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THE
CIVIL OFFICER,
OR
THE WHOLE DUTY
OF
SHERIFFS, CORONERS, CONSTABLES
AND
COLLECTORS OF TAXES.

By Thomas B. Wait



BOSTON:
PRINTED AND PUBLISHED BY THOMAS B. WAIT AND COMPANY.
COURT-STREET.

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1809.

KD 14424



11 Dec. 1931

estate of
A. Rank

DISTRICT OF MASSACHUSETTS, TO WIT:

BE it remembered, That on the seventeenth day of August in the thirty-fourth year of the Independence of the United States of America, THOMAS B. WAIT, and Company, of the said district, have deposited in this office the title of a book, the right whereof they claim as proprietors, in the words following, to wit:

"The CIVIL OFFICER, or the WHOLE DUTY of SHERIFFS, CORONERS, CONSTABLES and COLLECTORS of TAXES."

In conformity to the Act of the Congress of the United States, intituled, "An Act for the Encouragement of Learning, by securing the Copies of Maps, Charts, and Books; to the Authors and Proprietors of such copies, during the times therein mentioned;" and also to an act intituled, "An act supplementary to an act, intituled, an act for the encouragement of learning, by securing the copies of Maps, Charts, and Books, to the authors and proprietors of such copies during the times therein mentioned; and extending the benefits thereof to the Arts of Designing, Engraving, and Etching Historical, and other Prints."

WILLIAM S. SHAW,
Clerk of the District of Massachusetts.

INTRODUCTORY.

HAVING been for some years employed as a deputy-sheriff, the complexity of the duties of that office are well known to me. It was often necessary to apply to learned lawyers to be instructed in the performance of what the law of the land required, and this in cases of the greatest importance, in which a false step would have rendered nugatory all the pains that the party who required me to execute his writ had bestowed on the subject, and would besides have exposed my principal, the sheriff of the county, to very heavy damages.

It is of no small consequence to the sheriff whom he selects as his deputies, to act in his behalf. It is not necessary to conceal, that

INTRODUCTORY.

men are sometimes appointed, not only ignorant of the general duty of their office, but even incapable of ever acquiring instruction. Such men, however secure their bondsmen make the sheriff, will frequently create much difficulty, and will always be the cause of uneasiness to him.

I have therefore thought great benefit would result from a compendious treatise on the duties of this office; and knowing how closely connected the offices of coroner and constable are with that of sheriff, and how nearly analogous the execution of the duty of collectors is to the same, I offer this book to my fellow-citizens of the commonwealth. As it has been subjected to the revision of a gentleman of the bar, the marks of whose carefulness will be easily discernable, I presume those who inquire for information, will rely on it with the greater confidence.

In the following pages I have not been solicitous to enumerate with precision the penalties for breach of duty: having laboured

INTRODUCTORY.

to exhibit with perspicuity all a good officer need to perform, it seemed a proper compliment to withhold the terrors of the law against offenders. That there are, however, instances too frequent of wilful violation of justice, and hard-hearted extortion, is a subject rather of regret than surprise. Power in any hands, especially when exercised over "*the poor and him that hath no helper,*" is apt to degenerate into tyranny. He who goes beyond his duty, to the oppression of any of the subjects of a free government, offers an insult to the majesty of justice no less than a wrong to his fellow. He is therefore by our law subject to punishment criminally, and liable to a civil action at the suit of the party injured.

THE
CIVIL OFFICER, &c.

SHERIFF.

APPOINTMENT OF SHERIFF, HIS DISABILITIES, &c.

By the constitution of the commonwealth of Massachusetts, chap. 2. sec. 1. art. 9, it is provided, that sheriffs and coroners “shall be nominated and appointed by the governor, by and with the advice and consent of the council ; and every such nomination shall be made by the governor, and made at least seven days prior to such appointment.”

The oath required of all executive officers, as are sheriffs, is found in chap. 6. art. 1, as follows : “ I, A. B. do truly and sincerely acknowledge, profess, testify, and declare, that the commonwealth of Massachusetts is, and of right ought to be, a free, sovereign, and independent state ; and I do swear, that I will bear true faith/and allegiance to the said commonwealth, and that I will defend the same against

traitorous conspiracies, and all hostile attempts whatsoever : And that I do renounce and abjure all allegiance, subjection, and obedience, to the king, queen, or government of Great-Britain, (as the case may be) and every other foreign power whatsoever : And that no foreign prince, person, prelate, state or potentate, hath, or ought to have, any jurisdiction, superiority, pre-eminence, authority, dispensing, or other power, in any matter, civil, ecclesiastical or spiritual, within this commonwealth ; except the authority and power which is, or may be, vested by their constituents in the congress of the United States : And I do further testify and declare, that no man, or body of men, hath, or can have, any right to absolve or discharge me from the obligation of this oath, declaration or affirmation ; and that I do make this acknowledgment, profession, testimony, declaration, denial, renunciation and abjuration, heartily and truly, according to the common meaning and acceptance of the foregoing words, without any equivocation, mental evasion, or secret reservation whatsoever. So help me GOD."

"I, A. B. do solemnly swear and affirm, that I will faithfully and impartially discharge

and perform all the duties incumbent on me as ; according to the best of my abilities and understanding, agreeably to the rules and regulations of the constitution, and the laws of this commonwealth. So help me GOD."

"Provided always, That when any person chosen or appointed as aforesaid, shall be of the denomination of the people called Quakers, and shall decline taking the said oaths, he shall make his affirmation in the foregoing form, and subscribe the same, omitting the words, '*I do swear,*' '*and abjure,*' '*oath or,*' '*and abjuration,*' in the first oath; and in the second oath, the words '*swear and;*' and in each of them the words, '*So help me GOD;*' subjoining instead thereof, '*This I do under the pains and penalties of perjury.*'"

In chap. 6. art. 2, it is provided, that "no person shall be capable of holding or exercising at the same time, more than one of the following offices within this state, viz. judge of probate, sheriff, register of probate, or register of deeds; and never more than any two offices which are to be held by appointment of the governor, or the governor and council, or the senate, or the house of representatives,

or by the election of the people of the state at large, or of the people of any county, military offices and the offices of justices of the peace excepted, shall be held by one person."

No person holding the office of sheriff "shall at the same time have a seat in the senate or house of representatives; but their being chosen or appointed to, and accepting the same, shall operate as a resignation of their seat in the senate or house of representatives; and the place so vacated shall be filled up."

By chap. 6. art. 4, it is provided, that "all commissions shall be in the name of the commonwealth of Massachusetts, signed by the governor, and attested by the secretary or his deputy, and have the great seal of the commonwealth affixed thereto."

By a statute of February 27, 1796, entitled "An Act to repeal all the existing excise acts, and to provide for the expenses of justice in the several counties," sec. 4, it is enacted, "That no person, who, from and after the passing of this act, shall receive a commission appointing him to any of the offices following, in any county, shall receive any of the fees or profits thereof, until he shall pay to the treasurer of the county, the sum herein after an-

nexed to his office, and produce to, and lodge with the secretary of the commonwealth, the county treasurer's certificate therefor, to wit: Each person who shall receive a commission appointing him sheriff of the counties of Suffolk, Essex, Middlesex, Hampshire, or Worcester, *forty dollars*, and every other county, *twenty dollars*."

By a statute of June 28, 1792, entitled "An act authorizing coroners to execute writs and precepts, when the office of sheriff may be vacant," it is made the duty of "every person who may hereafter 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."

DUTY OF SHERIFF.

The general duty of the sheriff is described in the statute of March 12, 1784, entitled "An act defining the general powers and duties, and regulating the office of sheriffs."

Section 1, enacts, "That the sheriff of each county in this commonwealth 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 ; and the sheriff of each county shall have the custody, rule, and charge of the gaol or gaols, therein, and of all prisoners within such gaol or gaols, and shall keep the same himself personally, or by his deputy, for whom he shall be answerable ; and every sheriff shall give sufficient security at the discretion of the court of common pleas, in his county, unto the treasurer of the commonwealth, for his faithful performance of the duties of his office, and to answer the malefeasance and misfeasance of all his deputies ; and if any sheriff shall neglect to give such security at the court of common pleas which shall be held in his county, next after his being commissioned, all services done by him afterwards, and before he shall give such security, shall be null and void."

By section 2, the sheriff's account of fines imposed by the supreme judicial court, and by the court of general sessions of the peace, and of forfeitures arising in those courts must be settled with those courts respectively.

In the same statute sheriffs are forbidden to appear or act as attorneys, and their bodies are privileged from arrest; but this disability and this privilege are so intimately connected with their duty, that it may be useful to extract the provisions of the statute under this head :

“ Sec. 3. *And be it further enacted*, That 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. And 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 the 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.

“ Sec. 4. *And be it further enacted by the authority aforesaid*, That no sheriff shall have

his body arrested upon mean process, or upon an execution awarded upon a judgment consequent upon a civil action, and that when judgment shall be rendered against any person holding the office of sheriff, either in his official or private capacity, for any sum of money, the execution thereof shall be issued against his goods, chattels, and lands, but not against his body ; and if any execution issued against the goods, chattels, or lands of a person who holds the office of sheriff, shall be returned not satisfied, the creditor may file before the governor and council an attested copy of such execution and return, and also serve such sheriff with a copy of such copy filed, attested by the secretary, together with 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 such copy and notice, pay the creditor the full of his debt, together with reasonable costs of the copies and notifications aforesaid, the governor, with the advice of council, shall remove such sheriff from his office, and shall appoint some other person to the same."

By the latter part of this last quoted section it is provided, that "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 such sheriff 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 still retain the keeping of the gaol or gaols in their respective counties, and the prisoners therein, until their successors shall be appointed and qualified as the law directs."

In addition to this law, and repealing a part of it, the statute of February 27, 1795, entitled "An act in addition to an act defining the general powers and duties, and regulating the office of sheriffs," enacts, "That the justices of the several courts of common pleas, be, and hereby are authorized and required, in the term of said court, which shall be held in course, in the several counties, on or next after the last Tuesday of June, annually, to consider of the sufficiency of the security given by the sheriffs in their respective counties; and in case they shall find and deter-

mine the same to be insufficient, they shall cause a record to be made of such determination, by the clerk, and shall also cause the sheriff, whose security shall be found insufficient, to be served with an attested copy of said record, and shall require him to procure and give new security, to the satisfaction of said justices, on or before the term of the court next following the term in which said insufficiency shall be recorded as aforesaid.

“ 2. And be it further enacted by the authority aforesaid, That if any sheriff shall neglect to give security as required by the act to which this is an addition, or shall neglect to give the new security which may be required by the justices of the court of common pleas in his county, pursuant to this act, he shall forfeit and pay to the use of the commonwealth, the sum of one hundred and fifty dollars, for each month's neglect, to be recovered by 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 common pleas, in his county, to the governor and council, and also to the at-

torney general ; and the governor, with 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 such 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, as aforesaid.

“3. *And be it further enacted by the authority aforesaid,* That that part of the first enacting clause, in the act to which this act is in addition, by which all services done by any sheriff, in case of neglecting to give security after the time therein limited, are rendered null and void, be, and hereby is repealed.”

A statute of March 8, 1792, entitled “ An act providing for the payment of costs in criminal prosecutions, and for preventing unnecessary costs therein,” has varied the duty of the sheriff in settling his account of fines, imposed by the supreme judicial court, and by the court of general sessions of the peace, by enacting, “ That all sheriffs, coroners and

constables, who may hereafter receive any fines, forfeitures or bills of costs, in pursuance of the judgment or sentence of either of said courts, as well where such fines and forfeitures accrue to the commonwealth, as where they accrue to the county, except debts and costs received upon executions in favour of the commonwealth, shall forthwith pay the same to the treasurer of the county in which they shall be received: And if any sheriff or other officer, receiving such fine or forfeiture, or bills of costs, shall neglect to pay the same, for the space of ten days after receipt thereof, he shall forfeit and pay double the amount of such fine or forfeiture, and bill of cost, to such county treasurer; who is hereby empowered and directed to sue for the same forthwith, to be recovered with costs, by action of debt in the court of common pleas, in the same county; one third of said penalty to the use of such county treasurer, the other two thirds to the use of the commonwealth; and the same, when recovered and received, (if the fine or forfeiture unpaid, accrue to the commonwealth) shall, together with all other fines, forfeitures and costs accruing to the commonwealth, by him received as above, be

applied to the payment of bills of costs taxed in the supreme judicial court, and certified to him as aforesaid; otherwise, it shall be for the use of the county. And if any sheriff, or other officer aforesaid, or any gaoler, shall permit any person, who may be sentenced to pay any fine, forfeiture, or bill of cost, and committed to the custody of such sheriff or other officer, or gaoler, till such sentence be performed, to go at large, without and before payment, unless by order of law, and shall not pay such fine, forfeiture and costs, to the county treasurer, within twenty days next after such escape, he shall be held to pay double the sum of such fines, forfeitures and costs; and the treasurer of the county shall have power to sue for and recover the same, in the same manner, and to the same uses, as is herein before provided, where such sheriff or other officers neglect to pay such fines, forfeitures and costs as they have actually received. And every sheriff and other officer aforementioned, shall, instead of having his accounts of fines received and paid, audited by either of said courts, as by law is now provided, be held to produce to said courts respectively, at every session thereof in their

county, receipts in full, from the county treasurer, for all fines, forfeitures and costs, imposed by said courts respectively, received and paid, previous to the sitting of such courts, or to assign the cause why they have not received, or not paid the same, in order that such court may order a prosecution against such as shall appear to be delinquent."

By a statute of June 18, 1799, entitled, "An act authorizing the courts of general sessions of the peace to liberate poor convicts from prison, and to dispose of them in service, for payment of costs of prosecution," it is enacted, "That where there has been any person convicted for any crime, either in the supreme judicial court, or any court of general sessions of the peace, who has been imprisoned three months for costs of prosecution only, the court of general sessions of the peace for the county where the person has been imprisoned, may order the sheriff to 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 same court may order the sheriff to liberate such convict, on

such terms, or on such conditions, as they may think most beneficial to the commonwealth and county. And the said courts of general sessions of the peace may, at any session hereafter, on motion as aforesaid, order the sheriff of their respective counties, to liberate any convict in such county, in manner as aforesaid, after his having been imprisoned three months for costs as aforesaid." "And the several sheriffs are hereby required duly to execute the aforesaid orders, and to make return of their doings therein to the respective courts."

But by an act of June 17, 1809, all the powers and duties of the court of sessions are transferred to the court of common pleas.

