaid, or in making return of his doings within reasonable time as aforesaid, shall be liable to pay the whole sum in such execution or warrant of distress mentioned; and the treasurer of this State, and the treasurers of the counties, towns, plantations and parishes respectively, are authorized and empowered to make out their warrants respectively, directed to the coroner of such county, where any Sheriff or his deputy is deficient, requiring them respectively as aforesaid to distrain for the same, upon the estate, real or per-

sonal of such deficient Sheriff or his deputy, as is before directed herein, with respect to the Sheriff or his Deputy, making distress upon the estate of deficient Constables or Collectors; which warrant the coroner of any county respectively is hereby empowered and required to execute. *ch. 116, s. 45.*

3. Any officer who may have occasion to distrain any personal property of any deficient Constable or Collector, by force of any warrant of distress or execution issued by the treasurer of the State, or by the treasurer of any county, town, plantation or parish, shall proceed in the sale of said personal property, in the same manner such officer by law is obliged to proceed in serving executions upon judgments obtained by creditors against their debtors, where personal estate is taken for satisfying the same. *s. 46.*

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

such lands or tenements, duly executed as aforesaid, shall be good and effectual in law unto the purchaser, his heirs and assigns forever, to all intents and purposes, as though executed by the deficient constable, Sheriff or deputy. *ch.* 116, *s.* 47.

5. In case the produce of such lands and tenements shall not satisfy the sum or sums mentioned in the said warrant or warrants of distress, together with reasonable charges arising thereon, then the treasurer issuing such warrant, shall issue an alias execution or warrant of distress for such remaining sum or sums, and the officer executing the same, for want of estates, shall take the body of such deficient constable, Collector or deputy sheriff, and him commit unto the common jail of the county whereto he belongs until he pay the same. *s.* 47.

APPENDIX.

BONDS.

Sheriff's Bond to the Treasurer.

Know all men by these presents, that we A. B. of D. in the county of C., Esquire, as principal and E. F, G. H. &c. of &c. as sureties, are jointly held and stand firmly bound and obliged unto S. T. Esquire, Treasurer of the State of Maine, and his successors in said office, in the sum of thousand dollars, to be paid to the said S. T. or his successors in said office: to the which payment well and truly to be made we bind ourselves, jointly and severally and each of our respective heirs, executors and administrators firmly by these presents. Sealed with our seals. Dated the day of in the year of our Lord one thousand eight hundred and .

The condition of the above obligation is such, that whereas the abovenamed A. B. has been duly appointed and commissioned Sheriff of the county of C. Now if the said A. B. shall well and faithfully perform and execute all the duties which he is by-law bound to do and perform by virtue of his holding said office of Sheriff of the county of C, and shall well and faithfully answer

for all the neglects and misdoings of all his deputies which he may appoint, then this obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed, and delivered in presence of us :

A. B. L. S.

E. F. L. S.

G. H. L. S.

Deputy Sheriff's Bond.

Know all men by these presents, that we, G. R. of H. in the county of K. gentleman, as principal, and C. P. of and E. M. of as sureties are held and stand firmly bound unto B. S. of D. in the county aforesaid, Esquire, and Sheriff of said county of K. in the sum of to be paid to the said B. S. his heirs, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally, firmly by these presents. Sealed with our seals and dated this day of in the year of our Lord eighteen hundred and

The condition of this obligation is such, That whereas the said B. S. Sheriff of said county of K. has appointed the said G. R. a deputy sheriff for and within our said county of K. during the pleasure of him the said Sheriff — now if the said G. R. shall well and truly perform the duties of said office of deputy sheriff in all and every respect according to law, and shall faithfully execute and return all writs and precepts of whatsoever nature which shall be committed to him and which he ought by law to execute, and shall also keep a true and fair

account of all services done by him in his said capacity of deputy Sheriff, and of all the fees which he shall by law be entitled to, and shall exhibit the same to the said B. S. whenever he the said G. R. shall by him be requested, and under oath, if required by the said B. S. and shall also pay over to the said B. S. at the end of every three months twelve per cent. of all such fees as he shall then have received, or be entitled to receive, (saving and excepting his fees for levying and collecting executions issued by any Justice of the Peace, and wherein the debt or damage does not exceed twenty dollars,) or in case he shall be dismissed from office by said B. S. or shall resign the same, shall within thirty days after such dismissal or resignation pay over to said B. S. all such proportion of fees as shall be due to him, and shall resign or deliver up his appointment as deputy sheriff whenever requested by said B. S.—and also if the said G. R. shall fully and completely indemnify and save harmless the said B. S. his heirs, executors and administrators from all suits, costs, damages and expenses whatsoever, by reason of the doings, wrong doings or neglects of the said G. R. in the execution of his said office of deputy Sheriff—Then and upon a full and fair performance of each and every of the aforesaid conditions, and not otherwise, this obligation is to be void.

In testimony whereof we have hereunto set our hands and seals the day and year aforesaid.

Signed, sealed and delivered, in presence of us :

G. R. L. S.

C. P. L. S.

E. M. L. S.

Coroner's Bond.

Know all men by these presents, that we, M. N. of G. in the county of C. gentleman, as principal, and A. B. of , D. F. of , as sureties, are held, and stand firmly bound and obliged unto E. T. Esquire, Treasurer of the State of Maine, and his successors, in said office, in the sum of thousand dollars, to be paid to the said E. T. or his successors in said office, on demand: to the which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly, by these presents.

Sealed with our seals. Dated the day of
 in the year of our Lord one thousand eight
 hundred and .

The condition of the above obligation is such, that whereas the abovenamed M. N. has been duly appointed and commissioned a Coroner for the county of C. Now, if the said M. N., shall well and faithfully do and perform all the duties, which he is by law bound to do and perform by virtue of his holding said office, then this obligation to be null and void, otherwise to remain in full force and effect. M. N. L. s.

Signed, sealed, and delivered in presence of

A. B.	L. s.
D. F.	L. s.

Constable's Bond.

Know all men by these presents, that we J. L. of B. in the county of C. (addition) as principal, and H. S. (addition) of , and R. E. (addition) of , as sureties, are held and firm-

ly bound and obliged unto the inhabitants of the town of B, in the sum of two hundred dollars to be paid to the said inhabitants: to the true payment whereof, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals. Dated the day of , in the year of our Lord one thousand eight hundred and .

The condition of this obligation is such, that whereas the said J. L. was duly chosen on the day of , to the office of Constable within the said town of B. for the year following and until another should be chosen and sworn in his place: now if the said J. L. shall faithfully perform his duties and trust as to all processes which may by him be served or executed as Constable as aforesaid; then this obligation shall be void; otherwise the same shall remain in full force and virtue.

Signed, sealed, and delivered in presence of

J. L. (Seal.)

H. S. (Seal.)

R. E. (Seal.)

Collector's Bond.

Know all men by these presents, that we A. B., of C., in the county of D., (addition,) as principal, and E. F. (addition,) and G. H. (addition,) both of C. aforesaid, as sureties, are held and firmly bound and obliged unto the inhabitants of the said town of C., in the sum of , to be paid to the said inhabitants, for which payment to be well and truly made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed

with our seals. Dated the day of ,
in the year of our Lord one thousand eight
hundred and

The condition of this obligation is such, that
whereas the said A. B. has been duly chosen
to the office of Collector of taxes for the said
town of C., for the year next ensuing, from the
said day of , and fully to be com-
plete and ended: now if the said A. B. shall
during the year aforesaid, faithfully collect all
such rates or taxes as shall be assessed upon
the polls and estate of the said town of C. ;
and shall faithfully serve and execute all warrants
for the collection of such rates or taxes, which
shall be committed to him to collect, issued from
good and lawful authority ; and shall pay in the
said rates or taxes according to the directions in
such warrants mentioned and expressed ; then
this obligation shall be void ; otherwise, remain
in full force and virtue.

Signed, sealed, and deliv-
ered in presence of

A. B.	L. s.
E. F.	L. s.
G. H.	L. s.

Bail Bond.

Know all men by these presents, that we A.
B. of C. in the county of D. (addition) as prin-
cipal, and E. F. of G. (addition) and H. I. of
K. (addition) in the county aforesaid as sureties,
are held and stand firmly bound and obliged
unto L. M., Esquire, Sheriff of said county of
D. in the full and just sum of dollars, to
be paid unto the said L. M. his heirs or assigns.
To which payment well and truly to be made

we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated at C. the
day of in the year of our Lord,
one thousand eight hundred and .

The condition of the above written obligation is such, that whereas the above bound A. B. is attached at the suit of N. P. of H. in the county of R. (addition) in a plea of by the said N. P. commenced to be heard and tried before next to be held at on the day of as by the original writ or process bearing date the day of (reference thereunto being had) more fully appears.—If therefore, the above bound A. B. shall appear and answer unto said writ or process, and shall abide, do, and perform the judgment of, the said or the judgment of any other court before whom the said process shall in due course of law be finally determined, and shall not depart without license, then the above written obligation to be void : otherwise to remain in full force and virtue.

Signed, sealed and delivered, in presence of

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

*Bond for the Liberty of the Jail yard when
committed on Execution.*

Know all men by these presents, that we N. H. of W. in the county of C. (addition) Z. L. of F. (addition) and N. P. of W. (addition) both in said county of C. are held and stand firmly bound and obliged unto A. M. of N. in

the county of O. (addition) in the sum of dollars and cents, to be paid unto the said A. M. his certain attorney, heirs, executors, administrators, or assigns. To the payment of which sum, we do hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, in the whole, and for the whole, firmly by these presents.

Sealed with our seals—dated at P. the day of A. D. 18 .

The condition of the above written obligation is such, that whereas the said N. H. hath been and now is imprisoned in the prison at P. in the said county of C. by virtue of an execution issued against him on a judgment obtained against him by the said A. M. at which was begun and held at G. within and for the county of C. on the day of for the sum of dollars and cents damage, and costs of Court taxed at dollars and cents, with cents more for writ of execution, and the Officer's fees and charges for commitment, taxed at dollars and cents.

Now if the said N. H. from the time of executing this bond shall continue a true prisoner within the limits of the jail yard, until he shall be lawfully discharged, and shall not depart without the exterior bounds of said jail yard, until lawfully discharged from said imprisonment, and if he be not discharged from his said imprisonment according to law, within nine months from the date hereof, shall surrender himself to the jail keeper within three days from the end of said nine months, and go into close confinement, and commit no manner of escape, then

the said obligation to be void, otherwise to remain in full force.