By a statute of November 7, 1782, entitled "An act for apprehending and sending for trial persons charged with having committed crimes in some other state; and to authorize the officers of justice of the other states to continue the execution of their precepts within this state, when necessary," it is provided that "when any offender shall be apprehended in another state, and it may be necessary to carry him through this commonwealth, in order to his being conveyed to the state where

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

DRAWING JURORS.

By a statute of June 30, 1784, directing the process against forcible entry and detainer, the sheriff may be directed by two justices,

quorum unus “to cause to come before them twelve good and lawful men of the same county, each one of whom having a freehold of the yearly value of *forty shillings*,” &c. This is, I believe, the only instance, in which a whole panel is returnable by the sheriff without the intervention of other officers, and is the only case too, in which the jurors are required to be freeholders.

By the late statute of March 12, 1808, entitled “An act regulating the selections, the empanelling, and the services of grand, traverse and petit jurors, and repealing such laws or clauses of laws, touching these subjects, so far as they are provided for by this act,” section 4, the sheriff of each county is required, “so soon as he shall receive the venires for jurors from the clerk of either court” to forward the same to the constables of the towns to whom, &c.

Sheriffs and their deputies are exempted from the list of jurors.

COLLECTING TAXES.

In the collection of state, county, town, &c. taxes, the sheriff may have considerable agency.

By a statute of February 16, 1786, entitled "An act for enforcing the speedy payment of rates and taxes, and directing the process against deficient constables and collectors," it is provided, "That the treasurer and receiver-general shall send such warrants as he shall, from time to time, be ordered to issue, for the 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, districts and plantations within such county, according to the directions thereof; for disposing of which he shall have a reasonable allowance ordered him by the court of sessions of the same county, to be paid out of the county treasury, upon his laying the account thereof before the said court.

"Sec. 2. *Provided always, and it hereby is enacted,* That no allowance shall be made to any sheriff for transmitting any such warrants, unless he shall produce a certificate from one

of the assessors, or the clerk of each town, district or plantation, in the county to which such sheriff belongs, or other satisfactory evidence of their having respectively received such warrant as aforesaid."

Section 4, enacts "That 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 and receiver-general 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 assessor's warrant, pursuant to law, the treasurer and receiver-general 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."

Section 6 provides "That if the constable or collector of any town, district, plantation, precinct or parish, within this commonwealth, to whom any county, town, district, plantation, precinct 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 or receiver of such county, town, district, plantation, precinct or parish, by the time fixed in the warrant to him directed, such treasurer or receiver is hereby 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 or 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."

Sections 7, 8, and 9, contain further directions. “ Sec. 7. *And it is further enacted,* That all executions or warrants of distress, that have been, or may hereafter be issued by the treasurer and receiver-general, or by the treasurer of any county, town, district, plantation, precinct or parish, against any constable or collector, which hath been or may be hereafter delivered to the sheriff of any county within this commonwealth, 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 dwelling-house of the sheriff or his deputy, to the place where the warrant may be returnable; and 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 and receiver-general of this commonwealth, and the treasurers of the counties, towns, districts, precincts and parishes respectively, are hereby authorized and empowered to make out their warrants respectively, directed to the coroner of such county, where any sheriff or his deputy is deficient as aforesaid, requiring them respectively as aforesaid, to distrain for the same, upon the estate, real or personal, 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.

“ Sec. 8. *And be it further enacted*, That when any execution or warrant of distress issued by the treasurer of the state, or trea-

suror of any county, town, district, plantation, precinct or parish, to the-sheriff or his deputy, or to the coroner, shall be levied on the lands, tenements, or hereditaments of any deficient constable, sheriff or deputy, 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 up advertisements, at least fourteen days previous thereto, in two or more public places in the town or place where such lands or tenements lie, as also in the two adjacent towns; and all deeds and conveyances of any such lands or tenements duly executed as aforesaid, shall be good and effectual in law unto the purchaser, his heirs and assigns for ever, to all intents and purposes, as though executed by the deficient constable, sheriff or deputy; and in case the produce of such lands and tenements shall not satisfy the sum or sums, mentioned in the said warrant or warrants of distress, together with reasonable charges arising thereon, then the treasurer issuing such warrant, shall issue an *alias* execution or warrant of

distress for such remaining sum or sums, and the officer executing the same, for want of estate, shall take the body of such defient constable, collector or deputy-sheriff, and him commit unto the common gaol of the county whereto he belongs, until he shall pay the same.

“Provided always, That when any constable, collector, or deputy-sheriff, shall be committed to gaol for default in payment of any taxes committed to him to collect, such constable, collector, or deputy-sheriff, shall be admitted to the liberty of the gaol-yard, they procuring sufficient bonds in the same manner as by law is prescribed for other debtors.

“Sec. 9. Provided always, and be it further enacted, That in no case whatever, any distress shall be made or taken from any person, of his arms or household utensils, necessary for upholding life ; nor of tools or implements necessary for his trade or occupation, beasts of the plough necessary for the cultivation of his improved land ; nor of bedding or apparel necessary for him and his family ; any law, usage, or custom to the contrary notwithstanding.”

By section 4, of a statute of February 20, 1786, entitled "An act for the choice and appointment of assessors, and for assigning their powers and authority," the treasurer of the commonwealth is empowered and required, in case of negligence of assessors "to issue his warrant, requiring the sheriff, or his deputy, to levy" the sums, &c. "by distress and sale of the estates real and personal of such deficient assessors"; "and for want of estate to take the bodies," "and imprison them, until they pay the same; which warrant the sheriff or his deputy is empowered and required to execute accordingly."

By the statute of March 16, 1786, entitled "An act for the choice and appointment of collectors of rates and taxes, and for ascertaining their power and duty," it is enacted, section 3, "That where any town or district 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 general court, that in such case the sheriff of the county, or his deputy, shall be and hereby is empowered and directed to collect such rates or taxes, having received an assessment made of the pro-

portion of the several persons ratable in such town, district or plantation, together with a warrant under the hands of such assessors as shall be appointed by the court of general sessions of the peace, in the county where such deficient town, district or plantation lies, or under the hands of the assessors of such town, district or plantation, duly chosen by them respectively.

“ Sec. 4. *And be it further enacted*, That 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, district 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 gaol, in the manner collectors are by this act directed and empowered to distrain or commit to gaol; 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."

By a statute of Feb. 25, 1800, entitled "An act in addition to an act, entitled, 'An act for enforcing the speedy payment of rates, and directing the process against deficient constables and collectors,'" sections 1 and 2 it is enacted, that in cases where any town, district, or plantation neglects to choose assessors, the treasurer of the commonwealth shall 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, district, or plantation; which warrant the said sheriff or his deputy is hereby 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 the said sheriff or his deputy, on receiving the said warrant, forthwith to transmit an attested copy thereof to the selectmen or clerk of the town, district 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." And in cases where such town, district, &c. assessors neglect their duty in collecting state or county taxes, by section 3 the treasurer of the commonwealth or of the county is invested with similar powers, and the sheriff or his deputy are in like manner directed to obey.

RETURNS OF ELECTIONS.

In making returns of elections, the sheriff's duty is important.

By the constitution of this commonwealth, the officers presiding at elections of governor,

lieutenant-governor, senators and counsellors, are permitted to return copies of the records of the votes to the sheriffs of the several counties, in which, &c. and the sheriffs are required to deliver such returns into the office of the secretary of state seventeen days at least before the last Wednesday of May.

By the statute of February 24, 1796, entitled "An act for regulating elections," section 5, it is enacted "That if any sheriff, when required by law to make return to the secretary's office, of the votes of the towns and plantations, or districts in their several precincts, for any election as aforesaid, shall neglect to make such return within the time prescribed, he shall forfeit and pay a sum not exceeding *five hundred dollars*, nor less than *fifty dollars*, for each offence."

By the statute of March 10, 1802, entitled "An act dividing the commonwealth into seventeen districts for the choice of representatives in the congress of the United States, and prescribing the mode of election," section 3, the officers presiding, &c. are permitted to transmit, &c. to the sheriff of the county, in which, &c. who are required to transmit the same to the secretary of the commonwealth

within forty days next after the time of holding such meeting.

Section 4 provides for a second meeting, in case the first may have been ineffectual, in which the same proceedings shall be had, and the sheriff is required to make return of the precepts for such second meeting into the secretary's office "on or before such day as the governor shall appoint in such precept."

Section 6 enacts, that the sheriff, on receipt of any copy of this act, or any precept from the governor for the purposes of it, shall "transmit the same seasonably to the selectmen of the several towns and districts, and to the assessors of the several districts and plantations where there may be no selectmen, within their respective counties, to whom such copies or precepts may be respectively directed. And the several sheriffs shall, for the said service, be entitled to receive out of the treasury of this commonwealth *fifty cents* for each of the copies and of the precepts so by them distributed." But "no sheriff, who shall neglect seasonably to transmit all and every of the copies and precepts by him received in manner aforesaid, shall be entitled to any compensation for distributing any of

such copies or precepts." For returning the votes, the sheriff shall receive *twenty cents* per mile, computing from his place of abode to the secretary's office ; but his accounts in both cases must be presented to the committee on accounts for examination and allowance.

Section 7 inflicts the penalty of one thousand dollars on the sheriff for each neglect of the duty required of him by this act.

An act, passed June 18, 1802, amendatory of the last statute, in cases where a third trial for such election becomes necessary, makes similar provisions for the return of the votes by the sheriff.

PRESERVATION OF THE PEACE.

In preserving the peace the sheriff has no small share of authority.

By a statute of October 28, 1786, entitled "An act to prevent routs, riots, and tumultuous assemblies, and the evil consequences thereof," it is enacted that "if any persons to the number of twelve, or more, being armed with clubs, or other weapons; or if any number of persons, consisting of thirty or more, shall be unlawfully, routously, riotously or

tumultuously assembled, any justice of the peace, sheriff or deputy-sheriff of the county, or constable of the town, shall, among the rioters, or as near to them as he can safely come, command silence while proclamation is making, and shall openly make proclamation in these or the like words :

“ COMMONWEALTH OF MASSACHUSETTS.

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

“ GOD SAVE THE COMMONWEALTH.

“And if such persons, assembled as aforesaid, shall not disperse themselves within one hour after proclamation made, or attempted to be made, as aforesaid, it shall be lawful for

every such officer to command sufficient aid, and he shall seize such persons, who shall be had before a justice of the peace; and the aforesaid justice of the peace, sheriff or deputy-sheriff is hereby further empowered to require the aid of a sufficient number of persons in arms, if any of the persons assembled as aforesaid shall appear armed: And if any such person or persons shall be killed or wounded by reason of his or their resisting the persons endeavouring to disperse or seize them, the said justice, sheriff, deputy-sheriff, constable and their assistants, shall be indemnified and held guiltless."

By a statute of February 20, 1787, entitled "An act for the more speedy and effectual suppression of tumults and insurrections in the commonwealth," section 1 it is enacted, "That whenever an insurrection shall have taken place in either of the counties of the commonwealth, to obstruct the course of justice, or the due execution of the laws, or there is reason to apprehend that a dangerous insurrection for such purposes will be excited, it shall be the duty of the sheriff" (and of others) "immediately to give information thereof to the governor for the time being."

Section 2 enacts, "That if in the opinion of the sheriff or of any two of the justices, either of the supreme judicial court, or the court of common pleas in any of the counties of this commonwealth, it shall be necessary, for the suppression of any insurrection existing or apprehended, as aforesaid, in such county, that a force shall be instantly raised and called forth for that purpose; and if, by reason of distance, the necessary aid cannot be obtained by order of the commander in chief, it shall be the duty of such sheriff or justices to certify the same, under his or their hand, to the major-general or commanding officer of the division wherein such county lies, or to the commanding officer of some regiment or corps in the vicinity, and to request him or them to detach the whole, or such number of the militia under the command of such officer for the support of the civil authority, as the said justices or sheriff may think necessary to defeat the purposes of such insurgents, and to apprehend and safely keep them for trial, and, as soon as may be, to give notice of such application to the commander in chief."

And when the commanding officer has detached the militia, they are to be under the direction of the civil officer.

By a statute of February 26, 1796, entitled "An act to enable sheriffs, deputy-sheriffs and constables, to require aid in the execution of their respective offices in criminal cases," section 1, it is enacted, "That 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 lawful authority to require suitable aid and assistance therein."

The subsequent part of the same section imposes a penalty on persons refusing to obey.

Section 2 imposes a heavy penalty on any person, not being a sheriff, deputy-sheriff, or constable, but pretending himself to be either of the said officers, and acting as such.

By a statute of June 29, 1798, entitled "An act to prevent profane cursing and swearing," section 2, it is made the duty of any sheriff, deputy-sheriff, coroner, or constable, hearing any person profanely curse or swear, forthwith to give information thereof to some jus-

tice of the peace of the county, wherein the offence may be committed.

Here may perhaps be the most proper place to exhibit the sheriff's duty in capital executions, which is found in a statute of 1771, entitled "An act against treason and misprision of treason, and for regulating trials in such cases, and for directing the mode of executing judgments against persons attainted of felony," which makes necessary a warrant "from the supreme executive authority under the great seal of this state with a copy of the record thereunto annexed, directed to the sheriff of the county," wherein, &c.

In the performance of this solemn duty the sheriff must follow the command of his warrant; for if he behead one who is adjudged to be hanged, it is murder.

By a statute of March 15, 1805, entitled "An act for the punishment of murder," &c. the justices of the supreme judicial court are empowered, "at their discretion, to sentence and order the body of such convict to be dissected and anatomized." And in such case it is made the sheriff's duty to deliver the body of the convict, being dead, to a professor of anatomy and surgery in some public

college or seminary, when it shall be required; and otherwise to any surgeon, who shall be attending at the place of execution to receive and will engage for the dissection and anatomizing thereof.

KEEPING PRISONS.

In the superintendence and keeping of prisons the sheriff has large powers.

By a statute of February 21, 1785, entitled "An act for providing and regulating of prisons," section 2, it is enacted, that "where the escape of any prisoner shall happen through the insufficiency of the gaol, or the negligence of the sheriff or gaoler, the sheriff of the county in which the escape happens shall stand chargeable to the plaintiff, creditor, or other person, at whose suit or for whose debt he was committed, or to whose use any forfeiture was adjudged against such prisoner; and in case the escape shall happen through the insufficiency of the gaol, the court of general sessions of the peace in the county shall have power and authority to assess the sum or sums upon the polls and estates of the county, and

to order the county treasurer to pay the same over to the sheriff of the county ; and if the court of general sessions of the peace 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 sessions, 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; and an attested copy of the writ being left thirty days before the sitting of the court, with the county treasurer, by the coroner of the same county, shall be held and adjudged to be sufficient notice of the suit ; and the justices of the court of general sessions of the peace 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 sessions shall be holden 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."