Signed, sealed and delivered,	N. H.	L. s.
in presence of	Z. L.	L. s.
	N. P.	L. s.

Jail Bond when committed on a Writ, or Surrendered.

[The obligatory part is the same as in the above.]

The condition of the above written obligation is such, that whereas the said A. B. hath been and now is imprisoned in the prison at P. in the said county of L. by virtue of a writ of _____ in favor of G. H. against the said A. B. in due form of law, which was made returnable to the _____ court on the day of _____ as by the said writ, now in the custody of J. H. the keeper of said prison, will appear.

Now if the said A. B. from the time of executing this bond shall continue a true prisoner within the limits of the jail yard, until he shall be lawfully discharged, and shall not depart without the exterior bounds of the said jail yard, until lawfully discharged from said imprisonment, and commit no manner of escape, then the said obligation to be void, otherwise to remain in full force.

Signed, sealed and delivered,	A. B.	L. s.
in presence of	E. F.	L. s.
	G. H.	L. s.

Replevin Bond.

[The obligatory part of this bond is the same as in the bond for the liberty of the yard.]

The condition of the above obligation is such, that whereas the said A. B. on the day of commenced against the said C. D. an action of replevin, for which he says the said hath unlawfully taken.

Now therefore, if the said A. B. shall prosecute the said replevin to final judgment, and pay such damages and costs as the said C. D. shall recover against him; and also return and restore the same goods and chattels (or cattle) in like good order and condition as when taken, (in case such shall be the final judgment;) then the said obligation to be void, otherwise to remain in full force.

Signed, &c.

Notice to Creditor of Commitment of Debtor.

To A. B. of G. in the county of C.

You are hereby notified that C. D. of H. in the county of E. who is now confined in the jail in in said county of on a in favor claims relief as a pauper,—This is therefore to require you to provide for his support while he shall remain in close confinement agreeably to law, otherwise he will be discharged, after the expiration of eight days from this date.

Dated at P. this day of A. D.
18 . Dep'y Jailer.

Application of Jailer on Complaint of Pauper.

K. ss.

To T. V., Esq. one of the Justices of the Peace, within and for the county of C.

I, J. H., keeper of the prison in P. in said county, represent that D. G. of H. in said county (addition) now a prisoner in said prison, in which he stands committed by force of an execution, issued on a judgment obtained against him by A. B. of G. in the county of _____ for the sum of _____ dollars and _____ cents damage, and costs of court taxed at _____ dollars and _____ cents hath complained to me that he hath not estate sufficient to support himself in prison.

I do therefore, in his behalf, and at his request, apply to you the said Justice to make out a notification to the said A. B. the creditor aforesaid, agreeably to an act of the State of Maine entitled "An act for the relief of poor debtors," thereby signifying to said creditor his, the said _____, desire of taking the privilege and benefit allowed in and by said act.

Dated at P. aforesaid, the _____ day of _____ A. D. 18 ____.

 INQUISITIONS.

Coroner's Warrant for summoning a Jury of Inquest.

S. ss.

L. s. To either of the constables of B. in the said county of S., _____ Greeting.

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

Fail not herein at your peril. Given under my hand and seal at B., the day of , in the year of our Lord one thousand eight hundred and . W. G. Coroner.

Foreman's Oath.

You solemnly swear, that you will diligently inquire and true presentment make on behalf of this State, how and in what manner A. B., who here lies dead came to his death; and you shall deliver up to me, one of the coroners of this county, a true inquest thereof, according to such evidence as shall be laid before you, and according to your knowledge. So help you God.

Jurors' Oath.

Such oath as your foreman hath taken, you and each of you, shall well and truly observe and keep. So help you God.

Proclamation by the Constable for Information.

If any person can inform the coroner, here present, or this inquest, how A. B. who here lies dead, came to his death, let him draw near and declare it, and he shall be heard.

Subpœna for Witnesses.

C. ss.

To A. B., (addition,) and C. D., (addition,) both of B., in the said county of Greeting.

You are hereby required in the name of the State of Maine, to make your appearance before me, one of the coroners of the said county of S., at the dwellinghouse of , or at a place called , within the said town of B., on this day of instant, at the hour of , then and there to be examined, and to declare your knowledge concerning the death of A. B., there lying dead, upon whose body an inquest is then and there to be taken, in pursuance of a warrant this day issued by me, a coroner of the said county. Hereof fail not, as you will answer your default under the pains and penalty in the law in that behalf made and provided. Dated at B. aforesaid, this day of , in the year of our Lord, one thousand eight hundred and

W. G. Coroner.

Witnesses' Oath.

You solemnly swear that the evidence which you shall give to this inquest, concerning the

death of A. B., here lying dead, shall be the truth, the whole truth, and nothing but the truth. So help you God.

Recognizance of Witnesses.

C. ss.

Be it remembered, that on the day of , in the year of our Lord, one thousand eight hundred and , before me W. G., one of the coroners of the said county of S., personally appeared A. B., (addition,) and C. D., (addition,) both of B., in said county, and acknowledged themselves severally indebted to the State of Maine, in the sum of each, to be levied of their goods and chattels, lands and tenements, and in want thereof of their bodies, to the use of the said State, if default be made of the performance of the following condition.

The condition of this obligation is such, that if the said A. B. and C. D. shall personally appear at the next Supreme Judicial Court, to be held at B., within and for the said county on the Tuesday of next, then and there in said court, to give evidence of what they know in relation to the trial of any person concerned in the death of A. B. late of B. aforesaid, (addition,) upon whose body an inquest has this day been taken in pursuance of a warrant issued by me, as coroner of the said county; and shall not depart without license; then this recognizance shall be void; otherwise the same shall remain in full force and virtue.

W. G. Coroner.

Inquisition.

C. ss.

An inquisition taken at B. within the said county of C. the day of in this year of our Lord one thousand eight hundred and , before R. G., gentleman, one of the coroners of the said county upon the view of the body of A. B., there lying dead, by the oaths of good and lawful men, who being charged and sworn to inquire for the State when, how, and by what means the said A. B. came to his death, upon their oath do say that B. E. of F. in said county, laborer, on the day of with force and arms, at F. in said county, in and upon the said A. B. in the peace of the State then and there being, feloniously, wilfully, and of his malice aforethought did make an assault, and that the said B. E. a certain pistol then and there charged with gunpowder and one leaden bullet, which said pistol he the said E. in his right hand then and there held, then and there feloniously, wilfully and of his malice aforethought did discharge against the said A. B. and that the said E. with the leaden bullet aforesaid, out of the pistol aforesaid, by force of the gunpowder aforesaid by the said E. discharged as aforesaid, then and there feloniously, wilfully and of his malice aforethought did strike, penetrate and wound the said A. B. in and upon the right side of the belly of him the said A. B. giving to him the said A. B. with the leaden bullet aforesaid, in and upon the right side of the belly and near the right hip of him the said A. B. one mortal wound of the depth of four inches and the breadth of one inch, of which said mortal wound the said A. B. then and there instantly died: And so

the jurors aforesaid, upon their oaths aforesaid, do say that the aforesaid A. B. in manner and form aforesaid, then and there, of his malice aforethought, did kill and murder against the peace and dignity of the State, and the laws of the same. In witness whereof, the said coroner and jurors to this inquisition have set their hands and seals the day and year above said.

R. G. L. S.

&c.

Inquisition in case of Manslaughter.

C. ss. &c.

Upon their oaths do say that C. D. of E. in the county of , (addition) on the day of at E. aforesaid did then and there, with force and arms, in and upon the said A. B. late of the said E. feloniously, wilfully, and of the fury of his mind make an assault, and him the said A. B. then and there feloniously, wilfully and of the fury of his mind, did kill and slay, against the peace of the State aforesaid, and the law in such case made and provided. In witness, &c.

Inquisition in case of Self-murder.

C. ss. &c.

Upon their oaths do say that the said A. B. late of B. in said county, (addition) not having the fear God before his eyes, on the day of in the present year, at B. aforesaid feloniously, wilfully, and of his malice aforethought,

did make an assault ; and that the said A. B. with a certain knife which he held in his right hand, himself, in and upon the throat of him the said A. B., did then and there feloniously, wilfully and of his malice aforethought, strike and cut, then and there given to himself, with the said knife, in and upon the throat, one mortal wound, of the length of three inches and of the depth of four inches and a half, of which said mortal wound the said A. B. on the day of in the year aforesaid died : and so the jurors aforesaid, thus upon their oaths aforesaid, do say, that the said A. B. in manner and form aforesaid then and there voluntarily and feloniously, as a felon of himself, did kill and murder himself, against the peace. In witness, &c.

[If it appears that the death was by misfortune, say,] and so the jurors aforesaid, upon their oaths do say that the said A. B. in manner aforesaid, came to his death by misfortune.

[If innocently, by the hands of another person.] The jurors upon their oaths aforesaid do say, that the aforesaid P. S., the aforesaid A. B., by misfortune, and against and contrary to the will of him the said P. S. in manner and form aforesaid, did kill and slay.

OATHS.

Sheriff's, Deputy Sheriff's, Jailer's and Coroners' Oaths.

I, do swear that I will support the constitution of the United States and of this

State, so long as I shall continue a citizen thereof. So help me God.

I do swear, that I will faithfully discharge, to the best of my abilities, the duties incumbent on me as according to the constitution and the laws of the State. So help me God.

Constable's Oath.

Whereas you A. B. are chosen constable within the town of C., for one year now following, and until other be chosen and sworn in your place, do swear, that you will carefully intend the preservation of the peace, the discovery and preventing all attempts against the same; and that you will duly execute all warrants which shall be sent unto you from lawful authority, and faithfully attend all such directions in the laws and orders of court, as are or shall be committed to your care; that you will faithfully and with what speed you can, collect and levy all such fines, distresses, rates, assessments, and sums of money, for which you shall have sufficient warrants according to law; rendering an account thereof, and paying the same according to the direction in your warrant; and with like faithfulness, speed and diligence, you will serve all writs, executions and distresses in private causes betwixt party and party, and make return thereof duly in the same court where they are returnable; and in all these things you shall deal faithfully whilst you shall be in office, without any sinister respects of favor or displeasure. So help you God.

Collector's Oath.

You A. B., being appointed a collector of taxes within the of , for one year next following, do swear, that you will levy and collect, with what speed you can, all such rates and assessments, for which you shall have sufficient warrants according to law ; rendering an account thereof, and paying the same, according to the direction in your warrant. So help you God.

PROCLAMATIONS.

Proclamation among Rioters.

By virtue of an act of this State, entitled, "An act for suppressing routs, riots and tumultuous assemblies," I do in the name of the State of Maine, charge and command all persons, being here assembled, immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, upon the pains inflicted by the said act.

Proclamations by Criers.

The following proclamations are used in the Supreme Judicial Court, and may be used in other courts, as far as similar forms are applicable.

For opening the Court.

All persons that have any thing to do before the Honorable Justices of the Supreme Judicial

Court, now held at N., within and for the county of H., may draw near and give their attendance, and they shall be heard.

For Adjournment.

All persons that have any thing further to do before the Honorable Justices of the Supreme Judicial Court, now held at N., within and for the county of H., may hence depart, and give their attendance at this place this afternoon at o'clock (or to-morrow morning at o'clock,) to which time and place this Court is adjourned.

For the Justices of the Peace to answer to their Names.

Justices of the Peace for the county of H., please to answer to your names.

For the Justices to return their Recognizances.

* Justices of the Peace for the county of H., return all recognizances by you taken, returnable to this Court, that the Court may proceed thereon.

For the Coroners to answer to their Names.

Coroners of the county of H., please to answer to your names.

For the Coroners to return their Writs and Inquisitions.

Coroners of the county of H., return all writs and precepts to you directed, and all inquisitions

by you taken, returnable to this Court, that the Court may proceed thereon.

For the Sheriff to return his Writs, &c.

Sheriff of the county of H., return all writs and precepts to you directed, returnable to this Court, together with a calendar of the prisoners now in your custody, that the Court may advise thereon.

For the Jailer to return a list of Prisoners, &c.

Keeper of the State's jail in the county of H., return a list of the prisoners now in your custody, together with your calendar, for the inspection of the Court.

For the Grand Jurors to answer to their Names.

Ye good men of the county of H., who have been summoned to appear here this day, to serve on the grand inquest for the body of said county, answer to your names at the first call, upon pain and penalty of what shall fall thereon.

For the Petit Jurors to answer to their Names.

Ye good men of the county of H., who have been summoned to appear here this day, to serve on the Jury of trials, answer to your names at the first call, upon pain and penalty of what shall fall thereon.

For Silence.

All persons are commanded to keep silence whilst the charge is given to the grand Jury, upon pain of imprisonment.

For Information.

If any person can inform the Justices of this Court, attorney general, or this inquest, of any treason, murder, felony, or other misdemeanor, done or committed within the body of this county, let him come forth and declare it, and he shall be heard.

For a Nonsuit and Default.

A. B., A. B. A. B., come into Court and prosecute your action against C. D., or you will be nonsuit. C. D.

For a Default.

C. D., C. D., C. D., come into court and make answer to A. B., or your default will be recorded.

For a Principal to answer to his Recognizance.

A. B., A. B., A. B., come into court and save yourself and bail, or your default will be recorded.

For a Bail to bring in the Principal.

C. D., C. D., C. D., come into court and bring in E. F. whom you engaged to have here this day, or your default will be recorded.

For Discharging a Recognizance.

If any person has aught to say why E. F., who stands bound by recognizance to appear here this day, should not be discharged, let him come forth and declare it, and he shall be heard.

Same, second time.

Same, third time, only instead of "and he shall be heard," say, or he is discharged.

Previous to final Adjournment.

All persons that have any thing further to do before the Honorable Justices of the Supreme Judicial Court, now held at N., within and for the county of H., may come forth and declare it, or this court will be adjourned without day.

Final Proclamation.

All persons that have any thing further to do before the Honorable Justices of the Supreme Judicial Court now held at N., within and for the county of H., may hence depart and give there attendance upon a new summons, for this court is adjourned without day.

God save the State !

Receipt for Personal Property.

C. ss. 18 .

Received of R. S. deputy Sheriff, for safe keeping, the goods and chattels following, viz. of the value of dollars, which property the said officer has taken by virtue of a writ against P. S. in favour of D. C. and in consideration of one dollar paid by the above named officer, the receipt whereof do hereby acknowledge, hereby promise and agree safely to keep and to re-deliver all the property above mentioned to the said officer, to his order, or to his successor in office on de-

mand, to be delivered at B. in the like good order and condition that the same is now in, free from all charge and expense to the above named officer or the creditor aforesaid ; and agree that a demand on shall be considered as binding and further agree that if no demand be made will within thirty days from the rendition of judgment in the action aforesaid re-deliver all the above described property as aforesaid, that the same may be taken in execution. A. B. &c.

Notice to Bail on Execution.

To A. B.—As you are bail for C. D. of on the original writ against him in favour of E. F. of this is to give you notice that the execution has been put into my hands for service, and is made returnable the day of I hereby certify that I cannot find the principal debtor, nor whereof to satisfy said execution—You are therefore hereby requested to surrender your principal, for whom you became bail, one day at least before said execution is returnable, and pay the fees for this notice, within twenty days from the date hereof according to law.—Dated at G. this day of 18 .

Dlls. Cts.

Fees—Travel, -
 Service, -
 Certificate, -

To be paid by the bail.

RETURNS OF PRECEPTS.

RETURNS OF WRITS OF ATTACHMENT.

Summons given to Defendant.

Y. ss. May 30. 18 .

By virtue of this writ, I attached a chip, the property of the within named A. B. and at the same time, gave him a summons for his appearance at Court, (or left a summons at his last and usual place of abode.)

Fees.

C. D., Deputy Sheriff.

Service, 0 25

Travel 20 miles, 0 80

\$1 05

Bail Taken.

C. ss.

G. April 3, 18 .

By virtue of this writ, I have taken the body of the within named E. F., and held him to bail.

Fees

G. H., Constable of G.

Service, 0 50

Travel 90 miles, 2 40

\$2 90

Personal Estate Attached.

L. ss. June 20, 18 .

By virtue of this precept, I attached one

horse, two oxen, and ten sheep, the property of the within named R. W. and at the same time, gave him a summons for his appearance at Court.

Fees.	W. T., Coroner.
Service,	0 50
Travel 3 miles,	0 12
	<hr/>
	\$0 62

When one of the Defendants is out of the State.

K. ss. June 17, 18 .

By virtue of this precept I have attached the goods mentioned in the schedule hereto annexed, as the property of the within mentioned A. B, C. D., and E. F. to me shewn by the said G. H. attorney to the plaintiff, and at the same time left the summons at the last and usual place of abode of the said A. B. and C. D.—I also made diligent search for the said E. F. but could not find him, and he having no tenant, agent, trustee or attorney within this State, I left for him a summons with the said A. B.

Fees.	J. E. Sheriff.
Service,	50
Extra service in re- moving goods,	} 4 25
Travel 120 miles,	2 70
	<hr/>
	\$7 45

When the Defendant is summoned only.

W. ss. June 5, 18 .

By virtue of this writ, I have summoned the within named A. B., for his appearance at Court, by reading this writ in his presence, (or by giving him an attested copy of this writ,) (or by leaving an attested copy of this writ at his last and usual place of abode.)

Fees.	B. R., Constable of S.
Service,	0 25
Travel 18 miles,	0 72
	<hr/>
	\$0 97

Return of a writ of Foreign Attachment.

L. ss. June 4, 18 .

By virtue of this writ, I attached one chaise, and one wagon, the property of the within named A. B., the principal, and at the same time I summoned him for his appearance at Court, by reading this writ in his presence : and on the same day, I summoned the within named C. D., and E. F., the trustees, for their appearance at Court, by giving an attested copy of this writ to the said C. D., and by leaving an attested copy thereof, at the last and usual place of abode of the said E. F.

Fees.	J. W., Deputy Sheriff.
Service on the principal,	0 50
Service on the trustees,	0 90
2 copies 5 pages each.*	1 20
Travel 30 miles,	1 20
	<hr/>
	\$3 80

Return of a Writ of Replevin.

Y. ss. June 15, 18 .

By virtue of this writ, I have replevied the within described goods and chattels, (or cattle,) and have delivered the same to the within named A. B., and have taken his bond for abiding the order and judgment of court in the action; and on the same day I summoned the within named C. D., for his appearance at court, by reading this writ in his presence.

Fees.	E. F. Deputy Sheriff.
Service,	0 50
Bond,	0 25
Travel 8 miles,	0 32
	<hr/>
	\$1 07

Creditor's Receipt.

June 15, 18 .

Received of E. F., Deputy Sheriff, the within described goods and chattels, (or cattle.)
A. B.

Return of Justice's Warrant.

O. ss. May 11, 18 .

By virtue of this warrant, I have taken the body of the within named A. B., and have him before the within named Justice, C. D. Esquire, (or before E. F. Esquire, one of the Justices of the Peace for said county,) for the purpose within mentioned; and I have also summoned G. H., J. K., and L. M., the witnesses within named,

I gave public notice of the time and place of sale, by posting up notifications thereof, in two public places in the said town of C., and also by posting up notifications thereof, in two public places in each of the adjoining towns of R. and S., thirty days before the time of sale, and I also caused an advertisement of the time and place of sale, to be published three weeks successively, before the day of sale, in the , a public newspaper printed in P., in said county, and afterwards, on the day of , at a public vendue, held at the dwellinghouse of S. D., of C. aforesaid, (addition,) I sold to J. K., of C. aforesaid, (addition,) for the sum of , he being the highest bidder therefor, all the right in equity which the within named A. B. has of redeeming the real estate aforesaid, and on the same day of , for the consideration aforesaid, I made, executed, acknowledged, and delivered to the said J. K., a good and sufficient deed of the said right in equity, sold as aforesaid, therein reserving liberty to the said A. B., to redeem the said right in equity, by paying within one year after the date of the deed aforesaid, all such sums of money as by a statute act or law of this State, entitled an act for giving remedies in equity, he ought to pay, in order to redeem the said right in equity. All which is in full satisfaction of this execution and all fees; the cost of levying the same execution, together with my fees, amounting to . I therefore return this execution wholly satisfied.

W. T., Deputy Sheriff.

Fees.