Section 4 provides for the punishment of the gaoler for permitting the escape of any prisoner, charged with a crime, and contains a proviso in favour of the sheriff, providing, "That if any person who stands committed for debt, shall escape from prison, and the sheriff, the gaoler or prison-keeper shall, within three months next after such escape, recover the prisoner so escaped, and return him back to prison again, then the sheriff shall be liable to nothing further than the cost of any action that may have been commenced against him for such escape."

Section 5 enacts, "That the sheriffs of the respective counties, from and after the passing this act, shall keep a true and exact calendar or register of all prisoners committed to any prison under his care, and that the same shall be kept in a large bound book pro-

vided 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 (beginning with the names of those who may be prisoners when this law shall take place) with their names, places of abode, additions, the time of their commitment, for what cause, and by what authority committed ; and of such as are committed for criminal offences, a description of their persons ; and also from time to time, as any prisoner shall be liberated, the sheriff 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.”

Section 6 enacts, “ That every gaoler or prison-keeper, at the opening of the supreme judicial court, or the court of general sessions of the peace within the county where he keeps the gaol, shall return a list of prisoners in his custody, therein certifying the cause for which, and the persons by whom they were committed, and the names of all persons who 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 commonwealth 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 gaoler shall make default herein, he shall be fined at the discretion of the court."

Section 7 enacts, " That all warrants, mittimusses, 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 the office, on the penalty of *fifty pounds*, 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 prose-

cute therefor, in any court proper to try the same."

Section 9 enacts, "That any person imprisoned for debt, either upon mean process or execution, shall be permitted and allowed to have a chamber and lodging in any of the houses or apartments belonging to such prisons, and liberty of the yard within the same in the day time, but not to pass without the limits of the prison, upon reasonable payment to be made for chamber room, to be set and established once in every year by the court of sessions, and not to exceed *two shillings* a week. *Provided*, That such prisoner shall give bond, with sufficient surety or sureties within the county, to the creditor or creditors, in double the sum for which he is imprisoned, conditioned, that from the time of executing such bond, he will continue a true prisoner in the custody of the gaoler, and within the limits of the said prison, until he shall be lawfully discharged, without committing any manner of escape; and in order to prevent any oppression, under pretence of the surety or sureties being insufficient, two disinterested justices of the peace, *quorum unus*, shall be called to approve of the surety or sureties,

and the same being approved by them, shall be deemed sufficient ; and if the creditor or creditors shall refuse to take the bond, the same shall be left with the sheriff until the creditor or creditors shall demand the same ; and upon putting such bond in suit when the condition shall be broken, judgment shall be entered up for the whole of the penalty, and no chancery shall be allowed therein ; and the court of general sessions of the peace shall fix and determine the boundaries of the gaol-yards to the several gaols appertaining in their respective counties, as soon as may be after the publication of this act."

And because it may happen that the gaoler demand an unreasonable compensation for articles provided for prisoners, section 10 enacts, " That whenever any dispute about the price of such articles shall arise, the court of general sessions of the peace for the county in which such gaol stands, shall be, and hereby are fully authorized to hear and finally to determine all such disputes."

By a statute of October 30, 1784, entitled " An act prescribing forms of writs in civil causes, and directing the mode of proceeding therein," section 10, it is enacted, " That

no person imprisoned upon mean process shall be held in prison upon such process above the space of thirty days next after the entering up final judgment upon the writ whereby he is committed; unless he shall be continued there by having his body taken in execution, nor shall the prison-keeper discharge any such prisoner unless judgment is given in his favour, until thirty days next after the said judgment is entered up, unless the party at whose suit he was committed, shall give order, in writing, for his discharge, and shall pay the legal fees of the gaoler."

By a statute of February 26, 1790, entitled "An act to provide for the safe keeping all prisoners committed under the authority of the United States in the several gaols within this commonwealth," it is enacted, "That the keepers of the several gaols, within this commonwealth, shall, under the like penalties as by law are provided for the custody and safe keeping 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."

By a statute of February 27, 1795, entitled ‘ An act in addition to an act, entitled ‘ An act providing for the payment of costs, in criminal prosecutions, and for preventing unnecessary costs therein,’ ” it is enacted that “ The gaol keeper of each gaol in the commonwealth, shall render on oath to the court of general sessions of the peace of the county, at each term thereof, an account of the charges incurred for the support of prisoners, in the respective gaols, 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 with the said court ; and in the same account, the said gaol-keeper shall credit all moneys and effects whatever, received, or to be received of the prisoner, or of any persons 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 found unable to pay, the said court shall make a reasonable allowance to the said gaol keeper, to be paid out of the county treasury.”

Here may perhaps be most properly introduced the requisitions of the law, as far as it regards the sheriff, or gaoler, permitting poor prisoners on execution to discharge themselves by swearing out of gaol, as it is usually called.

The statute of November 19, 1787, entitled "An act for the relief of poor prisoners who are committed by execution for debt," section 1, enacts, "That when any person standing committed by force of any execution issuing from any court in this commonwealth, on a judgment recovered by any person, shall complain, that he or she hath not estate sufficient to support him or her in prison, the gaoler, or keeper of such prison, shall, on such complaint, apply to one of the justices of the peace within and for the county in which such prison is, who shall thereupon make out a notification, in writing, under his hand and seal, thereby signifying to the creditor, or creditors, such prisoner's desire of taking the privilege and benefit allowed in and by this act, and of the time and place appointed for the intended caption of the oath or affirmation allowed by this act, and which being served on the creditor or creditors of the said

prisoner, if he, she or they live within this commonwealth, his or her executor or administrator; and if such creditor or creditors live out of this commonwealth, upon his or their agent or attorney, who brought forward the suit on which the judgment whereon the execution by which the prisoner stands committed, was rendered, by the sheriff, or his deputy, of the county in which the said service shall be made, either by reading the same to him or her, or by leaving an attested copy thereof, at the usual place of abode of such creditor or creditors, agent or attorney as aforesaid, at least thirty days before the time appointed for taking the said oath or affirmation, that he, she, or they may be present, if they see cause. *Provided*, That if any creditor or creditors live out of this commonwealth, and have no agent or attorney, as aforesaid, living in the same, an attested copy of such notification shall be left with the clerk of the court, or the justice by whom the said execution was signed, at least fifty days before such intended caption."

Section 2 provides, that on a certificate from the two justices, under their hands and seals, who administered, &c. the gaoler or

prison-keeper shall set such prisoner at liberty, unless he be committed to prison for other cause.

The gaoler's fee for turning the key for each admittance or discharge of a prisoner is *twenty cents*.

The gaoler's fee for each person taken up by the watch in the night, and committed to be secured only till the next day, shall be *twenty-five cents*, and no more, according to statute of March 10, 1797, under the head of constable's duty.

IN CASES OF BREACH OF INSPECTION LAWS AND LAWS RELATING TO TRADE.

By a statute of November 8, 1785, entitled "An act for regulating the exportation of tobacco and butter, and the weight of onions in bunches, and the size of lime-casks," section 5, a justice of the peace is empowered to issue his warrant, directed to the sheriff, his deputy, or a constable, requiring them respectively to make seizure of any such tobacco, shipped and not marked, &c. and to secure the same in order for trial.

The statute of March 31, 1788, entitled "An act to prevent the exportation of green or unmanufactured calf-skins, out of this commonwealth, by land or water," contains similar provisions in that behalf.

Section 2, of a statute of February 26, 1794, entitled "An act ascertaining the quality of stone lime, and the size of lime casks, and for repealing all laws heretofore made relative thereto," contains similar provisions.

By a statute of June 17, 1800, entitled "An act to ascertain the quality of hogs-lard; and making further provision for the inspection of butter," section 4, similar provisions are enacted.

An act of June 22, 1803, regulating the manufacture of chocolate, contains similar provisions.

An act of June 23, 1803, for preventing fraud and deception in packing of pickled fish, &c. section 9 makes it lawful for a justice, upon information, &c. to issue his warrant to the sheriff, or his deputy, or to any constable of the town in which, &c. requiring them respectively to seize such fish and secure the same, and carry the same to some inspector or deputy within the same town,

&c. And in this case the officer has power to call for assistance, which he may certainly do in the other cases, where he has a legal warrant, though it be not expressly given, as here, by the statute.

A statute of June 24, 1806, providing for the inspection of hops, section 13, makes it the duty of the sheriff or his deputy, or a constable, to obey warrants of the inspector of hops or any of his deputies, requiring them respectively to make a seizure of any such hops not inspected, &c. and to secure the same in order for trial.

IN CASES OF INFECTIOUS SICKNESS, AND BREACH OF LAW
RELATING TO PUBLIC HEALTH.

By section 2, of a statute of June 22, 1797, entitled "An act to prevent the spreading of contagious sickness," it is provided, that the selectmen of any town may direct any person coming from any place out of this state, where the small-pox or other malignant distemper is prevailing to depart; and in case of refusal, any justice of the peace in the county where, &c. by warrant directed to a constable or other

proper officer, may cause such person to be removed into the state from whence, &c.

Section 4 enacts, " That if need be, 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 or any of them, in the name of the commonwealth, with the advice and direction of the selectmen of the same, to remove such infected person or persons, or to impress and take up convenient houses, lodging, nurses, attendance and other necessities, for the accommodation, safety and relief of the sick. And such sheriff, his deputy and constable, are hereby authorized and required to execute such warrant accordingly."

Section 5 enacts, " That whenever there shall be brought into any town within this state, either from any other town therein, or from ports 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 satisfac-

tion of any justice of the peace, that there is just cause to suspect such 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 of the peace, and he is hereby 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, clothing, 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, clothing, or other goods, until the same shall be sufficiently cleansed from infection : and in case it shall appear highly probable to the said justice, that such baggage, clothing, or other goods, are infected as aforesaid, he is hereby 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, clothing, or other goods, 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 said selectmen : and 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, ware-house, shop or other place, particularly mentioned in said warrant, where such baggage, clothing, or other goods shall be ; and in case of opposition, to require such aid as shall be necessary to effect the execution of said warrants, and repel such opposition.”

By the statute of June 20, 1799, entitled
“ An act to empower the town of Boston to

choose a board of health, and for removing and preventing nuisances," section 3, power is granted for the due examination of nuisances to the members, or any two of them, "having first obtained a warrant from a justice of the peace, in due form of law, predicated upon a complaint, under oath, directed to the sheriff of said county or his deputy, ~~for~~ to enter and search all houses, stores, cellars, vessels, and boats, between the hours of sunrise and sunset, where they may have just cause to suspect any of the aforesaid nuisances or sources of filth to exist, and the same to remove or destroy, as the case may require. *Provided however,* That no sheriff or deputy-sheriff shall execute any civil process, either by arresting the body, or attaching the goods and chattels of any person or persons, under colour of any entry made for the purposes aforesaid, unless such service could by law have been made without such entry; and all services so made, under colour of such entry, shall be utterly void, and the officer making such service, shall be considered as a trespasser to all intents, *ab initio*." And by a subsequent part of the same section the justice is permitted to issue his warrant to

the sheriff of Suffolk, his deputy, or any constable of said town, "commanding him to notify the person or persons in whose possession, or upon whose estate such nuisance or other source of filth aforesaid was found, his or their agent or agents, attorney or attorneys respectively, forthwith to appear before such justice."

Similar provisions are found in the act empowering the inhabitants of Marblehead to choose a board of health, &c.

By a statute of June 18, 1803, in addition to the above mentioned statute relating to the Boston board of health, section 1, it is made the duty of the sheriff or gaoler of the county, whenever any prisoner in Boston gaol is attacked with any contagious, malignant fever, and, in the opinion of any two reputable physicians, endangers the health, &c. to make known the situation of such prisoner to the board of health of said town. If by them an apartment is assigned to the prisoner upon Rainsford's island, the sheriff is empowered to remove such prisoner, and to cause such apartment to be effectually secured, so that such prisoner may not escape from his custody, or to appoint some person to guard him

in his confinement; and the apartment shall be, during this removal, &c. considered as the common gaol of the county; and the whole expense shall be paid by such prisoner, if able, or as such expenses are usually paid. “*Provided however*, that if such prisoner be confined for debt, it shall be necessary to obtain the consent of his creditor, and also his own consent to such removal; and if such prisoner has the liberty of the gaol yard in Boston, then the consent to such removal shall be first had in writing of the sureties of such prisoner.”

PROCESS OF HABEAS CORPUS.

By a statute of March 16, 1785, entitled “An act directing the process in *habeas corpus*,” section 1, the supreme judicial court in term time in any county, or any one or more of the judges thereof in vacation are authorized to award a writ of *habeas corpus*, directed to the officer or person imprisoning or restraining the complainant, unless he be “committed for treason or felony, or for suspicion thereof, or as accessory to the latter before the fact, plainly and specially expres-

sed in the warrant of commitment, or persons convict or in execution by legal process, criminal or civil, or committed by mean process in any civil action for want of reasonable bail," or one "with regard to whom the benefit of the said writ shall be suspended by the legislature, agreeable to the constitution."

Section 3 enacts, "That 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 gaol, 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 awarding the writ (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 from the place of imprisonment; if more than twenty, but within one hundred miles, then within ten days; if above one

hundred miles, then within 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."

Section 6 enacts, "That 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 greived, the sum of *fifty pounds*."

Section 7 enacts, "That if any officer or person, to whom any writ of *habeas corpus* shall be directed, shall refuse to receive the same, or, after receipt thereof, shall refuse or neglect to yield such obedience thereto as this act requires (the complainant performing the conditions required) unless prevented by the sickness of the prisoner, or other necessity, he, for such refusal or neglect, in each and every particular, shall forfeit, to the party grievd, the sum of *one hundred pounds*; and for any false return to such writ, shall be further liable to the action of the party."

Sections 8 and 9 enact, "That 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.

“And in order to prevent any attempts that might be made to deprive any prisoner of the benefit of his *habeas corpus*, by shifting the custody of such prisoner from one prison or officer to another, or sending him away :

“Sec. 9. *Be it enacted by the authority aforesaid*, That every person, duly ordered to be committed for any criminal or supposed criminal matter, shall be carried, as soon as may be, and confined in some common gaol, 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 easy and speedy conveyance of the prisoner to such gaol, nor be removed, without his consent, from one county to another, unless by *habeas corpus*, or some other legal writ, under the penalty of forfeiting, for every offence, to the party grieved, the sum of *one hundred pounds*.”

NUISANCES.

In case of nuisances complained of by any person, two justices of the peace, *quorum unus*, are required by statute of June 19, 1801, section 2, to "make out their warrant under their hands and seals, directed to the sheriff of the same county, commanding him to cause to come before them twelve good and lawful men of the same county, who shall be drawn in equal proportions out of the jury-box for the supreme court, by the selectmen of the three towns next adjoining to the town in which such nuisance may be, at a meeting of such selectmen, to be holden forthwith for that purpose, upon the requisition of such sheriff." And the same justices may address a summons to the party complained of, to be served by the sheriff or his deputy, by reading the same in his hearing, or by a copy thereof left at his usual place of abode, fourteen days exclusively before the day of trial. And the sheriff may, if necessary, fill the panel, *de talibus circumstantibus*, as in other causes. And the sheriff or his deputy may be commanded by the said justices to abate and

remove the nuisance by a special writ for that purpose to them directed.

It seems this law cannot be executed in the counties of Suffolk and Nantucket, because there is not the requisite number of towns in either of these counties, from which the jury can come.

ARREST AND PRIVILEGE.

When a person is legally stopped, apprehended and restrained of his liberty, he is said to be arrested. Arrest is the beginning of imprisonment.

An officer may not arrest any one without a precept, except in case of treason, felony, or breach of the peace.

Arrest must be by seizing or touching the body, after which the officer may break open the house to take his prisoner, but not before, for every man's house is by the law considered his castle.

If an officer lays hold of one by the hand, as he holds it out of a window, this is such an arrest, that he may afterwards justify breaking open the house to carry him away.

A sheriff is bound to execute process from a court of competent jurisdiction; and though there be no cause of action, or the process be erroneous, he is not responsible. Therefore, it has been held, that he is not liable to an action for false imprisonment for arresting a bankrupt, who has obtained his certificate. Nor would he be liable for arresting a debtor, who had been discharged from prison under the statute of November 19, 1787, for the relief of debtors, before cited, by virtue of an execution on the same judgment for which the debtor had been originally committed. For says justice Buller, "if the sheriff has acted in obedience to the mandate of the court, he is excused."

The officer must not break an outer door to arrest a man, on mean process or execution; but he may break an inner door to execute his precept, if he has gained lawful admission at the outer door.

And it is said, that though the door be not locked nor bolted, but only latched, the officer may not draw the latch and enter.

But, if the door be open, and the officer comes and shews his process, and offers to enter to execute the same, and the defendant

shut the door against him, the officer, giving notice of the cause of his coming, and requesting to have the door opened, may then break open the door, if the party refuse to open it.

This privilege extends only to the owner of the house, or inhabitant of it, not to protect any stranger, who flies to the house, or his goods. So that if the officer, having process against a stranger, desires to have the door opened, or to have the body of the party flying there, he may, on denial, break open the house and execute his precept.

But in all cases, where the officer has a precept in favour of the commonwealth, or any criminal process, he may break open the door even of the owner of a house, first giving notice of the cause of his coming, and requesting that the door may be opened.

The officer need not shew his precept, unless desired, nor until the defendant has quietly submitted to the arrest; but on demand, he must shew his authority.

Arrest by civil process on Sunday was illegal at common law, and the officer liable to an action for false imprisonment. And by our statute of March 8, 1792, entitled "An act

providing for the due observation of the Lord's day, and repealing the several laws heretofore made for that purpose," it is enacted, section 9, "That 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."

But if a prisoner escape, he may be retaken on Sunday, with or without warrant, for the retaking is only a continuance of the former imprisonment.

The constitution of the United States, article 1, section 6, provides, that senators and representatives "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 or returning from the same."

By an act of congress of July 11, 1798, section 5, it is enacted, that the non-commissioned officers, musicians, seamen and marines, who are or shall be enlisted into the

service of the United States shall be exempted, during their term of service, from all personal arrests for any debt or contract. This may be considered as relating only to the marine service, as there is some difference in the provisions of the act of March 16, 1802, for regulating the land service. Section 23 of this act enacts, that no non-commissioned officer, musician, or private shall be arrested, or 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.

By chapter 1, section 3, article 10, of the constitution of Massachusetts, it is provided, that "no member of the house of representatives shall be arrested, or held to bail on mean process, during his going unto, returning from, or his attending the general assembly." But no such privilege is specially granted to senators or any other branch of the government.

Embassadors and foreign ministers, and their servants, are privileged by the law of nations from arrest, for any cause, civil or criminal. But consuls and agents for com-

mercial purposes from foreign nations are not so favoured.

By a statute of November 19, 1787, for the relief of poor prisoners, before cited, section 4, such prisoner, discharged according to the provisions of that act, is exempted from arrest on a new execution for the same debt, although his property continues liable.

The law protects all those whose presence is necessary in courts; so that if a suitor or a witness is arrested in the view of the court or out of the court, as he is attending the suit, or coming to or returning from the court for that purpose, on complaint thereof, the party will be discharged by the court, and the officer who made the arrest, and the plaintiff who procured it, are liable to punishment for contempt of court. But it must appear, that the party complained of knew the circumstances of the complainant's attendance, &c.

Jurors are protected for the same reason, as parties or witnesses.

The points of law under this head may be found in 5 Co. 91. 1 Vern. 306. Doug. 671. Cowp. 1. Cro. Jac. 485. Salk. 78. 6 Mod. 95. Grotius de Jure Belli ac Pacis Lib. 2. Cap. 18. 4 Bur. 2015. 2 Rol. Ab. 272.

BAIL.

Bail is when a party arrested by an officer is liberated by the officer's taking security for his appearance at the court when, &c. where, &c. and for his responding the judgment. The sureties, into whose hands the party arrested is delivered, are also called his bail.

The right of any subject to be bailed on civil process is derived from the common law, the birthright which our fathers brought from England, where it is founded on a statute of 23 Henry 6, made more than three hundred and sixty years ago. 2 Mass. T. Rep. 188.

The officer may take one person as security, but it is at his own risk; nor can the defendant punish him for refusing to let him to bail, unless two good and sufficient persons are offered as his sureties. Vide Stat. 23 Hen. 6. cap. 10. Cro. Eliz. 808.

The officer is liable to an action for false imprisonment, if he refuse to release a prisoner, if unexceptionable bail is offered.

Bonds are usually taken in double the sum, laid by the plaintiff as his damage.

The statute of June 30, 1784, "regulating bail in civil actions," relates more to the rights of parties than to the duty of the sheriff. By section 2 it is provided, that "if the creditor shall not, within thirty days next after the surrender of the principal, take him in execution, the sheriff shall discharge him upon his paying the legal prison-fees."

By a statute of February 27, 1796, entitled "An act relating to actions of ejectment and disclaimer, and for preventing strip and waste pending such actions," it is enacted, section 1, "That when any person shall be arrested in trespass and ejectment, or other real action, the defendant's own bond, and no other, shall be required for his appearance to answer the same," which is in fact no bail at all.

By a statute of March 7, 1804, in addition to the act regulating bail, made to afford similar remedies in civil actions before justices of the peace, as in other civil causes, on which subject doubts had been entertained, section 2, the bail, desirous of surrendering his principal according to the provisions of the law, is allowed to 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.

Section 3 requires the justice to make out, and deliver to the officer a warrant or mittimus, as prescribed in the statute, which formality is not requisite in other cases. But in this case, the officer must not act without such warrant as the statute directs the justice to give.

It also provides, that the principal shall be discharged on payment of the fees, unless, within thirty days after such surrender, if it be on *scire facias*, or within thirty days after final judgment, if on the original process, he be taken by the plaintiff in execution.

Section 4 makes it the duty of any officer, upon the request, as above described, to repair to said justice's court, to receive the principal; and also, that he shall receive from the bail the same fees as by law he may for committing any defendant to prison on mean process. It also gives him the same power, and imposes on him the same duty in the execution of such warrant, as he has to execute any writ or execution whatever.

RAISING THE POSSE COMITATUS.

By the common law the sheriff may raise the *posse comitatus*, or power of the county ; that is, so many men as are necessary for his assistance in the execution of his precept. Every subject of the government, except women, the clergy, and such persons as the officer would, in his discretion, not call on, is bound to attend him, under penalty of fine and imprisonment.

But in the service of mean process the officer need not take the *posse*, until he is resisted ; for his return on the precept of a rescue would excuse him, unless he might after the opposition have executed his precept by calling assistance. Yet it is otherwise in the service of executions ; for the officer must obey such a precept, and no opposition can excuse, except of public enemies, or the act of God. He therefore proceeds to obey his precept at his own peril, if he do not take assistance. Cro. Jac. 419. 2 Saund. 343.

In criminal cases his duty is pointed out in the before cited act of February 26, 1796, under the head of keeping the peace.

SERVING PRECEPTS.

It is in general true, that the officer may expect directions from his employer how to execute his precept, and in many cases, he must throw all the responsibility of his conduct on the plaintiff or his attorney ; yet as the officer may much better perform his duty, if he thoroughly understands it before hand, than if he blindly follow the course pointed out, the requisitions of our statutes and the principles of law relating thereto are here inserted. In business of most frequent occurrence, a man of common sense cannot mistake the command of his precept ; but in a more intricate service, it will be no injury to the officer to know his duty better than the lawyer, who drew his writ.

It is by the before mentioned statute of March 12, 1784, made the sheriff's duty to execute all precepts to him directed, issued from good and lawful authority. Under the present title some information will be afforded of the manner of executing his duty.

Attachment of real estate is by going upon the same with the precept ; or it may be good, by going on one field and attaching that and

others adjoining, without the officer's putting his foot upon each one ; but if the fields be separated from each other by any intervening land of another person, the officer should go upon each if practicable.

Attachment of goods is, by corporal touch, accompanied with a declaration, if necessary, of the cause of taking, according to the officer's precept. When goods are attached, they should be removed to a safe place by the officer ; or he should appoint some body to keep guard over them, if the attachment is expected to be soon removed and discharged. The goods are in the officer's custody, and he is bound to keep them as his own, and may be answerable to the party, if they are stolen, or any ways carelessly injured.

If the writ be against one of two partners, the officer may attach the partnership goods ; but he must sell only the debtor's proportion of them undivided, for that the vendee will be tenant in common with the other partner. 1 Show. 173. 2 Ld. Raym. 871.

Yet it is said, that the officer may take and sell all, and pay over to the other partner a share of the produce proportionate to his

share of the partnership effects. 2 Doug. 627. Yet I should doubt of the propriety of this.

By the before mentioned statute of October 30, 1784, entitled "An act prescribing forms of writs in civil causes, and directing the mode of proceeding therein," section 11, it is provided, "That all original writs issuing out of the supreme judicial court, or court of common pleas, shall, before they are served, be indorsed on the back thereof by the plaintiff or plaintiffs, or one of them, with his christian and surname, if he or they are inhabitants of this commonwealth, or by his or their agent or attorney, being an inhabitant thereof, and where the plaintiff is not an inhabitant of this commonwealth, then his writ shall be indorsed in manner aforesaid, by some responsible person who is an inhabitant of this commonwealth." The same section provides for the continuance of attachment on any goods or estate. "And all goods and estate attached upon mean process, for the security of the debt or damages sued for, shall be held for the space of thirty days after final judgment, to be taken in execution. And if the creditor shall not take them in

execution within thirty days after judgment, the attachment shall be void."

. But by an act of February 28, 1807, all attachments, made on the island of Nantucket, shall be held for the space of sixty days after final judgment, to be taken in execution.

By a statute of March 17, 1784, entitled "An act directing the issuing, extending and serving of executions," in case the creditor will levy his execution on the debtor's real estate, section 2 provides, that "the officer to whom the execution is directed and 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, 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 shewn to them, who shall appraise the same, to satisfy the same execution with all fees, and shall set out such estate by meets and bounds, and the officer

shall deliver possession and seizen thereof to the creditor or creditors, his or their attorney. And 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 debtors' 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, seizen or possession of such debtor or debtors' real estate held as aforesaid, or part thereof, to hold in common with the said other persons:" which execution with his doings thereon the officer must return into the clerk's office; and before or after such return, but within three months from the return day, it must be recorded in the registry of deeds.

Section 3 provides, "And when it so happens that the real estate extended upon, cannot be divided and set out by meets 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 seizen there-

of 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 at-torn and become tenant to 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 seizen and possession of the same to the creditor.”

Section 5 provides, “ That when any goods or chattels shall be taken to satisfy an execution issuing upon a judgment obtained, such goods or 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 first been advertised by the posting up notifications of the time and place of sale, forty-eight hours before the expiration of the four days, in the town or place where the sale is to be ; and the money arising 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. And 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."

By a statute of the same date with the last mentioned, entitled, " An act prescribing the method of satisfying judgments in favour of this commonwealth," it is enacted, " That upon all judgments already recovered, which remain unsatisfied, or that may hereafter be recovered, in the name or for the use and benefit of this commonwealth, for any sum or sums of money, in any of the courts of law within this commonwealth, a warrant of distress reciting such judgments respectively, shall issue thereon, which shall be directed to such officer or officers as writs of execution are by law to be directed to, who shall be thereby directed to levy the moneys mentioned and expressed in such warrant of distress,

on the money, goods or estate of such debtor or debtors, and for want thereof, on his or their body or bodies, and to commit him or them unto the common gaol in the county where apprehended; and in all such cases the said sum or sums of money mentioned and expressed in such warrant of distress (where the same can be done) shall be satisfied out of the moneys or personal estate of the debtor or debtors.

“ Section 2. *And be it further enacted,* That before sale be made of any personal estate by virtue of a warrant of distress to be issued as aforesaid, notice shall be given of the time and place of sale, by posting up notifications thereof, by the officer executing such warrant, in two or more public places in the town or plantation where the warrant is executed, (within which the sale shall be) four days at the least before the time of sale.

“ Section 3. *And be it further enacted by the authority aforesaid,* That when it shall be necessary to dispose of real estate to satisfy such warrant of distress, in whole or in part; the officer executing the same is hereby fully authorized, empowered and directed, to make, execute, acknowledge, and deliver to

the highest bidder, good and sufficient deed or deeds of any real estate sold at public vendue, in manner as hereafter expressed.

“ Sec. 4. *Provided always, and it is enacted by the authority aforesaid,* That the officer executing such warrant of distress, when real estate shall be taken as aforesaid, shall give public notice of the time and place of sale, by posting up notifications thereof in two or more public places in the town or plantation where the real estate lies, thirty days before the time of sale, and also in two or more public places in two adjoining towns. And where it shall so happen, that the sum for the satisfaction of which a warrant of distress shall be levied on any real estate as aforesaid, shall amount to the sum of *one hundred pounds*, the officer executing the same, shall, in addition to the notifications aforesaid, cause an advertisement of the time and place of such sale, to be published in some public newspaper printed in the county where such real estate lies, three weeks successively before the day of sale, if any such newspaper shall be there printed, but if not, then said officer shall cause advertisement, in manner aforesaid, to be published in a newspaper

printed in the commonwealth nearest the county where such land lies. And 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 completed."