Levy,	10 50
Travel 40 miles,	1 60
Posting notices,	1 50
Paid printer for advertising,	} 1 50
Making deed and return,	1 50
Paid for acknowledging,	0 17
	<hr/>
	\$16 77

Officer's Deed of a right in Equity.

Know all men by these Presents, That I, W. T. of C. in the county of C. and State of Maine, a deputy Sheriff under E. F., Esquire, Sheriff of the same county, at a public vendue, held at the dwellinghouse of S. D. of C. in the county of C. aforesaid, (addition) on this day of in the year of our Lord one thousand eight hundred and having given notice in writing of the time and place of sale to the judgment debtor in the execution hereafter mentioned, by reading the same to him (or by leaving the same at his last and usual place of abode) and having given public notice of the time and place of sale, by posting up notifications thereof in two public places in the said town of C. and also by posting up notifications thereof in two public places in each of the adjoining towns of N. and S. thirty days before the time of sale, and having caused an advertisement of the time and place of sale to be published three weeks successively before the day of sale, in the a public newspaper printed in P. in said county,

have by virtue of an execution in my hands in favor of R. S. of T. in the county of G. against A. B. of K. in said county of C. in consideration of the sum of dollars and cents, of the lawful money of the said State, paid to me this day by J. K. of C. in said county (addition) sold to the said J. K. he being the highest bidder therefor, all the right in equity of redemption which the said A. B. has of redeeming the following described real estate lying in C. aforesaid, mortgaged by the said A. B. to D. E. of F. in said county of C. to wit: [here describe the premises,] reserving liberty to the said A. B. to redeem the said right in equity, by paying within one year after the date of these presents, all such sums of money as by the statutes of this State he ought to pay in order to redeem the said right in equity.

In witness whereof, I have hereunto set my hand and seal, this day of in the year of our Lord one thousand eight hundred and
W. T. L. S.

Signed, sealed and delivered in presence of

RETURN OF AN EXTENT ON LAND.

Justice's Certificate.

S. ss. May 23, 18 .

Then personally appeared A. B., C. D., and E. F., all freeholders in said county, who made oath, that in appraising such real estate of the within named G. H., as should be shown to

them to satisfy this execution and all fees, they would act faithfully and impartially, according to their best skill and judgment.

Before me, L. M., Justice of the Peace.

Appraisers' Return.

S. ss. May 23, 18 .

We the subscribers, being all freeholders within the said county of H., and having all this day, been duly chosen, appointed and sworn to the faithful and impartial appraisement of such real estate of the within named G. H., as should be shown to us to be appraised, in order to satisfy this execution and all fees, have this day viewed a tract of land lying in L., in said county, shown to us by M. N. and T. P., the creditors, (or by R. S., the attorney of the said creditors,) as the estate of the said G. H.; which said tract of land is bounded as follows, to wit: northerly on land of J. S., easterly on land of R. W., southerly on land of A. M., and westerly on land of C. F., and containing acres; which said tract of land we have on our oaths aforesaid, appraised at the sum of , and no more; and we have set out the said tract of land, by metes and bounds, to the creditors within mentioned, to satisfy this execution and all fees. In witness whereof we have hereunto set our hands.

B. L.

D. N.

E. P.

Return of an Execution upon Process of Foreign Attachment.

P. ss. May 25, 18 .

By virtue of this execution, I have taken fifty ploughs, the property of the within named A. B., the principal, &c; (as in the return of the sale of personal property,) in satisfaction in part of this execution, to wit, for the sum of ; and on the day of , I received of the within named C. D., one of the trustees, the sum of , and of the within named E. F., the other trustee the sum of , amounting in the whole to the sum of , the same sums of money being in the hands and possession of the said C. D. and E. F., and being by them discovered, exposed and delivered to me as the property of the said A. B. All which is in full satisfaction of this execution and all fees. I therefore return this execution wholly satisfied.

Fees.	G. H., Deputy Sheriff.
Levy,	25 00
Travel 5 miles,	0 20
	<hr/>
	\$25 20

Return of a Writ of Possession.

Y. ss. May 31, 18 .

By virtue of this execution, I have caused the within named A. B., to have possession of the within described premises, and at the same time, I received of the within named C. D. the sum of , being the full amount of the

damages and costs contained in this execution. I therefore return this execution wholly satisfied.

Fees.	E. F., Deputy Sheriff.
Service,	1 10
Collection,	1 08
Travel 16 miles,	0 64
	—— \$2 82

Return in case of a Commitment to Jail.

C. ss. May 28, 18 .

By virtue of this execution, and for want of property of the within named A. B., to be found within my precinct, to satisfy the same, I have taken his body, and have committed him to the prison of this State, in C., in said county, and at the same time, I left an attested copy of this execution with the jailer thereof.

Fees.	D. E., Constable of F.
Levy,	1 68
Travel 10 miles,	0 40
Copy,	0 12
	——
	\$2 20

Return of non est inventus.

K. ss. May 31, 18 .

By virtue of this execution I have made diligent search for the body and property of the within named A. B. and can find neither within my precinct. I therefore return this execution in no part satisfied.

C. D. Coroner.

*Advertisement of Taxes on unimproved Lands
of non-resident Proprietors, or improved
Lands of Proprietors, &c.*

It is hereby notified to the proprietors of the lands hereafter mentioned, in the of ,
[if the name of the place has been altered by any
act within three years next preceding the adver-
tisement, add, lately called ,] that the
same are taxed in the bill (or bills) committed
for collection to the undersigned, Collector of
said , for the year , in the respec-
tive sums following, viz.

Names of proprietors (if known)	No. of Lots.	Divisions.	Sums.	
			Dolls.	Cents.
A. B.				
C. D.				
Unknown, &c.				

The said Collector will proceed according to law to sell at public auction, to the highest bidder, at (describe the place of sale) at of the clock, in the noon, on the day of next, so much of the said lands as shall be sufficient to discharge said taxes and the necessary intervening charges, if no person shall appear on or before that time to discharge said taxes and charges.

Dated at said , the day of
A. D. 18 . J. H., *Collector as aforesaid.*

*Deed by Collector, on the Sale of unimproved
Lands, &c.*

To, all persons to whom these presents shall come.

Whereas the Assessors of the town of B. in the county of _____, and State of Maine, for the year _____ legally chosen and sworn, did commit to me, J. H. Collector of taxes within said town for the year aforesaid, their list of assessments to collect, in which the lot of land in said town, No. _____, (or, the lot of land in the _____ division of lots in said town, numbered _____, belonging to A. B. of C. _____ or, belonging to some non-resident proprietor not by me known, or, belonging to D. E. now living out of the limits of said State, *as the case may be*) was assessed in the sum of _____; and whereas no person did duly appear to discharge said tax although I advertised and posted the same in _____, as the law directs:

Therefore know ye, that I, the said J. H., Collector as aforesaid, by virtue of the statute in such cases provided, and in consideration of _____, to me paid for discharging said taxes and necessary intervening charges, by W. R. of _____, in said county, have granted, bargained, and sold, and by these presents do grant, bargain, sell and convey to the said W. R. his heirs and assigns forever [*here describe the premises sold.*]

The same having been struck off to the said W. R. he being the highest bidder therefor, at a public auction legally notified, begun and held at (describe the place) in said _____, on the _____ day of _____ last.

To have and to hold to the said W. R., his heirs and assigns forever, to his and their only proper use and behoof forever; saving however to the proprietor or proprietors the right of redemption of said lands within any time for the

space of two years from _____, the time of said sale. And I do covenant with the said W. R. his heirs and assigns, that the taxes aforesaid were legally advertised and posted by me, and that I have in all respects observed the directions of the law, in regard to the premises.

In witness whereof I do hereunto set my hand and seal this _____ day of _____, in the year of our Lord eighteen hundred and _____

J. H. (Seal.)

Signed, sealed and delivered }
in presence of us.
S. R.
T. W. }

Certificate to be made upon the copy of Assessment given to prison keeper when a person is committed for Taxes.

_____, 18 ____.

I hereby certify, that the sum which A. B. now committed to prison, is to pay as his proportion of the assessment within mentioned is \$ _____; and that the cost of taking and committing the said A. B. is \$ _____

J. H. Collector.

Seizin of Dower.

By virtue of this writ to me directed, by J. S. of K., J. N. of C., and J. M. of D., all of said county, disinterested freeholders, under oath administered by P. A., Esq. a Justice of the Peace for said county of _____ to them the

said J. S., J. N. and J. M. to set forth the same dower equally and impartially, without favour or affection, as conveniently as might be ; I caused one third part of the messuage, or (tenement) with appurtenances situate at C. aforesaid, within discribed ; viz. (here describe the metes and bounds particularly and so of each piece of land set forth, as well as of each building or part of building, and privilege) to be set forth to the said A. B. as her dower in the estate of C. B. her husband within named. And then and there I caused the said A. B. to have full seizure of said one third part of the aforesaid messuage, (or tenement,) &c. with the appurtenances so set forth by the said J. S., J. N. and J. M. to hold her the said A. B. by metes and bounds.

[Where no division of the estate can be made, the estate must be specifically described and the metes and bounds omitted, as in case of one third of rents, issues, or profits.]

Warrant of distress against a deficient Collector.

By virtue of this warrant to me directed, at C. in said county, on the day of A. D. I distrained one horse the property of the within named J. D., and, on the day of A. D. at the dwellinghouse of E. F. in C. aforesaid, having given notice by posting up notifications at two public places in said C. four days before the said day of that said horse would then be sold at public vendue at said dwellinghouse, I accordingly then and there

sold said horse to G. H. the highest bidder therefor, for the sum of and, on the

day of by virtue of this same warrant, I took three acres of land, the estate of said C. D., situate in said C. bounded, &c. [here describe the bounds] and posted up notifications at and at two public places in said C. and also at and at two public places in D. a town adjoining to said C., and also at

and at two public places in E. another town adjoining to said C. that the said three acres of land would be sold at public vendue to the highest bidder, on the day of fourteen days after the day of posting up such notification as aforesaid, at the dwellinghouse of , in said C. and on the day of

at said dwellinghouse, I sold said three acres of land at public vendue, to L. M. the highest bidder therefor, for the sum of

and then and there made, executed, acknowledged, and delivered to him the said L. M. a good and sufficient deed of conveyance thereof. And on the day of there still

remaining due on this warrant, the sum of and the said C. D. having no other or more goods or estate, found within my bailiwick, for want thereof I, by virtue of this warrant, took the body of the said C. D. at aforesaid, and him committed to the jail of this State at P. in said county, and left with the keeper of said jail an attested copy of this warrant, and of my proceedings above stated endorsed thereon.