Section 8 provides, "That in all cases where judgment as aforesaid shall be recovered against any person or persons, as debtor or debtors to any person or persons where [whose] estate or estates have been or may be confiscated, become forfeit, or be otherwise transferred to the use of the commonwealth, executions shall be levied in the same manner as is or may be by law provided in case of judgment, recovered by one individual against another in their private capacities respectively, any thing herein contained to the contrary notwithstanding."

By a statute of February 28, 1795, entitled "An act to enable creditors to receive their just demands out of the goods, effects and credits of their debtors, when the same cannot be attached by the ordinary process of law," directing the service of what are usually called trustee writs, section 1, it is enacted

that "the officer to whom such writ may be directed, shall serve the same by attaching the goods and estate of the principal in his hands and possession, 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 commonwealth, 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 trustee's 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 as aforesaid, shall be deemed a sufficient service; which service shall be made fourteen days at the least before the day of the sitting of the court, to which such writ is returnable."

The officer's duty will be understood in this, as in most other cases, from the words of his precept.

In levying the execution consequent upon this process, the officer must demand of the trustees, named in his precept, to deliver and pay him the money due and owing to the

principal debtor ; and by section 10 it is provided, "That 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, holden or bound to deliver to the principal, at a then future day, any specific article or articles whatsoever, other than money, such trustee shall be, and hereby is authorized and permitted, on demand made by the officer, having any execution in his hands, issued upon any judgment, recovered by virtue of this act, to deliver to him such specific article or articles, or so much and such part thereof, as may be necessary to satisfy such execution, with the legal fees thereon ; the value of such article or articles, as between the principal and trustee, to be estimated and ascertained by the appraisal of three disinterested and discreet men, one to be chosen by the trustee, one by the officer, and one by the principal, if he see cause, or if he neglect or refuse, then the officer shall appoint two of the said appraisers ; who shall all be sworn before a justice of the peace, in and for the county where such article or articles are to be delivered, faithfully and impartially to appraise the same : And the said justice and

appraisers, shall make, on such execution, a certificate of their respective doings: *Provided however*, that in all cases where, by the terms of the contract between the principal and trustee, any mode is pointed out for ascertaining the value of such specific articles, the principal and trustee, or either of them, may have their value thus 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, as is already by law provided, the overplus moneys, if any there should be, 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."

By the statute of February 17, 1798, entitled "An act relating to suits against defendants out of the state, also to giving notice to defendants sued," it is enacted, "That 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, four-

teen days before the day of the sitting of the court where such attachment is returnable; and in case the defendant was at no time an inhabitant or resident within this commonwealth, then such summons to be left with his or her tenant, agent or attorney; and the serving thereof in either case, to be certified by a sworn officer that executed the attachment, or by some other sworn officer, or by affidavit made in court by the person that delivered the same, and by one other credible witness then also present: Otherwise the writ shall abate.

“2. *Be it enacted by the authority aforesaid*, That 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 true copy thereof at his or her house or place of last and usual abode, attested by such officer, fourteen days before the day of the

court's sitting whereto the same process shall be returnable.

“ 3. *Be it enacted by the authority aforesaid*, That in all actions wherein the process shall be by original summons as aforesaid, and in which the defendant was at no time an inhabitant or resident within this commonwealth, 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 day of the court's sitting whereto the same process shall be returnable.

“ 4. *Be it enacted by the authority aforesaid*, That in actions of dower and other real actions, wherein it shall so happen that the possession of land or buildings shall be demanded in the writ not of the tenant in the actual possession or occupancy thereof, in addition to a service on the defendant in the writ or summons as aforesaid, there shall be a service on such tenant or occupant in possession, the like number of days before the day of the court's sitting, by the proper officer's reading to him or her the same writ or original summons, or leaving a like attested copy at his or

her house or place of usual abode on the premises, which shall also be certified by the proper officer, or the writ shall abate."

By the statute of March 1, 1799, entitled "An act in addition to an act, entitled 'An act for giving remedies in equity,'" it is enacted, section 3, "That all rights in equity of redeeming real estate mortgaged, shall be liable to be attached on mean process, and taken in execution upon judgment for the payment of the just debts of the mortgager or owner; and the officer having such execution is hereby authorized 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, in manner as is herein after expressed.

"Sec. 4. *Provided always, and be it further enacted,* That 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 the said time and place of sale, by posting up notifications thereof in two or more public places in the town, district or plantation in which such mortgaged

estate is situated, and also in one or more public places in two adjoining towns, thirty days at least before the time of sale ; and 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. And 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 in manner hereinafter described. And 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 completed. And the surplus moneys (if any there shall be) arising from such sale, beyond satisfying the debt, costs and necessary intervening charges, the officer shall return to the debtor."

By a statute of March 8, 1805, entitled
"An act directing the mode of attaching on

mean process, and selling by execution shares of debtors in incorporated companies," section 1, it is enacted, that the share or shares or interest of any person in any turnpike, bridge, canal or other company, which has been or may be incorporated by the legislature of this commonwealth, with all the rights and privileges appertaining to such shares, may be attached on mean process and taken on execution; and when any such shares or interest shall be attached on mean 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 be left with the clerk and treasurer or cashier of such company, and so many of said shares, or so much of said interest may be sold on said execution at public vendue to the highest bidder, as shall be sufficient to satisfy the same and the charges of the sale, after notice shall have been given of the time and place of sale.

Section 2 provides, that the attachment of the shares or interest, shall hold them and all dividends accruing after such attachment until the expiration of thirty days after the rendition, &c. and an attested copy or copies

of the execution left with the clerk and treasurer, or cashier of the corporation, and an advertisement of the time and place of sale, being once published within said thirty days, shall be deemed a taking such shares or interests in execution, pursuant to the attachment on the original writ.

Section 3 provides, that in making sale of any such shares or interest, the officer shall give notice of the time and place of sale to the debtor in writing, by leaving it at his last and usual place of abode, if within his county, and public notice of the said time and place of sale, by posting up notifications thereof in one or more public places in the town, district or plantation where such sale is to be made, and also in one or more public places in the two adjoining towns, thirty days at least before the time of sale, and further shall cause an advertisement, expressing the time and place of sale, and against whom such execution shall have issued on which such shares or interests have been taken, to be published three weeks successively before the day of sale, in some public newspaper printed in the county where the sale is to be made, if any such be therein printed, and if

not, then in some public newspaper in the nearest county. And in case the shares or interest so notified for sale shall not, for want of purchasers, be disposed of at the time appointed for sale, the officer shall adjourn the sale for a time not exceeding three days, and from time to time, until the sale be completed. The surplus money, after satisfying the execution and all charges, the officer shall pay to the debtor, or deposit with the treasurer or cashier.

Section 4, makes it the duty of the clerk or cashier to give the officer a certificate of the number of shares or amount of interest of the debtor, and therein express the numbers or other marks by which such shares or interest are distinguished, whenever thereto requested by the officer exhibiting a writ or execution against such person.

By section 6 of this act it is provided, that whenever an officer shall have in his hands any money arising from the sale of such shares or interests, or from the sale of any equity of redemption, or personal property, more than sufficient to satisfy the execution or executions, on which such property was taken and sold, he shall apply the same, or

such part as may be necessary to the payment of any other execution which he may have against the same debtor, or which may be delivered to him before he has paid over such surplus money. But if such share or interest, equity of redemption, or personal property has, before such sale, been attached on mean process other than that on which such execution shall have issued, or has been taken on some other execution, and the officer be duly notified of it, he shall hold such surplus money subject to such attachment or execution, and shall apply it to pay the execution issuing on the judgment that may be rendered on such mean process, and delivered to him within thirty days after the rendition of such judgment, or to the payment of the execution by which such shares or interest, equity of redemption, or personal property had been taken, according to the priority of such attachment, or taking in execution.

By a statute of March 13, 1806, entitled "An act to exempt certain goods and chattels of debtors from attachment and execution," which may well be called a BLESSED STATUTE, it is enacted, section 1, that 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 for his trade, or occupation, the bibles and school-books, which may be in actual use in his or her family, together with one cow, and one swine, shall be altogether exempted from attachment and execution ; and no civil officer shall attach, levy upon, or take the same, or any part thereof, either upon mean process or execution. Provided nevertheless, that the beds and bedding exempted as aforesaid, shall not exceed one bed, bedstead, and necessary bedding to two persons, and household furniture the value of fifty dollars.

By the statute of June 22, 1793, entitled "An act for regulating and governing the militia of the commonwealth of Massachusetts, and for repealing all laws heretofore made for that purpose ; excepting an act entitled "An act for establishing rules and articles for governing the troops stationed in forts and garrisons, within this commonwealth, and also the militia, when called into actual service," it is enacted, that, "every citizen enrolled and providing himself with arms, ammunition and accoutrements, requir-

ed as aforesaid, shall hold the same exempted from all suits, distresses, executions, or sales for debt, or for payment of taxes."

By the statute of July 3, 1782, entitled, "An act establishing courts of common pleas," it is enacted, that "all original processes in the said courts shall be summon, capias, or attachment, which shall be served and executed fourteen days before the day of the sitting of the court whereinto they are returnable."

But by the statute of March 10, 1784, entitled, "An act for the better managing lands, wharves, and other real estate, lying in common," it is enacted, "That when it shall happen that suit shall be brought against any towns, precincts, parishes or villages, or against the proprietors of any common or undivided lands or other estate, the plaintiff bringing forward such suit, shall cause the clerk of such towns, villages, precincts or proprietors, or one or more of the principal inhabitants or proprietors respectively, to be served with a copy of the writ or summons, at least thirty days before the day of the sitting of the court to which the same shall be returnable."

But the statute of March 11, 1784, entitled "An act describing the power of justices of the peace in civil actions," gives power to any justice in civil causes, "to grant summons, *capias*, and attachment, at the request of any person applying for the same, directed to some proper officer within the same county, empowered by law to execute the same. And such summons or *capias* and attachment shall be duly served by such officer, seven days at the least before the day therein set for trial."

By the statute of July 3, 1782, entitled "An act establishing a supreme judicial court within the commonwealth," it is enacted, that "any two justices of the same court may, by writ under their hands and seals, adjourn the same court to such further day as shall be expressed in the same writ; and the sheriff of the county, or his deputy, shall read such writ audibly in the court-house, or place where the court was to be holden, and post up an attested copy thereof in some public and conspicuous place there, and shall cause publication to be made of the same in some other of the most public places in the county."

Similar power is given to the court of common pleas by the above mentioned statute, and similar duty required of the sheriff.

By a statute of February 3, 1798, entitled "An act prescribing the mode of taking depositions, and administering oaths and affirmations," section 2, after empowering a justice to issue his notification in that behalf, enacts, that "the service of this notification on the said adverse party, or his attorney, by leaving an attested copy thereof, at his last and usual place of abode, allowing time for his attendance after being notified, not less than at the rate of one day, Lord's days exclusive, for every twenty miles travel, and such service being proved by the affidavit of a disinterested witness, or by the return on said notification of the sheriff or his deputy of the county, or of the constable of the town where the said adverse party or his attorney shall live, shall be deemed sufficient notice."

SHERIFF'S FEES.

Under this head, it may not be improper to warn deputies, that excessive fees, not allowed by law, have been very frequently charged by their predecessors; but that custom will not sanction injustice. Some officers have returned on precepts, when they had no direction to make special services, that they have attached a chip, or other thing of no value, and left a summons, as within directed, fees fifty cents, which is illegal, and subjects them to punishment.

By the statute of February 13, 1796, entitled "An act establishing and regulating the fees of the several officers, and other persons hereafter mentioned; and for repealing the laws heretofore made for that purpose," section 1, it is enacted, that the sheriff shall receive, "for the service of an original summons or *scire facias*, either by reading the same, or by copy, on one defendant, *thirty cents*, if on more than one defendant, then for each other defendant so served, *thirty cents*."

For the service of a *capias* or attachment on one defendant with summons, *thirty cents*; if served on more than one defendant then

thirty cents for each defendant so served : And if the officer, by the written direction of the plaintiff or plaintiffs, his or their agent or attorney, shall make a special service of any such writ, either by attaching property or taking the body therefor, for such special service on each defendant on whom such writ shall be so served, the sheriff shall be allowed *fifty cents*.

“ And 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.

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

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

“ The fees for collecting the costs on a writ of possession, the same as on executions in personal actions.

“ Serving a warrant, *thirty cents*.

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

“ Summoning witnesses in criminal cases, *ten cents* for each witness, and travel as in civil causes, unless in special cases, when the court may increase the fee to what they may judge reasonable.

“ 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.

“ Levying executions in personal actions, for the first *one hundred dollars*, *four cents*; for every *dollar* above that, and not exceeding *two hundred dollars*, *two cents* for every *dollar*; and for all above *two hundred dollars*, *one cent* for every *dollar*; travel for the services of such executions, and also of mean processes or warrants 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 of service 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.

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

“And no sheriff shall demand or receive from any of his deputies, more than at the rate of *twenty-five per cent.* on the amount of fees for travel and service.

“Every trial on a court of record, *fifteen cents.* Every default, *eight cents.*

“For returning the certificates of votes of the several towns for a governor, lieutenant-governor, counsellors and senators, to the

secretary's office, *eight cents* a mile, computing from the place of his abode, to the secretary's office, to be paid out of the treasury of the commonwealth ; and but one travel shall be allowed for the whole.

“ To the officer attending the grand jury, for each day's attendance, *seventy-five cents*.

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

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

“ To each appraiser of real estate, for extending execution or assigning dower, *one dollar* a day, and travel at the rate of *four cents* a mile going out and returning home.

“ For every deputy-sheriff or constable who shall attend the supreme judicial court, or court of general sessions of the peace or common pleas, by their order, *seventy-five cents* a day, to be paid out of the county treasury.

“ And for the encouragement of the sheriff in each county to take and use all possible care and diligence for the safe keeping of prisoners committed to his custody, he shall have such salary allowed him, as the justices

of the court of general sessions of the peace within the same county shall order, not exceeding *forty dollars* a year for the county of Suffolk, and not exceeding *twenty-five dollars* a year for any of the other counties within the commonwealth, to be paid out of the treasury of such county.

“ To 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. ”

Section 5 enacts, “ That every officer or other person upon receiving any 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. ”

Section 6 enacts, “ That 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 the sum of *thirty dollars* for every offence, to be reco-

vered with costs, either by presentment in the supreme judicial court, or court of general sessions of the peace, in which case the forfeiture shall accrue to the commonwealth ; or by action of debt in the court of common pleas, in which case the forfeiture shall be for the use of any person who may sue for the same : But no such presentment or action shall be sustained, unless made or commenced within one year next after the time when the offence may be committed."

CORONER.

APPOINTMENT OF CORONER.

CORONERS are nominated and appointed in the same manner as sheriffs.

They are required to take the same oath.

CORONER'S DUTY.

The duty of the coroner is almost wholly comprised in the statute of March 12, 1784, entitled "An act describing the duty and power of coroners," which provides, section 1, "That every coroner within the county for which he is appointed, shall serve all writs and precepts when the sheriff or either of his deputies shall be a party to the same, and shall, if present in court, return jurors *de talibus circumstantibus* in all causes where the sheriff of the county shall be interested or related to either party; they shall take

inquests of violent deaths committed, and casual deaths happening within their respective counties, and shall, before they enter upon the duties of their office, be sworn to the faithful discharge thereof, and give security before they proceed to act, in the same manner as sheriffs by law are obliged to do.

“ Sec. 2. *And be it further enacted by the authority aforesaid,* That 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 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 eighteen in all, to appear before him at the time and place in such warrant mentioned and expressed; which warrant shall be in form following:

Suffolk, ss.



To either of the constables of B—, in the said county of S—, Greeting.

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

“ And 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. And every constable failing unnecessarily of executing such war-

rant, or of returning the same as aforesaid, shall forfeit the sum of *three pounds*; and every person summoned as a juror as aforesaid, that shall fail of appearance without having reasonable excuse therefor, shall forfeit *forty shillings*, 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. And the coroner shall swear twelve or more of the jurors that shall appear, and shall give the foreman (by him appointed) his oath upon view of the body, in form following :

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

“ And then shall swear the other jurors, in form following :

SUCH oath as your foreman hath taken, you, and each of you, shall well and truly observe and keep. *So help you GOD.*

“ And 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 of mischance, or accident ; and if of felony, who were principals, and who were accessaries, with what instrument he was struck or wounded, and so of all prevailing circumstances which may come by presumption ; and if by mischance or accident, whether by the act of man, and whether by hurt, fall, stroke, drowning, or otherwise : To inquire of the persons who were present, the finders of the body, his relations and neighbours, whether he was killed in the same place where he was found, and if elsewhere by whom, and how he was brought from thence ; and of 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.

And every coroner is further empowered to send out his warrant for witnesses, commanding them to come before him to be examined, and to declare their knowledge concerning the matter in question, and he shall administer an oath to them in form following :

YOU solemnly swear, that the evidence which you shall give to this inquest, concerning the death of *A. B.* here lying dead, shall be the truth, the whole truth, and nothing but the truth. *So help you GOD.*

“ 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 holden within or for the same county, there to give evidence accordingly, and commit to the common gaol of the county such witness or witnesses as shall refuse to recognize as aforesaid, and shall return to the same court the inquisition, written evidence, and recognizance by him taken. And the jury having viewed the body, heard the evidence, and made all the

inquiry within their power, they shall draw up and deliver unto the coroner their verdict upon the death under consideration, in writing, under their hands and seals, in form following :

Suffolk, ss. { AN inquisition taken at
 { B within the said county of *S* the day of in the year of our Lord before *W. G.* gentleman, one of the coroners of the said county of *S* upon the view of the body of *A. B.* there lying dead, by the oaths of yeomen, good and lawful men, who being charged and sworn to inquire for the commonwealth, when, how, and by what means the said *A. B.* came to his death, upon their oaths do say

“ [*Then insert how, when, and by what means, with what instrument he was killed, and if it appears that he hath been murdered by a person known, then the inquisition shall be concluded in this form :*] to wit.

“ And so the jurors aforesaid, upon their oaths aforesaid, do say, that the aforesaid *A. B.* in manner and form aforesaid, then and there of his malice aforethought, did kill and murder, against the peace and dignity of the commonwealth, and the laws of the same,

“ [*If it appears to be self-murder, then shall the inquisition be concluded thus :*]

“ 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.

“ [*And if it appears that the death was by misfortune*]

And so the jurors aforesaid, upon their oaths say, that the said *A. B.* in manner aforesaid, came to his death by misfortune.

“ [*If innocently by the hands of any person*]

“ The jurors upon their oaths aforesaid do say, that the aforesaid *D. R.* the aforesaid *A. B.* by misfortune, and against and contrary to the will of him the said *D. R.* in manner and form aforesaid, did kill and slay. In witness whereof the said coroner and jurors to this inquisition have set their hands and seals, the day and year above said.

“ And upon any inquisition found before any coroner of the death of any person, by the felony or misfortune of another, he shall speedily inform 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."

By a statute of June 28, 1792, entitled "An act authorizing coroners to execute writs and precepts, when the office of sheriff may be vacant," it is enacted, "That, at all times hereafter, when the office of sheriff in any county may be vacant, by death, resignation, removal, or otherwise, the several coroners of such county be, and they hereby 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 legally qualified, and such coroners shall have notice thereof."

In addition to the act first mentioned under this title is a statute of February 6, 1807, providing, that 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 commonwealth, on account of said expenses, being first examined and allowed by the general court, 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 commonwealth, according to the best of his knowledge and belief; otherways, 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 commonwealth; and the expenses of said inquisition should be paid to the coroner by the county in which the inquisition shall be taken.

The coroner must obey the same directions in the service of all writs and executions and other precepts to him directed, as have been given to the sheriff. He must beware of arresting any sheriff, but need not be afraid of imprisoning a deputy, if he have a precept against him.

The coroner is bound to settle his account

of fines in the same manner as the sheriff by the before cited statute of March 8, 1792.

By the before mentioned statute of February 16, 1786, (vide sheriff's duty in collecting taxes) in case of the deficiency of the sheriff or his deputy, a warrant may be issued by, &c. against, &c. which the coroner must serve.

By the statute of February 20, 1786, mentioned under the same title with the above, it is provided, that where any warrant shall be against, &c. it shall be directed to and served by a coroner of the same county.

CORONER'S FEES.

The coroner's fees are settled by the before cited act of February 13, 1796. "For serving a writ, summons, or execution, and for collecting the monies due thereon, and for travel in returning precepts and inquisitions, the same allowance as is by this act allowed to sheriffs for similar services. For a bail bond, *twenty-five cents*.

Every trial where the sheriff is concerned, *twenty-five cents* ; and the same for attending the jury therein.

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

Travel and expense for taking an inquisition, *one dollar* a day, to each of the jurymen for their travel, if above four miles 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.

CONSTABLE.

APPOINTMENT OF CONSTABLE.

CONSTABLES are chosen annually in the month of March or April, in town meeting, by ballot or otherwise ; and in most cases, persons, chosen to this office are compelled to serve, as appears by statute of March 23, 1786, entitled " An Act for regulating towns, setting forth their power, and for the choice of town-officers, and for repealing all laws heretofore made for that purpose." " Sec. 3. *And be it further enacted,* That no person shall be obliged to serve in any town office two years successively ; nor shall any person in commission for any office, civil or military, church officer, member of the council, senate or house of representatives, for the time being, nor any one who has served in the office of a constable or collector of any town, district, parish or precinct, within seven years, be obliged to serve in the office of constable ; and every person chosen to the office of con-

stable, and not exempted as aforesaid, who shall refuse to take the oath to that office prescribed, and to serve therein, if he be able in person to execute the same, shall forfeit and pay to the use of the town, the sum of *five pounds*, and if in Boston, Salem, or Newburyport, *ten pounds*, and shall, if present, forthwith declare his acceptance or refusal; and in case he shall not declare his acceptance, the town shall proceed to a new choice, and so from time to time until one shall accept and be sworn; and any person who shall be present and declare his refusal to serve in the office of constable, or who shall neglect, after being summoned as aforesaid, to take the oath of office, for the space of seven days next after such summons, and shall also neglect to pay the fine aforesaid, shall, upon the application of the town-treasurer, be summoned before the court of general sessions of the peace in the county in which such town lieth; and a certificate under the hand of the clerk, or two of the selectmen, certifying that such person was legally chosen to the office of constable, shall be admitted as evidence of the fact; and if the person summoned shall make default, or appearing, shall not shew

sufficient cause to the court for his refusal, the court shall order a warrant under the seal thereof, directed to any of the constables of the same town then in office, to levy the fine by distress and sale of the offender's goods and chattels, returning the overplus (if any) be together with the costs arising on such prosecution; and for want of goods and chattels, to commit the delinquent to prison until the same shall be paid."

The oath to be taken by every constable is as follows :

"WHEREAS you, *A. B.* are chosen constable within the town of *C.* for one year now following and until other be chosen and sworn in your place, do swear, that you will carefully intend the preservation of the peace, the discovery and preventing all attempts against the same; that you will duly execute all warrants which shall be sent unto you from lawful authority, and faithfully attend all such directions in the laws and orders of court, as are or shall be committed to your care; that you will faithfully and with what speed you can, collect and levy all such fines, distresses, rates, assessments, and

sums of money, for which you shall have sufficient warrants according to law ; rendering an account thereof, and paying the same according to the 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 favour or displeasure. So help you GOD."

But in the town of Boston constables are selected in a different manner. Inquiry of the selectmen of the town is necessary.

CONSTABLE'S DUTY.

The greater part of a constable's duty, regulated by the statutes of this commonwealth, is on the subject of collecting taxes, in which he must, in every instance, I think, without exception, behave as is required of collectors. Vide collector's duty.

By a statute of February 21, 1783, entitled "An act for encouraging the killing of wolves," section 1, it is provided, "That whosoever shall hereafter, within this commonwealth, kill any grown wolf or wolf's whelp (other than such as shall be taken out of the belly of any bitch wolf) and bring the head thereof unto the constable of the town in which such wolf or wolf's whelp shall be killed, or to the constable of the town next adjacent unto the place of killing such wolf or wolf's whelp, without the bounds of any township, the constable, in presence of one or more of the selectmen, shall cut off both the ears of the same, and cause them to be burned. And such selectman or men, and constable, shall give the party a receipt for the said head, expressing whether it be a grown wolf, or a whelp."

The constable must execute the warrant of the coroner, in case of a dead body's being found by him, as directed by the statute of March 12, 1784, for which see coroner's duty.

By the statute of March 23, 1786, before cited under the title, appointment of constable, section 2, it is provided, that a warrant,

together with a list of the names, &c. may be directed by the town clerk, or two of the selectmen to the constable, requiring him "within three days after receiving such warrant, to notify and summon each of the said persons to appear before the town-clerk within seven days from the time of such notice, to take the oath by law prescribed to the office into which they are severally chosen ; and every constable shall, at the expiration of the term 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 a neglect of which, he shall forfeit and pay the sum of *forty shillings*, to be 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."

Section 5 enacts, "That when there shall be occasion of a town-meeting, the constable or constables, or such other person as shall be appointed for the purpose, by warrant from the selectmen, or the major part of them, shall summon and notify the inhabitants of such town to assemble at 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." It also provides for the calling of a town meeting by a justice of the same county, issuing his warrant under his hand and seal, directed to the constable or other person.

At all town-meetings, the constable must obey the direction of the moderator in preserving order, &c.

The constable's power and duty in preserving the peace are similar in some respects to that of the sheriff, which see. By a statute of January 10, 1789, entitled "An act for erecting workhouses, for the reception and employment of the idle and indigent," section 6, power is given to two or more of the overseers, to commit to the workhouse, by writing, under their hands, any person, &c. "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."

The constable is bound to settle his account of fines in the same manner as the sheriff by the before cited act of March 8, 1792.

By a statute of February 13, 1796, before cited, commonly called the fee bill, section 3, inconsistent as it may appear with the object of the statute, as declared in the title, enacts, "That any constable in any town or district within this commonwealth, be and he hereby is authorized and empowered to serve upon any person or persons in the town or district to which he may belong, any writ, summons or execution, in any personal action, where the damage sued for or recovered shall not exceed *seventy dollars*, and return thereof to make to the court to which the same may be returnable."

By the statute of June 25, 1789, entitled "An act prescribing the form, and directing the mode of process, to be adopted in replevying of cattle or beasts distrained, and also of goods and chattels," it is provided, that writs of replevin, "where the sum does not exceed *twenty pounds*, may be directed to a constable, and by him executed."

A statute of February 26, 1796, before cited, contains this provision: "Whereas doubts have arisen whether a constable, unless empowered by statute, can lawfully convey any person by him apprehended, or things

taken by writ or warrant to him directed, any farther than through his town or district :

“ 4. *Be it further enacted*, That any constable of any town or district within this commonwealth, 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 gaol or house of correction of the county where such constable is an inhabitant, according as in the writ or warrant may be directed.”

The constable's duty in obeying warrants of justices, in case of infectious sickness, will be found under the head of sheriff's duty in that behalf.

Notice of the taking of depositions may be served by a constable. Vide sheriff—service of precepts.

By the statute of March 10, 1797, entitled “ An act for keeping watches and wards in towns, and for preventing disorders in streets and public places,” section 2, it is provided, that justices of the peace, together with the selectmen of each town and district, and in

such towns and districts where no justice of the peace dwells, the selectmen alone shall have power to direct a suitable watch, and "to give orders in writing accordingly, signed by a major part of such justices and selectmen, or selectmen alone, as the case may be, directed to any constable or constables of the town or district, 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 manner as shall be required; and in the warning thereof, to take care that some able householders or other sufficient persons be joined in each watch or ward. And 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 not reasonable satisfaction therein, then to secure, by imprisonment or otherwise, all such disorderly and suspicious persons, to be safely

kept until morning ; then to carry them before one of the next justices of the peace, to be examined and proceeded against according to the nature of their offences as is by law directed. And each constable, when attending watch or ward, shall carry with him the usual badge of his office."

By the jury law of March 12, 1808, section 4, the constables of the several towns, receiving the venires from the sheriff, shall "notify the freeholders and other inhabitants, in their towns, qualified to vote in the election of representatives, and particularly the selectmen 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 setting [sitting] of the court to which the venire shall be returnable."

Section 6 requires "the constable to notify the persons thus 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 being 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 doing thereon."

Section 7 empowers the court to issue venires, and, when jurors are drawn, pursuant thereto, the constable must notify them to attend immediately on the court. This will, of course, happen when the court finds a deficiency of jurors, drawn in the above directed manner.

Section 13 says, the way of notifying the inhabitants to assemble, shall be as heretofore practised; but any town may direct a different mode.