ABRIDGEMENT
OF THE
LAW RELATIVE TO THE DUTIES
OF
CIVIL OFFICERS;

Taken principally from the Decisions of the Supreme Judicial Courts,
in Massachusetts and Maine.

ARREST.

- I. *The power and duty of an Officer in making an arrest.*
- II. *The privilege from arrest.*

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- I. *The power and duty of an Officer in making an arrest.*

1. IN making an arrest, there must be an actual seizing or touching of the body, or a power of taking an immediate possession of the body and a submission of the party. 2 *Esp. Dig.* 603.

2. If an officer say to a person that he has a precept against him and that he arrests him, and the person acquiesce and accompany the officer, that will be considered as submitting himself to the process and as complete an arrest, as if the officer had touched the person. 3 *Selwin*, 1050.

3. It is not incumbent on an officer in making an arrest, to have his precept in his hand, nor to show it to the person, nor to mention at whose suit he arrests him, until he obeys and requires or demands it; then the officer must tell at whose suit, for what cause, by what process, and in what court returnable, the arrest is made; otherwise it will be wrongful. 4 *Com. Dig.* 127.

4. An arrest is legal, although made by a deputy sheriff's aid, appointed without writing, and out of the sight of the deputy—provided both are pursuing the the same object. 13 *Mass. Rep.* 323.

5. An arrest of a debtor, after an attachment of his property on the same writ, is illegal and void. *ib.* 75.

6. None may be arrested in any civil action, but by some writ, precept or command, issued by some court, Judge, or Justice, having authority therefor. But for treason, felony, or breach of the peace, any person may arrest, without warrant or precept. *Terms de ley*, 54.

7. Arrests may be made at any time except before or on the return of the precept; and at any place within the county, except where the defendant is privileged. *Tidd's Prac.* 193.

II. *The privilege from arrest.*

1. Ambassadors and other public Ministers, their secretaries, families and domestic servants, are privileged from arrest. 3 *Burr.* 1478.

2. Senators and Representatives of the United States, shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest, during their attendance at the session of their respective houses, and in going to, and returning from the same. *U. S. Const. art. 1. sec. 6.*

3. Members of the Legislature in this State are entitled to the same privilege. *Const. Maine, art. 4. part 3.*

4. A minister of religion, while performing divine service in a church, or other place of public worship, may not be arrested on civil process. 1 *Tidd*, 188.

5. Any person whose duty brings him to court, whether as a juror, a party, or a witness, is privileged from arrest, and if he be arrested while attending court, or in coming to and returning from it, the court, upon motion, will take order for his discharge. 3 *Mass. Rep.* 288.

And no person can be arrested in any place where courts of justice are actually sitting. 3 *Bl. Com.* 289.

6. No non-commissioned officer, musician, or private, shall be arrested, or be subject to arrest, or to be taken in execution for any debt under the sum of twenty dollars, contracted before enlistment, nor for any debt contracted after enlistment. 4 *U. S. Stat.* 201.

7. In an action against husband and wife, the husband alone is liable to be arrested; and shall not be discharged, until he have put in bail for himself and wife; and if the wife be arrested, she shall be discharged: but if the wife be taken in execution she shall not be discharged. *Tidd's Prac.* 173, 4.

8. A dwellinghouse is a protection from arrest to the occupant and his family, and to permanent boarders and lodgers; but not to strangers and visitors. 13 *Mass. Rep.* 520.

9. If an outward door be opened to an officer from within or if he find an outward door open, he may break inward doors to make an arrest or attachment; but in such case he must first demand admittance. 3 *Selw.* 1123. 2 *Esp. Dig.* 604.

10. If a house be let out in lodgings, each lodging is considered a dwellinghouse, and the door of each apartment an outward door, which cannot be legally broken to make an arrest or an attachment. 3 *Bl. Com.* 288. n. 3.

11. Though no outward doors can in general be broken to execute any civil process, yet in criminal cases the public safety supersedes the private, and an officer, in the pursuit of a criminal, is authorised, if necessary, to break open the doors of a dwellinghouse, to arrest him; but in such cases there must be a previous notification, demand and refusal, before the officer proceeds to break open doors. 4 *Bl. Com.* 223, 293. *Fost. C. L.* 136, 320. 2 *Hawk. P. C.* 138. 3 *Cok. Rep.* 90.

ATTACHMENT.

What property may be attached, and the manner of making an attachment.

1. Real and personal estate jointly or severally held by partners, may be attached for the debts of partnership, or of the individuals.

2. Partnership effects are liable to be attached by a creditor of one of the firm, and the attachment will be good against all the creditors, whose demands are not upon the company. 6 *Mass. Rep.* 242. 11 *ib.* 242.

3. Those goods and chattels only, which can be lawfully seized on execution, are liable to attachment and the goods must be the property of the debtor, and the officer must have the right to seize them and hold possession so that they may be finally taken on execution; and the officer making the attachment must take knowledge whose are the goods, at his peril, for if they prove to be the goods of a stranger the officer is a trespasser. 1 *Pick.* 399. *Dalt. Sher.* 155. 6 *Mass. Rep.* 242.

4. Property in the hands of one, who has been summoned as the trustee of the owner, may be attached at the suit of another creditor; and the attaching officer will hold it subject to the lien of the creditor who previously summoned the trustee. 16 *Mass. Rep.* 318.

5. Implements of husbandry necessary for tilling land are not within the statute providing that the tools of any debtor necessary for his trade and occupation, shall be exempted from attachment and execution. 5 *Mass. Rep.* 313.

6. Under the same statute, two beds only are exempted from attachment, when the debtor's family consists of himself and wife, and three young children; unless they are of different sexes. 15 *Mass. Rep.* 170.

7. A printing press, types and cases belonging to a printer, carrying on business extensively in printing books, (in whose possession and control implements and materials were left sufficient to print school books, newspapers, &c.) were held not to be exempted.

Such articles are not tools ; and if they were, they are not tools *necessary* for the debtor's trade or occupation. 13 *Mass. Rep.* 82.

Machines used in manufactures, the utensils of a manufactory are not exempted from attachment by the statute. *ibid.*

8. Personal chattels attached by one deputy Sheriff cannot be subsequently attached by another deputy. 13 *Mass. Rep.* 114.

If one deputy sheriff attach goods, and another deputy of the same Sheriff attach and take the same goods out of his possession by virtue of another precept against the same debtor, the deputy who made the first attachment may have trespass *vi et armis* for this injury, against the sheriff himself. 2 *Greenleaf*, 270.

But goods attached by a deputy sheriff, may be attached on another suit, by the Sheriff; for the deputies of the same Sheriff are all servants of the Sheriff, and the possession of any deputy, by virtue of an attachment is the possession of the Sheriff. 5 *Mass. Rep.* 271.

9. Generally, goods which cannot be returned in the same plight in which they are taken, but which would be materially injured by removing them, are not liable to attachment. Thus, green hides, in a vat, are not subject to attachment. 7 *Mass. Rep.* 123.

10. Things fixed to the freehold cannot be attached or taken in execution ; and therefore for such taking, trespass will lie. *White's Dig.* 195.

11. To constitute a valid attachment of chattels, there must be an actual custody and possession by the attaching officer, so as to give notoriety to the transaction, as much as on seizure by execution. 5 *Mass. Rep.* 157. 12 *Mass. Rep.* 495. 13 *Mass. Rep.* 116. 14 *Mass. Rep.* 190, 359.

But it is not necessary that every article be taken hold of by the officer ; it is sufficient if he be in view of the whole, with the power of taking them into his actual possession. 12 *Mass. Rep.* 495.

And no overt act is necessary to constitute a sec-

ond attachment of property previously in the officer's possession. 16 *Mass. Rep.* 181.

12. If an officer, having a writ of attachment, goes to a debtor's store, and declares his intention to attach the goods therein, and locks the store and takes the key, it is a good attachment, as it respects all who have notice of it. But perhaps it is otherwise as it respects other creditors who have no notice of the attachment; if they deliver a writ to an officer who also has no notice. 16 *Mass. Rep.* 420, 465.

13. A nominal attachment, *viz.* leaving the property in the hands of the debtor and taking a receipt from some friend of his is so far valid, as to bind the officer for the value of the property, and to give force to the contract between him and the person who gives his receipt for it. But with respect to other creditors (or purchasers) without notice, the attachment is wholly inoperative. 14 *Mass. Rep.* 195. 16 *Mass. Rep.* 8.

14. Shares in incorporated companies may be attached, by different deputies of the same Sheriff; because no change of possession is required. 16 *Mass. Rep.* 405.

15. An officer may make a further attachment where the property first attached is insufficient, any time previous to leaving the summons. *Mass. Rep.* 150.

Where an officer attaches goods on mesne process, it is necessary, in order to secure them from a second attachment by another officer that the goods be kept in his possession. This possession however, need not be personal, but it is sufficient if the officer lock up the goods and retain the key; or place them in the custody of some one acting as his servant who is not the debtor; the object being to give notoriety to the attachment. 12 *Mass. Rep.* 131, 495.

17. An officer cannot attach the estate of the debtor, on original process, after having arrested his body on the same writ. 3 *Mass. Rep.* 561.

18. Where an officer attaches cattle, the debtor is bound to support them, after notice by the officer;

and if the debtor neglect to provide for their support, the Sheriff is bound to do it. 9 *Mass. Rep.* 535. 12 *Mass. Rep.* 163.

And an officer may recover expenses incurred by him in supporting animals, against the party who ordered him to attach them on mesne process — if judgment is given for the defendant in the suit—though there was no express promise to indemnify the officer. 1 *Pick.* 59.

19. Where an officer is charged by an original debtor with having lost or wasted a portion of the goods which he had attached, it is competent for him to excuse himself from liability by shewing that he has applied the amount to the use of the plaintiff, by paying with it the expenses of keeping the goods. 2 *Greenleaf*, 221.