Section 17 empowers the court to fine any constable neglecting his duties in this behalf.

By the first section constables are exempted from serving as jurors.

CONSTABLE'S FEES.

Vide sheriff's fees.

COLLECTOR OF TAXES.

A STATUTE of March 16, 1786, entitled "An act for the choice and appointment of collectors of rates and taxes, and for ascertaining their power and duty," provides, "That the qualified voters of any town or district, at the same 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 or district, 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 or district shall collect and gather such rates and taxes; and every collector of taxes, or constable, shall have a warrant from the select-

men 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; and 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, district or plantation, shall nominate and appoint, at the charge of such town, district, 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."

COLLECTOR'S POWER AND DUTY.

By the statute of March 20, 1783, entitled "An act more effectually to enable constables and collectors of taxes to collect assessments in certain cases," it is provided, "Whereas towns, districts and plantations, in certain instances, are by law authorized to assess the

inhabitants adjacent to such towns, districts and plantations, their proportion of the public taxes; and whereas doubts have arisen, and may hereafter arise, whether constables and collectors are by law authorized to command assistance when out of the limits of their respective towns: Therefore,

“Sec. 1. *Be it enacted by the senate and house of representatives in general court assembled, and by the authority of the same, That* when and so often as any constable or collector of public taxes shall have any list of 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, district 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, districts 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."

Section 2 subjects any person neglecting or refusing such aid to a penalty.

By the statute of July 5, 1783, entitled "An act to provide for the collection of taxes in cases where the constables or collectors appointed for that purpose have removed or may remove themselves out of this commonwealth," it is enacted, section 1, "That where any constable or collector in any town, precinct or parish, within this commonwealth, 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 precinct or parish (as the case may be) is about to remove out of this commonwealth 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, or committee of such

precinct or parish, on their own motion, or at the request of their respective assessors or treasurers, to call a town, precinct 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 has 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, who, upon non-acceptance, shall be liable to the same fine as if he had been originally chosen in the month of March, and the town, parish or precinct, shall proceed to a new choice, and so *toties quoties*, until one is chosen who shall accept, and be sworn accordingly; and the assessors shall make out a new warrant under their hands and seals, 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 the collector was to whom they were first committed.

“ Sec. 2. *And be it further enacted by the authority aforesaid,* That if any constable or collector so removing or intending to remove himself out of this commonwealth, shall refuse to deliver the bill or bills, of rates or assessments committed to him to collect, and all monies 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 *sixty pounds*, to the use of the town, precinct or parish of which he was constable or collector, to be recovered by such town, precinct 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 by the

law of this commonwealth is already provided."

By the statute of March 23, 1784, entitled "An act to enable the inhabitants of the several towns and plantations within this commonwealth, to ascertain from time to time the amount of moneys received by their respective collectors of public taxes, and what payments they have made to the treasurer of the commonwealth," it is enacted, section 1, "That 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.

"Sec. 2. *And be it further enacted by the authority aforesaid,* " That 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.

“Sec. 3. *And be it further enacted by the authority aforesaid,* “That whenever the time fixed by law for collecting any tax shall have expired, the treasurer of this commonwealth 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 any further order from the general court; any law or resolve to the contrary notwithstanding.”

By the before mentioned statute of March 16, 1786, section 2, it is enacted, “That 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, district, plantation, precinct or parish, 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, district, plantation, precinct or parish, forty-eight hours before the sale, and after the 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; and 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 shew 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 gaol 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.”

Section 5 provides, “ That 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, precinct, 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 commonwealth, he may be

found, and upon refusal or neglect to pay the same, to distrain the said person by his goods or chattels as aforesaid ; and for want of such distress, to commit the party to the common gaol of the county where he shall be found, there to remain until payment be made."

Section 6 provides, " That if any owner or proprietor of land or other real estate shall remove out of the town, district, plantation, precinct, or parish, where said land, or other real estate lies, after the same is assessed, to some other place within this commonwealth or out of the limits thereof, and shall neglect or refuse to pay the said assessment by the space of three months, from and after the time of such removal ; and if the collector or collectors, to whom such assessment shall be legally committed, cannot, within the said three months, find any personal estate belonging to such person so removed sufficient to pay the same, then such collector or collectors shall proceed to sell so much of the said land or other real estate, as will amount to the assessment aforesaid, together with the charges of such sale, in the same manner as is herein after provided for the sale of lands

belonging to non-resident proprietors for the payment of taxes."

Section 7 provides, "That 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 commonwealth, to the collector thereof, he shall advertise in the public newspapers of the printer to the general court 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; 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; and where the name of the place in which such lands lie, may have been altered by any act of this commonwealth, within 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, and in three of the adjoining towns, at least, for the term of three weeks previous to the time appointed for such sale ; 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 land so sold, within any time for the space of two years from the time of such sale."

Section 8 provides, " That 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 or dweller in any town, district or plantation, within this commonwealth, 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 payment of the same, it shall and may be lawful for the constable or collector of the same town, district 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 ; and when the constables or collectors be anew chosen and sworn, in any town, district, plantation, precinct 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."

Section 9 provides, "That if any of the collectors of the state, county, town, district, precinct 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 that all persons so required who shall refuse their aid and assistance, shall severally pay a fine to the poor of the town, district, or plantation where the offence may arise, not exceeding *forty shillings*, 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 gaol of the county for the space of forty-eight hours."

Section 10 provides, "That where the owner or tenant of any improved lands, liable to pay taxes, shall not reside, or be an inhabitant of the town, district, plantation, precinct, or parish in which such lands lie, and no stock, corn or hay, can be found upon the said lands, whereof the constable or collector may make distress to satisfy such sum or sums, as from time to time such lands shall be assessed, either to the state, county, town, district, plantation, precinct, or parish, in such case any justice of the peace in the county where the owner or tenant of any such lands lives, upon application to him made, in writing, by the constable or collector, to whom the list, wherein such lands shall be assessed, shall be committed, and upon sight of the same, or an authenticated copy thereof, may and hereby is empowered and required to grant a warrant unto the constable of the town or place where such occupant dwells or resides, to distrain such owner or occupant, by his goods or chattels, the full sum at which the said lands are set in such list or assessment, with the charges occasioned by making such distress; and to satisfy the same by sale thereof, returning the overplus,

if any there be, to the owner; and in case no goods or chattels can be found, whereon to distrain, to commit the party to the common gaol of the county, there to remain until he pay and satisfy the sum or sumssso assessed, with the charges."

Section 11 provides, "That 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 custody until he shall pay his rate or assessment as aforesaid, and charges of imprisonment, with *two shillings* for the copy of the warrant."

Section 12 invests plantations, which are by the general court ordered to pay taxes, with all the powers of towns, relating to the collection of taxes.

Section 13 subjects them, in case of neglect, to the same penalties as are provided in the case of deficiency of towns in this behalf.

Section 14 provides, " That in all cases where any person or persons who may be taxed for any real estate in their possession, may not be owners or proprietors of such estate, it shall be the duty of every collector on whose rate-bill the name or names of any such person or persons shall be borne, to demand, as soon as may be after such bill shall be regularly committed to him, the full amount of the taxes that may be therein assessed upon such person or persons respectively; and that all cattle, sheep, horses, swine, or other stock, and also all the produce of any such estate which then, or within nine months from the time such assessment shall be committed as aforesaid, shall or may be found on the premises belonging to the owner or proprietor of such estate, or to any tenant thereof taxed as aforesaid, shall be liable to be

taken and disposed of by public auction, in manner as is provided by law, in case of distress taken for taxes in discharge in part or in whole of any sum or sums assessed, upon any such person or persons as aforesaid."

Section 15 provides, "That if any stock or produce which may be taken and disposed of as aforesaid, shall be the property of the proprietor or owner of the land assessed as aforesaid, in every such case such person or persons assessed as aforesaid shall be held to make full satisfaction to the owner or proprietor of such stock or produce, and the collector making distress shall not be chargeable with the same.

"*Provided always*, That if the person or persons assessed as aforesaid shall remain on such estate, or in the town, district, parish, precinct or plantation, where the same may lie, for the space of nine months next after the rate-bill shall be committed to any such collector as aforesaid, the said collector shall have no other remedy than against the person, or property of the person or persons assessed as aforesaid, unless it shall appear, that there was no sufficient distress to be found upon the premises within that time, and that such

collector was unable to collect the sum or sums due from the person or persons assessed as aforesaid within the like term; in which case it shall and may be lawful for such collector or collectors to proceed to sell so much of said real estate as may be necessary to discharge the said assessment and charges, in the same manner as is hereinafter provided for the sale of lands belonging to non-resident proprietors for the non-payment of taxes. *Provided* such sale shall be made within the term of one year from the time such tax shall be committed to such collector or collectors, and not afterwards."

Section 16 provides, "That it shall be in the power of any precinct or parish within this commonwealth, some time in the month of March, annually, at the time they choose other precinct or parish officers, to choose one or more person or persons to serve as collector or collectors of all such rates or assessments as shall be granted or agreed upon by such precinct or parish, who shall be duly sworn to the faithful discharge of the trust reposed in him or them; and any person that shall be chosen into the office of a collector as aforesaid, and shall refuse to ac-

cept thereof, or deny or neglect to take the oath by law required, shall forfeit and pay unto the treasurer of such precinct or parish, for the use of such precinct or parish, the sum of *five pounds*, to be sued for and recovered in the same manner fines are recovered from persons refusing to serve in the office of a constable in any town or district; *Provided* no person in commission for any office, civil or military, church officer, or member of the council, senate or house of representatives, selectmen, town-clerk, town-treasurer or assessors, for the time being, nor any other person, that has served as constable or collector for himself or his own turn, within the space of seven years, shall be obliged to serve in the office of collector.”

Section 17, after the oath to be administered to the constable, proceeds, “And the oath to such as may be collectors only, shall be in the following form :

“ 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 suffi-

cient warrants according to law : rendering an account thereof, and paying the same, according to the direction in your warrant. *So help you GOD.*”

Section 18 enacts, “ That 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 dwelling-house of the officer making such distress to the place where the distress may be made.”

The statute of June 28, 1786, entitled “ An act regulating parishes and precincts, and the officers thereof,” after providing for the meeting of the inhabitants of each parish and precinct, according to notification by the collector, and for the choice of officers at such meeting, proceeds to enact that “ no person in commission for any office, civil or military, church officer, member of the council, senate or house of representatives, for the time being, nor any one who has served in the office of constable or collector of any town, district, parish or precinct within the term of seven

years, shall be obliged to serve in the office of collector. And every person chosen to the office of collector, and not exempted as aforesaid, if he be able in person to execute the same, and of the same denomination of christians as those of the major part of the parish or precinct who shall choose him, who shall refuse to take the oath to that office prescribed, and to serve therein, shall forfeit and pay to the use of the same precinct or parish, the sum of *three pounds*. And the person chosen collector shall, if present, forthwith declare his acceptance or refusal, and in case of non-acceptance the parish or precinct shall proceed to a new choice, and so from time to time until one shall accept and be sworn; and any person so chosen, who shall be present, and shall not declare his acceptance of the office of collector, or who shall neglect, after being summoned by a constable or any other person whom the clerk or assessors may appoint for that purpose before the clerk, to take the oaths of office, for the space of seven days next after being notified or summoned, as aforesaid (which oath, as well as the oath of all other parish or precinct officers, the clerk for the time being is hereby authorized

and empowered to administer) and shall neglect to pay the fine aforesaid, may be compelled to pay the same by the same mode of process, in the court of general sessions of the peace, that fines may by law be recovered of persons refusing to serve in the office of constable."

By the statute of March 26, 1788, entitled "An act in addition to an act passed March the sixteenth, in the year of our Lord one thousand seven hundred and eighty-six, entitled, 'An act for the choice and appointment of collectors of rates and taxes, and for ascertaining their power and duty,'" it is provided, "Whereas it often happens that persons taxed in public and other assessments abscond, not having paid their rates and taxes, by which means the said taxes are frequently lost, and no provision being made in the said act for remedy thereof,

"Be it enacted by the senate and house of representatives, in general court assembled, and by the authority of the same, That when any person duly taxed in any assessment as aforesaid, hath absconded or shall hereafter abscond, not having paid their rates and taxes, and hath concealed or shall conceal his

goods and estates ; in every such case, the collectors, and constables to whom the said rates and taxes are committed to collect, shall have like remedy against their agents, factors or trustees, for the recovery of the same, as by the laws of this commonwealth other creditors have for the recovery of their debts.”

By the statute of June 15, 1789, entitled “ An act further to enable constables and collectors of taxes to complete their collections in certain cases,” it is enacted, “ That where any person, duly rated in any town, district, precinct, 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, district 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 payment of such rates, in all such cases, it shall and may be lawful for the constables or collectors of such town, district, precinct, 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."

By the statute of February 3, 1792, entitled "An act in addition to the several laws now in force, providing for the collection of taxes," it is enacted, "Whereas provision is made by law, when any constable or collector of taxes in any town, district, plantation, precinct or parish, shall die, before the completing of the collection of the taxes committed to him, that the assessors appoint a collector to perfect such collection; but no provision is made when any constable or collector shall become *non compos mentis*, or be disabled by bodily infirmities from perfecting his collection; for remedy whereof,

"1. *Be it enacted by the senate and house of representatives in general court assembled, and by the authority of the same,* That when any constable or collector of any town, district, plantation, precinct 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 perfect 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: *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. And in the cases aforesaid, and in case of the decease of any constable or

collector of taxes before his perfecting his collections, 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.

“ And whereas provision is also made by law, that when any distress shall be taken by any constable or collector, for non-payment of taxes, it shall be kept four days before notice of sale shall be given, and that the forty-eight hours notice of sale shall not be given until after the expiration of the said four days, which prolongation of the time of sale often increases expense and appears to be unnecessary,

“ 2. *Be it therefore enacted by the authority aforesaid*, That it shall and may be lawful for any constable or collector to give the forty-eight hours notice, of the sale of any distress by him taken, for the non-payment of

taxes, within the said four days, and after such notice, to sell such distress, after the expiration of the said four days ; any law to the contrary notwithstanding.

“ 3. *And be it further enacted by the authority aforesaid,* That 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 commonwealth, or by the treasurer of any county, town, district, plantation, parish or precinct, 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.”

By the statute of February, 28, 1795, entitled “ An act prescribing the duty of constables and collectors in certain cases, previous to the advertisement of non-resident proprietors’ land for sale, for non-payment of taxes ; and for perpetuating the evidence of posting notifications previous to such sale,” it is enacted, section 1, “ that where any non-resident proprietor of any lands in any town, district

or plantation, within this commonwealth, shall have authorized in writing, any person residing and dwelling in any such town, district 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 clerks of such town, district or plantation, which such clerk is hereby required to do, upon application of such attorney, and payment of *one shilling* for filing or recording the same; no constable or collector of taxes in any such town, district 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 dwelling house, nor till after the expiration of two months from and after such notice. 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, district, or plantation (who is hereby required, upon request of such con-

stable 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."