20. The expense of the safe custody of goods attached on mesne process, is a lien on the goods; and it is not affected by the allowance of a sum for that purpose by the court in the taxation of costs for the original plaintiff. *ib.*

21. Goods and chattels attached on mesne process, are considered as being in custody of the officer, until thirty days after judgment; and he parts with the property at his peril. 11 *Mass. Rep.* 242. 12 *Mass. Rep.* 163.

22. The attachment of real estate is almost entirely symbolical; the officer has no possession of it, nor is the tenant dispossessed. No act of notoriety is necessary; and it is doubtful whether it is necessary for the officer to make an entry upon it. 13 *Mass. Rep.* 130.

23. If a creditor indorses on an original writ a direction to the officer to attach sufficient estate or hold to bail, the officer may execute the writ either way. 3 *Mass. Rep.* 60.

But if the creditor give verbal orders to the officer to attach certain specified property, he is bound to conform to such orders. *ib.*

The creditor is not bound to go with the officer making the attachment, but if he direct goods to be

attached not in possession of the debtor, or about which there is a dispute, he must give the officer an indemnity. *ib.*

24. If an officer have entered a dwellinghouse to execute civil process, he may break open inner doors, and also trunks and chests after demand to have them opened, in order to complete the execution of the writ. 2 *Show.* 87. *Cro. Eliz.* 99. 1 *William's Abr.* 663.

BAIL.

Of the duty of Officers in Letting to Bail.

1. When a person is arrested in a civil action, the officer is obliged to admit him to bail, if required; and if he refuse sufficient sureties, he is liable to an action to the party injured. 2 *Mass. Rep.* 194.

But the party is not entitled to his discharge upon bail, unless he offer two sufficient sureties at the least. 9 *Mass. Rep.* 479. 12 *Mass. Rep.* 127.

And it seems unnecessary that the persons offered as bail reside within the county, if they have sufficient estate within the county. *ib.*

2. A bail bond with but one surety, is not void for that cause; but will be binding on the parties to it; and the officer will not be liable for a neglect of duty, unless the surety eventually prove insufficient, so that the creditor is deprived of his remedy against the bail. *ib.*

3. A bail bond will be void, unless it substantially appear at whose suit the arrest has been made; what is the amount of the debt or damages demanded; and when and where the process, on which the arrest was made, is returnable. 5 *Mass. Rep.* 541.

4. An action lies against a Sheriff for taking insufficient bail, although he did not know the bail to be insufficient. 2 *Mass. Rep.* 183.

But if a Sheriff take two sureties who are reputed of sufficient ability, although they may afterwards become

insolvent and unable to pay the debt, the Sheriff is not liable. 12 *Mass. Rep.* 127.

5. If the process be directed to, and executed by a coroner, the bail must be given by bond to the coroner, by his name of office; and if by a constable it must be taken to himself by his name of office, or it will be void. 1 *Saund.* 158.

6. Until the original writ is returned the principal, although in the custody of bail, cannot be surrendered by them to the officer; but if, after issuing the execution, the bond is saved at law, the officer is obliged to commit him in execution. 2 *Mass. Rep.* 484, 5.

7. A surrender of the principal debtor, to the officer holding the execution against him, is a discharge of the bail bond. 2 *Greenleaf*, 382.

8. Where the principal in a bail bond, after it was signed by the surety, and in his absence, but before delivery, erased the name of the Sheriff as obligee, and inserted that of the constable who served the precept, and this in the presence of and at the suggestion of the constable; it was held that this did not avoid the bond as to the surety. 1 *Greenleaf*, 334.

9. In an action of the case against a Sheriff for returning bail to the action when no bail was taken, the Sheriff may be admitted to show the insolvency of the debtor; and this fact being proved, the creditor is entitled to none but nominal damages. 2 *Greenleaf*, 46.

ESCAPE.

Of the Liability of Officers for the Escape of Prisoners.

1. Every liberty given to a prisoner, not authorized by law, is an escape. 5 *Mass. Rep.* 310. 11 *Mass. Rep.* 160.

Thus, if an officer having arrested a debtor on execution, commit him to the custody of a third person, who without the knowledge of the officer, voluntarily permits his prisoner to go at large, such permission will

be considered as the act of the officer, and consequently a voluntary escape. 4 *Mass. Rep.* 391.

2. No action shall hereafter be maintained to recover damages for an escape of any debtor committed on execution except an action on the case. And the action must be commenced within one year. *ch.* 613, *sec.* 1, & 2.

3. An officer who has arrested a prisoner on original process, may retake him before the return of the writ, though he voluntarily permitted the prisoner to escape immediately after the arrest; and such retaking shall excuse the officer for the escape. 3 *Wms. Abr.* 357, 358.

But if an officer voluntarily permit a person taken on execution to go at large, though only for a minute, it is an escape, and the officer cannot afterwards retake him. *ib.* 350.

4. If an officer arrest a person on original process, and he be rescued by a third person, he may return the rescue and such return is good, and no action of escape will be against him after such return; for in this case, though the officer may, he is not obliged to raise the county. 2 *Bac. Abr.* 240. 4 *Bac. Abr.* 453. 10 *Mass. Rep.* 207.

But after an arrest in execution, the officer cannot return a rescue, for in such case, the officer is obliged to raise the county, if it be necessary, and therefore if he return a rescue he is liable to an action for an escape. *ib.*

And if an officer, where an escape in execution is a negligent one, retake upon fresh pursuit, before an action is brought for the escape, he shall be excused. 1 *Saund.* 35, *n.* 1.

A voluntary return of a prisoner, after an escape, is equivalent to a retaking on a fresh pursuit. 3 *Wms. Abr.* 351, 3.

5. A prisoner, committed to jail in execution for debt, must be kept in safe and close custody, as well by day as by night, unless he has given bonds for the liberty of the yard; and if he has given no bond, and the Sheriff grant him this liberty, it is a voluntary escape in the Sheriff. 7 *Mass. Rep.* 101. 11 *ib.* 160.

In short, after commitment in a civil suit, every discharge of the prisoner, without the consent of the plaintiff or creditor, or in the due course of law, is an escape for which the Sheriff or jailer is liable, with the exceptions only which are recognized as cases of necessity, such, for instance, is the case of a prisoner who leaves the jail, when in danger from a sudden fire within the jail, or when the jail is broken by a public enemy; but a breach of prison by traitors is no excuse for the jailer. 10 *Mass. Rep.* 206.

6. To constitute an escape within the intent of a bond given to obtain the liberty of the yard, there must be some agency of the debtor employed; and a conveying him without the limits of the prison he not consenting, is no escape, if he return as soon as he has the ability. 4 *Mass. Rep.* 206.

If the Sheriff grant a debtor the liberty of the yard upon a bond not made pursuant to the statute, it will be an escape. 3 *Mass. Rep.* 107.

7. Where a coroner or constable has arrested one on execution, he can only carry the prisoner to the jail and offer to deliver him, with a copy of the precept; and if the Sheriff be not there, nor any keeper appointed by him to receive and confine the prisoner, the coroner or constable has done his duty; and if afterwards the prisoner go at large, it will be the escape of the Sheriff. 5 *Mass. Rep.* 310. 11 *ib.* 181.

8. If an officer, having arrested a debtor on execution, voluntarily permit him to escape, he cannot afterwards arrest him on the same execution; nor is the debtor liable to the officer for any damages he may suffer in consequence of the escape. But in case of a negligent escape, the officer may have his remedy against the debtor; for in such case the debtor is a wrongdoer as to the officer. In an action of debt against a Sheriff or jailer, for a voluntary escape, the plaintiff is entitled to recover the amount of his execution against the prisoner; but it is otherwise in an action of the case. 5 *Mass. Rep.* 310. 10 *ib.* 59. 11 *ib.* 11. 4 *ib.* 391. 7 *ib.* 377. 8 *ib.* 373.

9. No action can be maintained for an escape on

mesne process, unless the plaintiff could have maintained the original action against the prisoner. 1 *Greenleaf*, 68.

No action lies at the suit of the prosecutor, against the Sheriff for the escape of the prisoner, charged with larceny under *Stat. 1804, ch. 143*, before conviction; even though the prisoner have pleaded guilty at his examination before the magistrate. *ib.*

10. In the commitment of a person to prison, by warrant or process, the officer must furnish the jailer with an attested copy thereof, to oblige the jailer to receive the prisoner; and where the prisoner is committed by order of court, the Sheriff may at any time have a copy of the record, and it is his duty to procure such copy, if required. 2 *Mass. Rep.* 551; 3.

EXECUTION.

The Duty of Officers in Serving Executions.

1. The general principle of law is, that the person whose writ is first delivered to the officer is entitled to a priority; and if two executions come to an officer on the same day, that which is first delivered must be first executed. 3 *Wms. Abr.* 466.

But this must admit of an exception in favor of executions where there was an attachment upon the original writ.

2. An execution cannot be executed by taking the body, goods, or estate of the debtor, after the time when it is to be returned; but if it be unsatisfied the officer ought to return it, that the creditor may sue out an *alias* execution. And when an execution is returnable to a court to be held on a certain day, it may be executed at any time on that day while the court is sitting; but after the court is adjourned to the next day, it cannot be executed, as the authority of the officer to execute it is determined, and it is his duty to return it to the court while sitting. But if an officer has begun to execute an execution at any time before it is

returnable, he may complete the service afterwards, and retain the execution to indorse the service thereon; the whole of which shall have relation to the time when it commenced. 4 *Mass. Rep.* 28.

3. If an officer seize lands on execution, but do not complete the levy for several days afterwards, the whole proceedings after the seizure, have relation to the day on which it was made, and the officer may date his return on that day. 9 *Mass. Rep.* 393. 11 *ib.* 207.

4. An officer, having seized goods on an execution, is obliged to keep them four days, that the debtor may, if he see cause, redeem them; during which time they must be considered in the nature of a distress; and if before the expiration of that time, the debtor satisfy or tender satisfaction of the execution and the charge of keeping the distress, the officer cannot proceed to sell. And that the debtor may not be unreasonably burthened by the delay of the sale, the officer must proceed to sell the goods at public auction, at the expiration of four days from the time of seizure, and must also post up notifications of the time and place of sale, forty-eight hours before the expiration of the four days; and if he neglect to pursue the directions of the statute in this respect, his special property in the goods, acquired by the seizure, will be lost, and they will be liable to be attached at the suit of other creditors, or to be seized on another execution. 5 *Mass. Rep.* 399, 157. 9 *ib.* 265.

5. An officer making sale of personal property on execution, has power to adjourn the sale to a subsequent day and to a different place. *Russel v. Richards & al.* 2 *Fairf.* 371.

6. Where different parcels of real estate are taken to satisfy an execution, a distinct set of appraisers may be chosen to appraise each parcel. 11 *Mass. Rep.* 515.

And perhaps it may not be necessary to make a separate appraisement of each lot, but the whole may be appraised in one estimate, without specifying the value of each parcel. 7 *Mass. Rep.* 71.

If an execution against two persons be levied upon

lands of which both are seized, an appointment of an appraiser by either of them is sufficient ; for if they agree it is the appointment of both, and if they disagree the Sheriff must appoint. Or, if but one of the debtors be seized, an appointment by him is sufficient. 8 *Mass. Rep.* 113.

If the appraisers be Justices of the Peace, they may administer the oath to each other ; or the judgment debtor, if a magistrate, may administer the oath to them, and this shall not avoid the levy. *ib.*

7. The certificate of the magistrate who swears the appraisers, and the appraisers' certificate of their proceedings are not an essential part of the officer's return. If he certify that the appraisers were duly chosen, or appointed, and sworn, and that they performed the duty assigned them, it is sufficient. 14 *Mass. Rep.* 28.

But as the officer had failed to return that the appraisers were discreet and disinterested freeholders, the extent was held to be void. *ib.*

When an officer returns upon an execution, that he has appointed two of the appraisers of real estate to be levied upon, he must also return that the debtor refused to choose one ; otherwise the judgment creditor derives no title to the land by the levy. 2. *Mass. Rep.* 154, 5.

8. An execution cannot be levied upon any particular portion of lands held in joint-tenancy or tenancy in common, but the execution must be levied on the debtor's share of the estate in the whole land. 11 *Mass. Rep.* 348.

9. Where an execution is levied on lands, the officer's or appraiser's return must contain a definite description of the land levied upon, without referring for a description to any thing extraneous, but it may refer to deeds of the same estate on record ; or the officer may refer to the appraiser's certificate for a description of the lands. 9. *Mass Rep.* 92. 11 *Mass. Rep.* 163, 515. 8 *Mass. Rep.* 113.

It ought to appear that the appraisers entered upon the land to appraise and set off the same ; for other-

wise they would not be enabled to make a just estimate of its value. 9 *Mass. Rep.* 92, 96. 11 *Mass. Rep.* 163.

10. The extent of an execution on lands gives the creditor an actual seizin of the lands. The lands of the debtor cannot be taken unless by the acceptance of the creditor, to whom seizin must be delivered by the officer; and until this delivery of seizin, the title of the debtor is not affected. The creditor's title is matter of record, and unless he can shew it by a record, the debtor will hold the land. The officer must therefore return the extent and the delivery of seizin; which return, when made, is a record of the court, and as such may be pleaded. 4 *Mass. Rep.* 150, 403.

11. A notice by an officer, of the intended sale of the right in equity of redemption on execution, need not contain a particular description of the land; but a general description will be sufficient. 12 *Mass. Rep.* 514.

But the return of the officer who sells an equity, must state particularly all the prerequisites of the sale which are provided by the statute, or the execution debtor and any person claiming regularly under him, or even a mere disseizor in possession at the time of the seizure and sale, may avoid the levy. Thus, where an officer stated generally in his return that he proceeded to sell, "after giving public notice of the time and place of sale, agreeably to law in such cases made and provided," the levy and sale were held void against a mere disseizor in possession. 13 *Mass. Rep.* 488.

12. When an officer has received money to satisfy an execution, it is his duty to return the execution according to his precept; but by our statute he is not obliged to bring the money into court, but it remains in his hands, in the custody of the law, and he may retain it until it be demanded of him by the creditor; and if it be demanded of him at any time, after he has received it, either before or after the return day, and he shall refuse to pay it to the creditor, he is then guilty of a breach of his duty, and the law will no

longer protect him in holding the money, and the creditor may by action recover it of him, with interest at the rate of thirty per cent. The creditor is therefore to demand his money, and if he direct the Sheriff to send it to him by mail, the money is very properly at the risk of the creditor. 3 *Mass. Rep.* 251, 295.

In all executions the expense of levying is a charge on the debtor, in favor of the creditor. 4 *Mass. Rep.* 413.

13. If a Sheriff is prevented by accident from making sale of goods on an execution on the day appointed he may adjourn the sale to a reasonable time, and preserve his lien on the goods. 9 *Mass. Rep.* 265.

14. An officer who receives an execution within thirty days after the judgment, is liable for neglecting to levy it on an equity of redemption attached by him on the original writ, though he has no particular instructions from the creditor, if he knew that the "right, title and interest," which he attached was only an equity. *Otherwise*, if the land itself was attached, because, in that case he can do nothing without the agency of the creditor. 1 *Pick.* 581.

SERVICE AND RETURN OF PRECEPTS.

1. A writ ought to be directed to the officer by whom it is served, even in cases where his authority to serve is expressly recognized by statute. 11 *Mass. Rep.* 271.

2. A constable is authorized to serve writs in *personal* actions only, and in those only where the damage sued for does not exceed one hundred dollars. 5 *Mass. Rep.* 260. 6 *ib.* 399.

3. A coroner may serve a writ in which a corporation is a party, if the Sheriff or any of his deputies be a member of such corporation. 8 *Mass. Rep.* 96.

But in an action against a banking company in which a deputy sheriff is a stockholder, the writ may be served by another deputy of the same Sheriff, within *Revised Stat. ch.* 92. 1 *Greenleaf*, 361.

4. Where a coroner, who was also a deputy sheriff, was sued for neglect of his duty as a coroner, service of the writ upon him by another deputy of the same Sheriff was held to be bad. 1 *Greenleaf*, 165.

5. The *Stat.* 1817, *ch.* 13, removes the disability of a deputy sheriff to serve process in which the town where he resides is a party, not only from the deputy resident in such town, but from the Sheriff, and from all his other deputies. *ib.* 82.

6. There can be no legal service of a writ, where the defendant is not an inhabitant of this State, unless there be an actual service on him, or unless some of his estate or effects be attached. 12 *Mass. Rep.* 36.

But where joint debtors are sued, a service upon those only who dwell within the Commonwealth is sufficient, if it appear on the writ that the others have no domicil here. 16 *Mass. Rep.* 303.

7. The estate of a defendant on original process, may be attached at one time, and the service thereof may be completed by summoning the party at any time previous to the expiration of the time of service. *Dickinson's Digest*, 141.

8. A *return* is the certificate of the officer to whom any process is directed, stating what he has done in obedience to the commands therein, or the reason of his neglect, and is often the most difficult part of the Sheriff's duty, as the return ought to be both in form and substance according to law; otherwise the officer may be subjected to punishment, and the party employing him to damage. *Dalt. Sher.* 162.

The return must be attested by the officer who made the service, and must be certain to every intent. *Cr. El.* 310. *Dalt. Sher.* 168.

He must also specify the time when the facts took place. The officer may return that the writ came to him so late, that on account of the shortness of the time, he could not make service thereof. *ib.*

9. If after service of an original writ, the officer make no return, he is liable to an action by both parties respectively. He may also be liable to both parties for a false return. *Dalt. Sher.* 176, 8.

10. An officer having an opportunity to levy an execution in his hands on the body or property of the debtor, is liable to the creditor, if he neglect to levy: and a return that he cannot find either the body or property of the defendant is, in such case, a false return. *Day's Rep.* 128.

11. A Sheriff ought not to make a return of a writ after he is out of office, but ought to deliver it to the new Sheriff with the assignment of the prisoner committed by it, so that the new Sheriff may return it with his endorsement of discharge on taking bail. 3 *Davis's Abr.* 74.

12. If the return show the command of the writ performed in substance, it is sufficient. But if the return be false in substance, though true in words, an action will lie. 6 *Com. Dig.* 237, 241.

13. The Sheriff may return that he was always ready to deliver seizin, &c. and gave notice such a day, but the plaintiff did not come to receive it. And in replevin, that no one came to show him the cattle. And on a writ which says, upon condition that the plaintiff give security, he may return that the plaintiff did not find pledges. But the Sheriff may not return that he could not have view of the premises: nor that he could not have sight of the cattle: nor that the plaintiff did not prosecute his writ: nor that he had levied the goods on an execution and afterwards lost them: nor that they were rescued. 5 *Com. Dig.* 444, 5.

SHERIFF.

Of the Responsibility of a Sheriff and his Deputies, and their Relation to him.

1. The Sheriff is answerable *civiliter* for the default of his deputies, by nonfeasance or misfeasance, in the duties of their office enjoined on them by law, whenever the deputy himself would be liable for an act done *colore officii*. 4 *Mass. Rep.* 60. 1 *Pick.* 274.

For acts not official, but personal, done by the deputy, the Sheriff is not answerable. But an official act does not mean what the deputy might lawfully do in the execution of his office—but whatever is done under, or by virtue of his office. *ib.*

2. The Sheriff is liable for the misconduct of his deputy in embezzling money collected on a precept which he receives while the Sheriff is in office, although the money is collected and embezzled after the Sheriff has resigned. 13 *Mass. Rep.* 295.

3. The Sheriff is answerable for the misconduct of his deputy, in the same form of action in which the deputy would be liable, if the suit were against him. Hence trespass, and not case, is the proper action against the Sheriff for an injury done by his deputy to the person or property of another. But a Sheriff cannot be sued jointly with his deputy for a tort committed by the deputy alone. And a judgment in trespass *de bonis asportatis* against the deputy is a bar to an action against the Sheriff for the same trespass. 17 *Mass. Rep.* 244. 1 *Pick.* 62.

4. In this State a deputy sheriff acquires a special property to himself in goods by him attached, which the Sheriff can neither divest nor control; his character essentially differing from that of a Sheriff's servant or deputy in *England*. *Walker v. Foxcroft*, 1 *Greenleaf*, 270.

5. If an officer delay to serve a writ delivered to him, and, by reason of such delay, any damage accrues to the creditor, the officer is answerable for it. 9 *Mass. Rep.* 269.

6. If an officer, holding an execution, receive directions from the creditor to do the best he can with it, at his discretion, he will not be liable for not arresting the body when he might, if such conduct be not injurious to the creditor. 11 *Mass. Rep.* 177.