Section 2 contains a provision, "That the affidavit of any disinterested person, taken before a justice of the peace, of the posting notifications, required by law, 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."

The statute of June 19, 1809, entitled "An act in addition to an act entitled an act for regulating towns, setting forth their power, and for the choice of town officers, and for repealing all laws heretofore made for that purpose," section 2, enacts, "That it shall be the duty of every collector of taxes in the several towns and districts aforesaid, for the

two last years immediately preceding the first day of March, annually, and they are hereby severally authorized and directed to make out and return to the assessors of the several towns and districts, for the time being, or such other persons as perform the office of assessors of such towns and districts, thirty days previous to the first day of March, annually, an accurate list of the names of all those persons from whom the said collectors shall have received any sum of money as payment for taxes for either of said two years ; and to the name of each person each collector shall respectively annex the said sum of money which he shall have so received from such person on account aforesaid ;” and provides, for unreasonably refusing or neglecting to make out and return such list, a penalty of not less than *fifty* nor more than *five hundred dollars*.

APPENDIX.

BOND OF SHERIFF TO THE TREASURER.

KNOW all men by these presents, that we B. C. of R. in the county of N. esquire, and sheriff of said county of N. as principal, and D. E.—J. C. and F. G. all of B. in the county of S. as sureties, are holden and stand firmly bound unto P. C. of B. in the county of S. as he is treasurer and receiver general of the commonwealth of Massachusetts, in the sum of *thousand dollars*, to be paid to the said C. in his capacity as said treasurer, or to his successor in said office of treasurer and receiver general of said commonwealth; 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 Anno Domini*, one thousand eight hundred and

APPENDIX.

THE condition of this obligation is such, that if the above bounden B. C. shall faithfully perform and execute all the duties of his office aforesaid of sheriff of said county of N. and respond and repair the malfeasance, misfeasance and nonfeasance of all his deputies; then this obligation to be void; otherwise to remain in full force and virtue.

Signed, sealed and delivered }
in presence of

B. C. (SEAL.)

D. E. (SEAL.)

J. C. (SEAL.)

F. G. (SEAL.)

BOND OF THE DEPUTY TO THE SHERIFF.

KNOW all men by these presents, that we, A. B. of C. in the county of D. as principal, and E. F. of G. and H. I. of K. in said county of D. as sureties, are holden and stand firmly bound unto L. M. of B. in the county of S. aforesaid, esq. in the sum of *thousand dollars*, to be paid to the said L. M. his executors or administrators: For the payment of which sum we bind ourselves, our executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals. Dated this day of
Anno Domini, 180

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THE condition of the above obligation is such, that whereas the said L. M. is sheriff of the said county of S. and at the request of the said A. B. hath appointed him his deputy sheriff, in and for the same county : If, therefore, the said A. B. shall discharge and perform his said office, agreeably to his oath thereof taken ; and shall indemnify and save the said L. M. his executors, and administrators, harmless from all actions, debts, damages, costs, expense, trouble and demands, that may accrue, happen, or arise, to or against him or them, by means of his appointing the said A. B. a deputy-sheriff, as aforesaid ; or by means of any malfeasance, misfeasance, or nonfeasance, of the said A. B. in his said office ; and shall obey all the legal and reasonable commands and instructions of the said L. M. touching the same office ; and shall keep a fair register, or registers, of all warrants, summonses, writs and precepts, that may come to his hand, as a deputy-sheriff aforesaid ; and of his doings and fees thereon ; in such fit and concise manner as the said L. M. shall order, and subject to his inspection ; and, if at any time thereto requested by the said L. M. shall make solemn oath, be-

APPENDIX.

fore some justice of the peace in and for the said county of S. that, according to the best of his knowledge and remembrance, the said register, or registers, contains, or contain, a true list and account of all warrants, summonses, writs, and precepts, that have come to his hand, in manner aforesaid; and of all legal fees on the same, except what are contained in some former register or registers, in like manner sworn to or otherwise approved of, by the said L. M. and, shall annually, in the months of *January, April, July* and *October*, furnish the said L. M. with a true copy of the said register, or registers, (or such parts thereof as the said L. M. may direct) subscribed and attested as such: Then the above obligation to be void; otherwise to remain in full force.

Signed, sealed and delivered }
in presence of }

APPENDIX.

OFFICER'S RETURN, WHEN DIRECTED TO TAKE BAIL.

Middlesex, ss. Groton, April 10, 1809.

By virtue of this precept, I have taken the body of the within named J. S. and he gave bail.

S. W. Deputy-Sheriff.

| | |
|-------------------|----------|
| Fees—Service..... | \$ 00 50 |
| Travel, 32 miles, | 1 28 |
| | <hr/> |
| | \$ 1 78 |

BAIL BOND.

Know all men by these presents, that we, A. B. of C. in the county of D. yeoman, as principal, and E. F. merchant, and G. H. gentleman, both of said C. as sureties, are holden and stand firmly bound and obliged unto J. K. esquire, sheriff of the county of D. in the sum of *dollars*, to be paid unto the said J. K. his successors in the office, or assigns; 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. Seal-

APPENDIX.

ed 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 body of the above bounden
 A. B. is by force of a writ or process, bear-
 ing date taken at the suit of L. M.
 of D. in the county of P. mariner, to answer
 unto the said L. M. in a plea of by
 him commenced, to be heard and tried at the
 court of common pleas, to be holden at Q.
 within the county of R. on the of
 as by the return of said writ or process will
 appear. If therefore the above bounden A.
 B. shall appear at the said court of common
 pleas to answer the said L. M. upon the said
 plea, and shall abide the final judgment there-
 on, and shall not avoid, then the above writ-
 ten obligation shall be null and void, other-
 wise shall remain in full force and virtue.

Signed, sealed, and delivered }
 in presence of

A. B. (SEAL.)

E. F. (SEAL.)

G. H. (SEAL.)

This bond must be, according to the statute of 23 Hen. 6.
 c. 9. to the sheriff, by the name of his office, and on condition
 that the principal shall appear, &c. as above shewn. Any ob-
 ligation in other form will be void.

APPENDIX.

OFFICER'S RETURN WHEN IT IS NECESSARY TO
LEAVE A SUMMONS ONLY.

Essex, ss. December 3, 1804.

BY virtue of this precept I have summoned the within named A. B. to appear at the time and place within mentioned by giving him a summons in hand.....[or, by leaving a summons at his last and usual place of abode.]

C. D. Constable of Ipswich.

| | |
|------------------------|---------|
| Fees—Service..... | £ 00 30 |
| Travel 12 miles, 00 48 | |
| | <hr/> |
| | £ 00 78 |

OFFICER'S RETURN WHEN GOODS ARE ATTACHED.

Suffolk, ss. Boston, May 25, 1806.

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 a summons at the last and usual abode of each of the said A. B. and C. D. —I also made diligent search for

APPENDIX.

the said E. F. but could not find him, and he having no tenant, agent, trustee or attorney within this commonwealth, I left for him a summons with the said A. B.

| | |
|-----------------------|----------|
| Fees—Service..... | \$ 00 50 |
| Extra service in . } | 4 75 |
| removing goods, } | |
| Travel, 120 miles.... | 2 70 |
| | <hr/> |
| | \$ 7 95 |

OFFICER'S RETURN WHEN GOODS ARE ATTACHED AND TRUSTEES SUMMONED.

Essex, ss. Salem, June 4, 1807.

By virtue of this precept I have attached the goods in the store of the said A. B. and also the store with the land under the same, situated in said Gloucester, being bounded as follows, viz: on C. street, feet front, on D. lane, feet from the corner of C. street, thence running a line at right angles from D. lane feet inches, thence to C. street. I also summoned the within named E. F. and G. H. by reading to them the within precept, and I. K. by leaving a copy of the same at his dwelling

APPENDIX.

house, to appear as within directed. I also left a copy at the last and usual place of abode of the said A. B.

L. M. Deputy-Sheriff.

| | |
|---|----------|
| Fees—Service..... | \$ 00 50 |
| Travel, 20 miles..... | 00 80 |
| Trustee's copy..... | 00 12 |
| and service..... | 00 90 |
| Copy to principal..... | 00 12 |
| Putting a man in pos- session of the goods, and truckage in re- moval..... | } 3 25 |
| | |
| | \$ 5 69 |

OFFICER'S RETURN ON A WRIT OF SCIRE FACIAS.

Worcester, ss. December 3, 1801.

IN obedience to this precept I have made known unto the said A. B. as within com-
manded, by leaving him a copy thereof.

C. D. Deputy-Sheriff.

| | |
|-------------------|----------|
| Fees—Service..... | \$ 00 30 |
| Copy..... | 00 12 |
| | \$ 00 42 |

APPENDIX.

OFFICER'S RETURN ON A WRIT OF REPLEVIN.

Middlesex, ss. M..... August 20, 1807.

By virtue of this precept I have replevied the within mentioned goods and chattels, and delivered them to the plaintiff, having taken ~~the~~ bond and receipt, as hereunto annexed, according to law. I have also summoned the within named A. B. to appear, by giving him an attested copy of this writ.

C. D. Coroner.

| | |
|------------------|----------|
| Fees—Bond..... | \$ 00 25 |
| Copy..... | 00 12 |
| Service..... | 00 50 |
| Travel 20 miles, | 00 80 |
| | \$ 1 67 |

M..... August 20, 1807.

RECEIVED of C. D. the within mentioned goods and chattels.

A. B.

The bond is of the same form as any other, but the condition runs thus:

THE condition of this obligation is such, that whereas the above bounden A. B. on the day of current, sued out of the clerk's office a writ of replevin against the said E. F. in due form of law, returnable

APPENDIX.

to the next court of common pleas, to be holden at within and for the said county of on the of next. Now if the above bounden A. B. shall prosecute his said action of replevin to final judgment; and shall pay all such costs and damages as the said E. F. shall recover against him, and shall also return the goods and chattels replevied, in like good order and condition as when taken, in case such shall be the final judgment, then this obligation to be void and of no effect, otherwise to remain in full force and virtue.

Signed, sealed and delivered }
in presence of

A. B. (SEAL.)

G. H. (SEAL.)

I. K. (SEAL.)

RETURNS ON EXECUTIONS

Are so simple, that it is unnecessary to offer forms for most of them.

In case where real estate is extended on, the following form of a return is recommended.

APPENDIX.

JUSTICE'S CERTIFICATE.

Suffolk, ss. May 8, 1808.

PERSONALLY appeared before A. B., C. D. and E. F. and severally made oath, that they will faithfully and impartially appraise such real estate of the within named G. H. as shall be shewn to them, to satisfy this execution and all charges.

J. K. Justice of Peace.

APPRAISERS' CERTIFICATE.

WE the subscribers, above named appraisers, and sworn as above appears, have faithfully and impartially appraised the real estate, herein after described, to us shewn, as the estate of the within named G. H. to satisfy the within execution and all charges, viz. a certain piece or parcel of land, situated in B. in the county of S. bounded and measuring as follows, beginning at the south-west corner of land belonging to L. M. and running from said corner easterly feet, bounding on said land of L. M. then turning nearly at a right angle and running northerly on land of N. O. feet inches, then turning at an acute angle, and running southerly

APPENDIX.

feet, to a passage way, then running easterly on said passage way feet, thence to the first mentioned bounds; and we have appraised the premises at the sum of

dollars, to satisfy this execution and the charges of extending the same, being *dollars* and *cents*. As witness our hands.

A. B.

C. D.

E. F.

B.....May 9, 1808.

OFFICER'S RETURN.

PURSUANT to the within writ of execution to me directed, for want of money or other personal estate to the acceptance of the creditor, wherewith to satisfy this execution, I have by his direction caused three disinterested and discreet men, above mentioned, freeholders of said county, of whom A. B. was chosen by the creditor, C. D. by the debtor and E. F. by myself, to be sworn as above mentioned by J. K. esquire, one of the justices of the peace for the said county of S. faithfully and impartially to appraise the real estate above described, shewn to them and

APPENDIX.

me as the estate of the said G. H. to satisfy this execution with all fees, who have appraised the same, as by them is above certified at the sum of

dollars, which includes the sum of *cents*, being for the fees and charges of levying this execution; and I have caused the same to be set out by the metes and bounds above mentioned in said appraisers return, and have delivered possession and seizen of the same land to the creditor as appears by his receipt and acknowledgment hereunto subjoined, and therefore I return this execution fully satisfied.

P. Q. Deputy-Sheriff.

| | |
|-------------------|----------|
| Fees—Sheriff..... | \$ 37 00 |
| Appraisers..... | 3 00 |
| Justices..... | 25 |
| | <hr/> |
| | \$ 40 25 |

APPENDIX.

CREDITOR'S RECEIPT.

I ACKNOWLEDGE to have received seizen and possession of premises above described, to satisfy this execution.

R. S.

REGISTER'S CERTIFICATE.

Registry of deeds, S.... county. B.... May 21, 1808.

RECEIVED and entered in the records of
S. lib. folio
T. U. Register of Deeds.

MODE OF KEEPING ACCOUNTS OF WRITS, EXECUTIONS, &c.

ORDER is no less necessary in keeping the books of accounts of sheriffs or deputies, than of people in any other line of business. I have, therefore, thought it might be useful to subjoin to this volume a mode of keeping an account which will exhibit at a single glance the whole history of an action, as far as it was or could be necessary for me to know it. That it is the best, is not proper or necessary for me to say, but it was preferred after some considerable experience.

APPENDIX.

Should every sheriff in the commonwealth direct each of his deputies to keep an exact account in books of the following forms, or similar to them, and to submit them every month, quarter, and year, to him, it would, probably, ensure more faithful performance of his duty by the subordinate officer, and promote the interest of suitors as well as that of the sheriff.

In the following form, the covers of the respective books, which should be of paste-board, is supposed to project at the top half an inch or more above the leaves. The cover being divided and marked, and all the leaves ruled in corresponding divisions, the heads on the cover will serve for the whole book.

| DATE | RETURNED. | |
|------|-------------------|--|
| Jaro | 1808. March 4. | dant Everhard's house, hand. |
| Japr | April 21. | fficient to respond judg- y appear. |
| Au | August 3. | in hand. |

MARKS.

. Returned :

Satisfied in :
newed.

. Returned n
; Creditor....[
Attorney.]

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