7. If an officer, in the service of an execution, conduct irregularly, yet if the goods taken in execution be fairly sold, and the proceeds be applied in payment of the execution on which they were sold, the officer is responsible to the debtor for nominal damages only.

But if, by the officer's misconduct, the goods were sold under their fair value, he is responsible for the difference between the fair value and the amount of sales. 1 *Greenleaf*, 192.

8. If an officer set off one execution against another, and do not reserve sufficient to satisfy the lien of the attorney for costs, after having been notified of such lien, he will be liable to the attorney for the amount thereof. 11 *Mass. Rep.* 236.

9. No action lies against a Sheriff either for his own default or for that of his deputy, but by one to whom he is bound by the duty of his office. And, in the service of a writ or any other process, a Sheriff is liable for his *neglects* to none but the parties in the suit. 9 *Mass. Rep.* 251.

But an action for a *false return* may be maintained against the Sheriff by any person who is affected by such return, although he be not a party to the writ. *ib.* 393.

10. An action for a breach or neglect of duty by a deputy sheriff lies either against the Sheriff or the deputy, at the election of the party injured. 12 *Mass. Rep.* 449. 7 *ib.* 464.

And in an action for the misfeasance of his deputy, the Sheriff can give nothing in evidence which his deputy could not were he defendant. 6 *Mass. Rep.* 325.

11. The deputies of a Sheriff are all his servants, and in law they are considered as but one officer. 5 *Mass. Rep.* 271. 9 *ib.* 112.

Controversies between deputies of the same Sheriff respecting attachments of the same property at the suits of different creditors ought to be adjusted by the Sheriff; for the dispute is between his servants, and as there is no technical propriety in actions between them, when they claim by no distinct rights, so there can be very little occasion for such actions, as the Sheriff, in settling the rights of each attaching creditor, must determine and proceed at his own peril. *ib.*

12. A deputy of the Sheriff in his capacity of keeper of the jail is not, in any sense, a deputy sheriff;

nor is a deputy sheriff a keeper of the jail ; but a deputy sheriff may serve writs where the jailer is a party. 11 *Mass. Rep.* 181

13. There is no incompatibility between the office of a coroner and that of a deputy sheriff; but a coroner who is also a deputy sheriff may serve a process in which the Sheriff or his deputy is a party. *ib.* 6 *Mass. Rep.* 475.

14. In an action against a Sheriff, for not seizing on execution chattels which he had attached on the original writ, it is a good defence that the chattels were not the property of the execution debtor when attached, nor ever after. 4 *Mass. Rep.* 498. 12 *ib.* 163.

15. No action lies against an officer for taking goods from the possession of a debtor which he had previously attached and delivered to a third person, taking his receipt therefor returnable on demand. The special property in such case, remains in the officer and he has complete right to the possession ; and the exercise of such right is no injury to the debtor. 13 *Mass. Rep.* 394.

16. An officer is liable in trespass, if he attach or seize on execution property which is exempt from attachment and execution. 15 *Mass. Rep.* 255.

He is also liable in trover. *Metcalf's Dig.* 340, *note.*

He is also liable in trespass, replevin or trover if he attach, &c. property which does not belong to the defendant in the writ. 17 *Mass. Rep.* 197, 606. 15 *ib.* 242.

17. It is not required of executive officers, before they are obliged to obey precepts directed to them, that they should have evidence of the regularity of the proceedings of the tribunal which commands the duty. If the precept be sufficient in point of form and issue from a court or magistrate having jurisdiction of the subject matter, the officer is obliged by law to serve it, and is protected in the rightful discharge of his duty. 13 *Mass. Rep.* 288.

Otherwise, if the precept be not lawful on the face of it. *ib.* 344.

18. As a general position, it is true that different deputies of the same Sheriff are not different officers in legal contemplation ; all deputies being but servants of the Sheriff, and their possession of property attached or seized on execution being his. This rule, however, admits of exceptions ; The deputies in relation to each other must often be considered as several officers with distinct rights and acting with distinct liabilities. As it is necessary to constitute an attachment as it affects other officers and creditors — that there should be an actual possession by the attaching officer ; and as no other officer can interfere with that possession ; it is not in the power of one deputy to make a second attachment of the same chattels which have already been attached by another. If a second attachment is intended, the writ must be delivered to the deputy who has made the first, and who may hold the same goods as attached on other writs which subsequently come into his hands for service. Or it may be delivered to the Sheriff, who may cause the goods to be held upon it — the possession of the deputy being in law his possession — by given notice to the deputy who holds them, of the writ thus put into his hands, before any other writs come into the hands of the deputy. 13 *Mass. Rep.* 114.

19. A second deputy who finds goods, which he is ordered to attach already in legal custody, is bound to deliver his precept to him who has the goods, and to require him to attach them — and if he do not, he is guilty of a breach of duty for which he is responsible. 14 *Mass. Rep.* 269.

20. A deputy, who has attached goods, may maintain trover or replevin against another deputy, who takes them from him or his bailee on another precept against the same party. 16 *Mass. Rep.* 420, 465.

21. An officer who takes possession of goods attached is bound to keep them safely until the attachment is dissolved, and is answerable both to debtor and creditor, if he suffer them to be taken away or injured. 1 *Pick.* 395.

Hence he may maintain an action against a bailee to whom he delivered the goods, although the attach-

ment has expired or the debt has been paid ; that he may restore them to the owner. But if the debtor retain possession of the goods, after an attachment and receipt given to the officer by a bailee, the officer is not answerable to the owner, and has no action against the bailee after the attachment expires—having no right to the goods except for the purpose of delivering them to the debtor, who already has them. 16 *Mass. Rep.* 8, 464. 14 *ib.* 196.

22. It is not considered extortion for an officer in settling an execution, to demand and receive of the debtor more than his legal fees, as compensation for trouble at a former time for the debtor's resistance. Under the statute, the sum alleged to have been extorted must have been demanded as a fee for some official duty. 15 *Mass. Rep.* 525.

And an officer does not incur the penalty of the statute by taking fees on a writ of execution, on which he makes no service. Though he may be punishable therefor, by indictment at common law. But the penalty of the statute is incurred, if an officer takes as compensation for extra trouble, greater fees for levying the execution than the statute allows. 1 *Pick.* 174.

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FORM FOR SHERIFF'S DOCKET.

When rec'd.	No.	Plaintiff.	Defendant.	Precept.	Cust.	Place.	Endorser or Attorney.	How Received.	When as- how return	Date and man- ner of Service.	Fees.	Other Emoluments.	Jus. Ex. and Extra.	Total.
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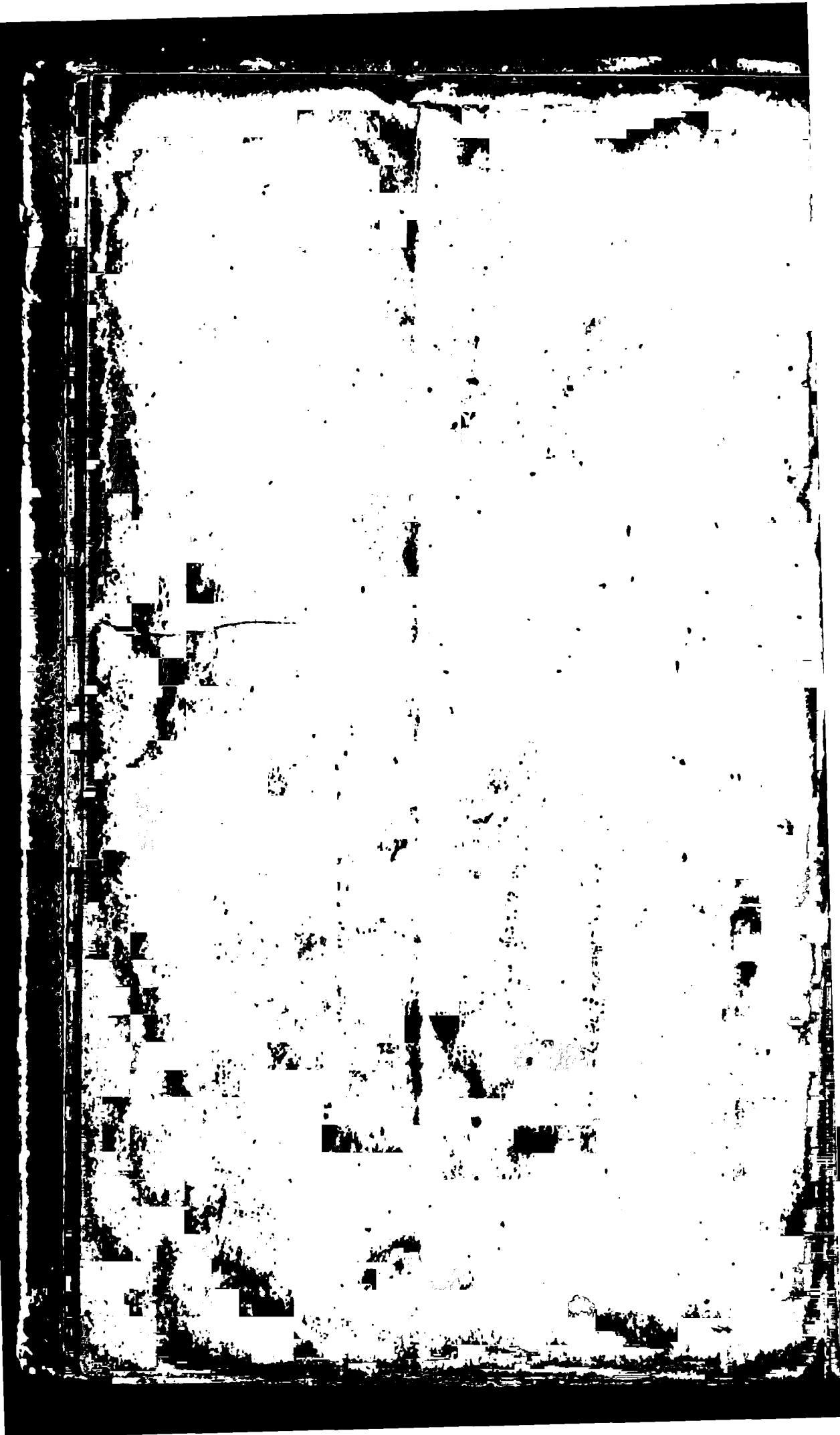
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